

CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Syllabus & Index Guide

PAPER 15 | SYLLABUS 2022

ALL
MODULES

**Complete Master Index
(Modules 1 to 14)**

COURSE

CMA Final

SYLLABUS STRUCTURE

Section A (60%) | Section B (40%)

PAPER

15: Direct Tax Laws & International Taxation

SUITABLE FOR

Quick Navigation & Syllabus Tracking

SYLLABUS OVERVIEW

Paper 15: Syllabus Structure & Weightage

The subject primarily focuses on various provisions of direct taxation laws to guide assessment of income and computation of tax liability, tax management, grievance redressal, and international taxation laws including DTAA, Transfer Pricing, and GAAR.

 Sectional Weightage

SECTION A: DIRECT TAX LAWS (60%)	SECTION B: INTERNATIONAL TAXATION (40%)
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Study Framework & Application Skills

Students will develop an understanding of legal provisions and analyse, interpret, and apply the same in day-to-day business transactions. They will acquire knowledge and application skills required to compute income and tax liabilities, and be able to apply those for helping management to take tax efficient business decisions. Students would learn about ways and means for identifying various compliance requirements as well as processes for redressal of grievances.

CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

01

MODULE

Assessment of Income and Computation of Tax Liability of Various Entities

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 1

Assessment of Income and Computation of Tax Liability of Various Entities

Comprehensive coverage of computation of income and tax liability for Individuals (Resident & Non-Resident), Companies, Trusts, and Mutual Associations including special provisions, presumptive taxation, MAT, carry forward & set-off of losses, and special tax regimes as per the official CMA Final syllabus.

 Syllabus Weightage

Section A: Direct Tax Laws — 60%

Section B: International Taxation — 40%

11

MODULES IN SECTION A

3

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14

TOTAL MODULES

4

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1.1 Individual Including Non-Resident

Computation of Total Income requires complete knowledge of all heads of income and deductions under Chapter VIA. The following proforma is applicable for A.Y. 2026-27.

1.1.1 Computation of Total Income of Individual for A.Y. 2026-27

PARTICULARS	AMOUNT (₹)
Salaries	***
Income from house property	***
Profits and gains of business or profession	***
Capital gains	***
Income from other sources	***
Gross Total Income	***
Less: Deductions u/s 80C to 80U (subject to Max. of GTI before casual income, STCG u/s 111A & LTCG) [subject to regime]	***
Total Income / Taxable Income (Rounded off u/s 288A)	***

Computation of Tax Liability of Mr. X for A.Y. 2026-27

PARTICULARS	RATE	AMOUNT (₹)
Total Income other than STCG u/s 111A, LTCG & casual income	Slab	***
Add: Tax on casual income	30%	***
Add: Tax on LTCG	12.5% / 20% / 0%	***
Add: Tax on STCG covered u/s 111A	20%	***
Total tax liability before rebate and cess		PQR
Less: Rebate u/s 87A		**
Add: Surcharge	STY	***
Add: Health and Education cess @ 4%		***
Tax liability after cess		ABC
Less: Relief u/s 86, 89, 90 & 91		**
Tax liability		***
Less: Advance Tax / TDS / TCS / Any other prepaid tax		***
Tax Payable (+) or Refundable (-) (Rounded off u/s 288B)		***

1.1.2 Non-Resident [Sec. 2(30)]

Non-resident means a person who is not a resident, and for the purposes of sections 92, 93 and 168, includes a person who is not ordinarily resident within the meaning of sec. 6(6).

Residential Status — Individual, HUF, Company, Firm

ASSESSEE	CONDITION TO BE A RESIDENT	CONDITION TO BE AN ORDINARILY RESIDENT
Individual	Satisfies any one condition of sec. 6(1): (a) In India in PY for 182 days or more ; or (b) In India for 60 days or more during PY and 365 days or more during 4 preceding PYs.	Satisfies both conditions of sec. 6(6): (a) Resident in India in at least 2 out of 10 preceding PYs; and (b) Resided in India for 730 days or more during 7 preceding PYs.
HUF	Management wholly or partly situated in India	Karta satisfies all conditions of sec. 6(6)
Company	(a) Indian Co. — Always resident; (b) Other Co. — Place of effective management (POEM) in India	Not applicable
Firm / AOP / BOI	Management wholly or partly situated in India	—

△ IMPORTANT

Exceptions:

A. Condition (ii) of sec. 6(1) is irrelevant for: (i) An Indian citizen, who leaves India during PY for **employment purpose**. (ii) An Indian citizen, who leaves India during PY as a member of **crew of an Indian ship**.

B. Deemed Resident [Sec. 6(1A)]: An individual shall be deemed to be resident in India if: He is a citizen of India; His total income (other than income from foreign sources) exceeds **₹15 lakhs** during PY; He is not satisfying any of the basic conditions u/s 6(1); and He is not liable to tax in any other country or territory by reason of his domicile or residence.

C. Deemed Resident but Not Ordinarily Resident [Sec. 6(1A)]: An individual shall be deemed to be RNOR if: He is a citizen of India or a person of Indian origin; He comes on a visit to India during PY; His total income (other than foreign sources) exceeds **₹15 lakhs**; He is in India for **120 days or more** (but less than 182 days) and 365 or more days during 4 preceding PYs; He is in India for **182 days or more** during PY.

▽ TAXPOINT

POEM Guidelines: (i) Place where management decisions are taken is more important than place where decisions are implemented. (ii) A foreign company whose annual turnover / gross receipts is **₹50 crores or less** cannot be resident in India. (iii) Para 7: POEM in case of a company engaged in active business outside India (ABOI) shall be presumed to be outside India if majority meetings of BoD are held outside India. (iv) Para 7.1: If BoD are standing aside and not exercising powers of management, and such powers are exercised by holding company or any other person(s) resident in India, then POEM shall be considered to be in India.

Foreign Company said to be Resident in India [Sec. 115JH]

Where a foreign company is said to be resident in India in any PY and has not been resident in India in any preceding PY, then provisions relating to computation of total income, unabsorbed depreciation, set off/carry forward of losses, collection & recovery, and special provisions relating to avoidance of tax shall apply with exceptions, modifications and adaptations as specified in notification.

Consequences of Failure: (i) Benefit/exemption/relief deemed to have been wrongly allowed; (ii) AO may recompute total income; (iii) Sec. 154 applies; period of 4 years from end of PY in which failure occurs.

1.1.3 Computation of Income on Presumptive Basis

Shipping Business (Other than Cruise Ship) — Sec. 44B

Applicable to	All non-resident assesseees
Condition	Engaged in business of operation of ships
Estimated Income	7.5% of aggregate of: (1) Amount paid/payable (in or out of India) for carriage of passengers, livestock, mail or goods shipped at any port in India; (2) Amount received/deemed to be received in India for carriage shipped at any port outside India.
Notes	Includes demurrage charges, handling charges, or any other similar amount.

Special Procedure for Shipping Business — Sec. 172

Applicable to	Ships belonging to or chartered by non-resident carrying passengers, livestock, mail or goods shipped at port in India.
Deemed Income	7.5% of amount paid/payable for such carriage to owner/charterer.
Computation	Master of ship shall prepare and furnish return before departure. No order after expiry of 9 months from end of FY in which return is furnished.
Option to Claim	Owner/charterer may claim assessment of total income u/s 172(7).

≈ CASE LAW

V.M. Salgaocar & Brother Ltd. v. Deputy Controller [1991] 187 ITR 381 (Kar.) — Ship casually visiting Indian port is covered by sec. 172; regular shipping business is covered by sec. 44B.

Profits & Gains from Mineral Oils — Sec. 44BB

Applicable to	Non-resident assesseees
Condition	Engaged in providing services/facilities or supplying plant and machinery on hire used/to be used in prospecting for, extraction or production of mineral oils.
Estimated Income	10% of aggregate of amounts paid/payable (in or out of India) and amounts received/deemed to be received in India.
Lower Profit	Allowed if books maintained u/s 44AA, audited u/s 44AB.
Taxpoint	Benefit of unabsorbed depreciation and brought forward loss not allowed.

Aircraft Operation — Sec. 44BBA

Applicable to	All non-resident assesseees
Condition	Engaged in business of operation of aircraft
Estimated Income	5% of aggregate of amounts paid/payable for carriage from any place in India and amounts received/deemed to be received in India for carriage from any place outside India.

Turnkey Power Projects, Cruise Ships & Electronics — Sec. 44BBB, 44BBC, 44BBD

SECTION	CONDITION	DEEMED INCOME
44BBB	Foreign company engaged in civil construction/erection in turnkey power project approved by CG.	10% of amount paid/payable (in or out of India). Unabsorbed dep/b/f loss not allowed.
44BBC	Non-resident engaged in operation of cruise ships.	20% of aggregate for carriage of passengers.
44BBD	Non-resident providing services/technology for electronics manufacturing facility under notified scheme.	25% of aggregate of amounts paid/payable and received/deemed received. No set-off of unabsorbed dep/b/f loss; Sec. 44DA/115A not applicable.

Royalties/FTS to Non-Resident with PE — Sec. 44DA

Applicable to	Non-resident (not being a company) or foreign company
Conditions	(1) Income by way of royalty/FTS from Government/Indian concern; (2) Carries on business in India through PE; (3) Right/property/contract effectively connected with PE.
Agreement Date	After 31/3/2003
Tax Treatment	Computed under head "Profits and gains of business or profession".
Deduction Not Permissible	(a) Expenditure not wholly and exclusively incurred for PE in India; (b) Amounts paid (other than reimbursement) by PE to head office.
Note	Books u/s 44AA, audit u/s 44AB, report in Form 3CE uploaded one month prior to due date.

Deduction of Head Office Expenditure — Sec. 44C

Head office expenditure allowed = **Higher of:** (i) 5% of adjusted total income; or (ii) Amount of head office expenditure attributable to business/profession in India.

Σ FORMULA

Average Adjusted Total Income = Average of adjusted total income of 3 AYs immediately preceding relevant AY

📍 TAXPOINT

Adjusted Total Income means total income without giving effect to: Head-office expenditure u/s 44C; Unabsorbed depreciation u/s 32(2); First proviso to sec. 36(1)(ix); Loss carried forward u/s 72/73/74/74A; Deductions under Chapter VIA.

1.1.4 Capital Gain on Transfer of Shares/Debentures by a Non-Resident

First Proviso to Sec. 48 and Rule 115A: Applicable to non-resident assessee (not covered u/s 115AC and 115AD) on capital assets being shares/debentures of Indian company acquired by utilizing foreign currency. **Not applicable** to units of UTI and Mutual Funds.

STEP	CONVERSION OF	PARTICULARS	CONVERSION RATE
1	Sale consideration	Find sale consideration in Indian currency and convert into foreign currency	Average exchange rate on date of transfer
2	Expenditure on transfer	Find expenditure on transfer in Indian currency and convert into foreign currency	Average exchange rate on date of transfer
3	Cost of acquisition	Find cost of acquisition in Indian currency and convert into foreign currency	Average exchange rate on date of acquisition
4	Capital gain in foreign currency	Step 1 – Step 2 – Step 3	Not applicable
5	Taxable Capital gain	Capital gain so calculated (in step 4) will be reconverted into Indian currency	Buying rate on date of transfer

★ QUICK REVISION

Definitions: **Average exchange rate** — average of telegraphic transfer buying rate and telegraphic transfer selling rate. **Buying Rate** — telegraphic transfer buying rate. **Telegraphic transfer buying/selling rate** — rate adopted by SBI for purchasing/selling currency through telegraphic transfer.

1.1.5 Special Provisions [Sec. 115ACA to 115BBA]

SEC.	115AB	115AC	115ACA	115AD	115BBA
Applicable on	Offshore Fund	Non-resident	Resident individual	Specified Fund or FII	Non-resident sportsman/association
Income covered	Income from units	Dividend on GDRs; LTCG on transfer	Dividend on GDRs; LTCG on transfer	Income on securities; STCG/LTCG	Participation in game/sport; advertisement; articles
Chapter VIA	Not available	Not available	Not available	Not available	—
Index benefit	Not applicable	Not applicable	Not applicable	Not applicable	—
Return	Yes	Yes	No	No	—

TAXPOINT

Taxpoint: In case of LTCG referred to in sec. 112A, income-tax @ **12.5%** on income exceeding ₹1.25 lakh. **Specified Knowledge Based Industry:** IT software, IT service, entertainment service, pharmaceutical, bio-technology, any other specified.

1.1.6 Special Provision — Non-Resident Indian [Sec. 115C to 115-I]

Applicable on	Non-resident Indians deriving: (a) Income from investment in foreign exchange asset; or (b) LTCG on foreign exchange asset.
Foreign Exchange Asset	Specified asset acquired/purchased/subscribed in convertible foreign exchange.
Specified Asset	Shares in Indian company; Debentures of Indian public company; Deposit with Indian public company; Central Government securities; Notified asset.
Investment Income	Income derived from foreign exchange asset.
Long-term Capital Gain	Income chargeable under Capital gains relating to foreign exchange asset which is not short-term.

20%

INVESTMENT INCOME

12.5%

LTCG [SEC. 115E]

6 Months

INVEST FOR EXEMPTION

3 Years

LOCK-IN PERIOD

Exempted Capital Gain [Sec. 115F]

Conditions	(1) Transfer of LTCG asset acquired in convertible foreign exchange (original asset); (2) Within 6 months , invest whole/part of net consideration in new asset.
New Asset	Shares in Indian company; Debentures of Indian public company; Deposit with Indian public company; Central Government securities; NSC VI and VII issues.
Exemption Amount	Minimum of: LTCG; or LTCG × Amount invested / Net consideration.
Withdrawal	If new asset transferred/converted into money within 3 years , exemption revoked.

Other Provisions & Compliance

- ▶ **Sec. 115G:** Not necessary to file return if income consists only of income u/s 115BBA and tax deducted at source.
- ▶ **Sec. 115H:** On becoming resident, may be assessed as above if declaration filed in writing with return.
- ▶ **Sec. 115I:** Assessee may elect not to be governed by furnishing return declaring provisions shall not apply.
- ▶ **Sec. 115JG:** Conversion of Indian branch into subsidiary — capital gains not chargeable; failure = all provisions apply without benefit.
- ▶ **Sec. 285:** Non-resident with liaison office shall deliver statement in **Form 49C**.
- ▶ **Sec. 285BAA:** Crypto-asset reporting — defective: 30 days; inaccuracy: 10 days.
- ▶ **Sec. 286:** International group report within **12 months** from end of reporting accounting year.

1.1.7 Withholding Tax for Non-Resident

SECTION	NATURE OF PAYMENT	WHO IS RESPONSIBLE	RATE OF TDS
194E	Payment to non-resident sportsman/sports associations	Any person paying for participation in game, advertising, articles	20% + SC + HEC
194LB	Interest from Infrastructure Debt Fund	Any person paying interest by infrastructure debt fund u/s 10(47)	5% + SC + HEC
194LC	Interest to non-resident (foreign currency borrowings)	Indian company or business trust paying interest	5% + SC + HEC (4%/9% specified)
194LD	Interest on bonds/Govt. securities to FII/QFI	Any person paying interest to FII or QFI	At notified rate
195	Other sums payable to non-resident	Any person paying any sum chargeable (excluding salary)	At rate in force
196A	Income in respect of units of non-residents	Any person paying income from units of MF u/s 10(23D) or UTI	20% + SC + HEC
196B	Income from units (Offshore Fund)	Any person paying income from units u/s 115AB	LTCG: 12.5%; Other: 10%
196C	Income from foreign currency bonds or GDR	Any person paying income from bonds/GDR u/s 115AC	LTCG: 12.5%; Other: 10%
196D	Income of FII from securities	Any person paying income from securities u/s 115AD(1)(a)	20% (10% specified fund)

1.1.8 Recovery of Tax

Agent of Non-resident [Sec. 163]

Where person liable to tax resides outside India, tax may be levied upon and recovered from his agent. Agent deemed to be assessee. **Who may be treated as Agent:** (i) Employed by/on behalf of non-resident; (ii) Has business connection; (iii) From/through whom non-resident receives income; (iv) Trustee of non-resident; (v) Any person who has acquired capital asset in India by transfer.

Exception: Broker in India not dealing directly with non-resident principal but through non-resident broker, if transactions in ordinary course and non-resident broker not as principal.

Recovery from Assets & Foreign Agreements [Sec. 173, 228A]

- **Sec. 173:** Tax recovered by deduction under Chapter XVII-B and arrears from any assets of non-resident within India.
- **Sec. 228A:** TRO may forward certificate to Board if assessee has property in country with which India has agreement for recovery.

1.2 Company

1.2.1 Company [Sec. 2(17)]

"Company" means: (i) any Indian company; or (ii) any body corporate, incorporated under laws of a foreign country; or (iii) any institution, association or body which is or was assessable or was assessed as a company for any AY on or before April 1, 1970; or (iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of CBDT to be a company.

Indian Company [Sec. 2(26)] & Domestic Company [Sec. 2(22A)]

An Indian company means a company formed & registered under the Companies Act, 1956 & includes: (i) company formed and registered under any law relating to companies formerly in force in any part of India (other than J&K and specified UT); (ii) company formed and registered under any law in force in J&K; (iii) company formed and registered under any law in force in Union territories of Dadar & Nagar Haveli, Goa, Daman & Diu and Pondicherry; (iv) corporation established by or under a Central, State or Provincial Act; (v) any institution, association or body declared by CBDT to be a company u/s 2(17). Registered office or principal office must be in India.

Domestic company means: (i) an Indian company; or (ii) any other company, which in respect of its income liable to tax under the Act, has made prescribed arrangements for declaration and payment of dividends (including dividend on preference share), payable out of such income, within India. **Prescribed arrangements [Rule 27]:** (a) Share-register maintained at principal place of business in India; (b) General meeting held only at place within India; (c) Dividends payable only within India to all shareholders.

Foreign company means a company which is not a domestic company.

Company in which public are substantially interested [Sec. 2(18)]

- 1 **Government company:** Owned by Government/RBI or not less than **40% shares** held by Government/RBI.
- 2 **Company u/s 8:** Registered u/s 8 of Companies Act, 2013.
- 3 **Mutual benefit finance company:** Nidhi or Mutual Benefit Society.
- 4 **Co-operative societies:** Equity shares carrying not less than **50% voting power** held by co-operative societies.
- 5 **Listed company:** Not a private company with conditions in item (A) or (B) fulfilled — (A) equity shares listed on recognized stock exchange; (B) equity shares carrying not less than 50% (40% for industrial company) voting power held by Government, corporation, or companies.
- 6 **Company prescribed by Board:** No share capital and declared by Board.

1.2.2 Rate of Tax for Company Assessee

INCOME	RATE
Short term capital gain covered u/s 111A	20%
Long term capital gain covered u/s 112A / Other LTCG	12.50%
Winnings from lottery, cross-word puzzles, etc.	30%
– Domestic company (turnover ≤ ₹400 crores in PY 2023-24)	25%
– Domestic company (other cases)	30%
– Foreign company: Royalty/FTS (agreement after 31-3-1961 but before 1-4-1976, approved by CG)	50%
– Foreign company: Other incomes	35%

SURCHARGE		
TOTAL INCOME	DOMESTIC	FOREIGN
≤ ₹1 crore	Nil	Nil
> ₹1 cr ≤ ₹10 cr	7%	2%
> ₹10 cr	12%	5%

TAXPOINT

HEC: 4% of tax after surcharge. **Marginal Relief:** Available when income exceeds ₹1 crore or ₹10 crores.

1.2.3 Special Tax Regimes — Sec. 115BA, 115BAA, 115BAB

PARTICULARS	SEC. 115BA	SEC. 115BAA	SEC. 115BAB
Conditions	Set-up & registered on or after 01-03-2016; engaged only in manufacture/production + research/distribution; total income computed without specified deductions.	Total income computed without specified deductions (10AA, 32(1)(ia), 32AD, etc.) other than 80JJAA/80M.	Set-up & registered on or after 01-10-2019; commenced manufacture before 31-03-2024; not formed by splitting/reconstruction; no previously used machinery/building (certain exceptions); only manufacture/production + research/distribution.
Rate	25% + SC + Cess	22% + SC 10% + Cess	15% + SC 10% + Cess
Key Points	Optional; cannot be withdrawn.	Optional; cannot be withdrawn; MAT not applicable.	Optional; cannot be withdrawn; MAT not applicable; certain businesses excluded.

1.2.4 Carry Forward and Set-off of Losses [Sec. 79]

In case of a company in which the public are not substantially interested, no loss shall be carried forward and set off against income of the previous year, unless at least **51% of the voting power** of the company are beneficially held (on last day of PY in which loss is sought to be set off) by same person(s) who held at least 51% of shares on last day of financial year in which loss was incurred.

TAXPOINT

Taxpoint: (i) Sec. 79 applies to all losses, including capital gains losses. (ii) The above provision is **not applicable** on unabsorbed depreciation; allowed to be carried forward.

Option for Eligible Start-up Company

Loss incurred in any year prior to previous year shall be carried forward and set off if: All shareholders who held shares carrying voting power on last day of year(s) in which loss incurred continue to hold those shares on last day of such previous year; and Such loss has been incurred during the period of **10 years** beginning from the year in which company is incorporated.

Exceptions — Change in shareholding not considered

- Transfer due to death:** Change in voting power consequent upon death of a shareholder.
- Transfer by way of gift:** Change on account of transfer of shares by way of gift to any relative of shareholder.
- Amalgamation/demerger of foreign company:** Change in shareholding of Indian subsidiary as result of amalgamation/demerger of foreign company subject to 51% shareholders continuing.
- Insolvency and Bankruptcy Code:** Change pursuant to resolution plan approved under IBC, 2016.
- Relocation of Fund:** Change on account of relocation referred to in Explanation to sec. 47(viac) and (viad).
- Distressed Company:** Where NCLT suspended BoD and appointed new directors u/s 242 of Companies Act, 2013.
- Strategic Disinvestment:** Erstwhile public sector company provided ultimate holding company continues to hold at least 51% voting power.

No Set Off of Losses Consequent to Search [Sec. 79A]

Set off of loss (including unabsorbed depreciation) shall **not be allowed** from undisclosed income if: Total income of assessee includes undisclosed income; Such undisclosed income is consequent to search u/s 132 or requisition u/s 132A or survey u/s 133A [other than u/s 133A(2A)].

IMPORTANT

Undisclosed income means: Any income represented by money, bullion, jewellery, valuable article or entry in books found during search/requisition/survey which has: (a) not been recorded on or before date of search in books maintained in normal course; or (b) not been disclosed to PCIT/CIT before date of search. Any income represented by entry in respect of expense recorded in books which is found to be false.

1.2.5 Minimum Alternate Tax (MAT) [Sec. 115JB]

MAT was introduced to bring into tax net "zero tax companies" which in spite of having earned substantial book profits and paid handsome dividends, do not pay any tax due to various tax concessions and incentives. MAT was introduced by Finance Act, 1987 w.e.f. AY 1988-89, withdrawn by Finance Act, 1990, reintroduced by Finance (No. 2) Act, 1996 w.e.f. 1-4-1997.

15%

MAT RATE (9% IFSC)

115JB

SECTION

Form 29B

REPORT

15 Years

MAT CREDIT

Applicable to	Any company (Indian or Foreign, resident or non-resident, closely held or widely held)
Circumstance	Where income-tax payable on total income is less than 15% of its book profit.
Treatment	Book profit deemed total income; tax payable at 15% (plus surcharge + HEC). IFSC unit: 9% .
Report	Upload Form 29B from accountant one month prior to due date u/s 139.
Not Applicable	Life insurance business; companies opting for Sec. 115BAA/115BAB; certain foreign companies.

Computation of Book Profit [Explanation 1 to Sec. 115JB]

Book profit = Profit as shown in statement of P&L for relevant previous year:

As increased by (if debited in Statement of P&L):

- 1 Amount of income-tax paid or payable and provision therefor (including interest, surcharge, cess on income-tax; excluding penalty, wealth tax, STT).
- 2 Amounts carried to any reserves.
- 3 Amount set aside to provisions for meeting liabilities other than ascertained liabilities.
- 4 Amount by way of provision for losses of subsidiary companies.
- 5 Amount of dividends paid or proposed.
- 6 Amount of expenditure relatable to income to which sec. 10/11/12 apply.
- 7 Expenditure relatable to share of profit from AOP if exempt u/s 86.
- 8 Expenditure relating to certain income of foreign company if tax payable under normal provisions < 15%.
- 9 Notional loss on transfer of capital asset being share/SPV to business trust (sec. 47(xvii)).
- 10 Expenditure relatable to royalty income in respect of patent chargeable u/s 115BBF.
- 11 Amount of depreciation.
- 12 Amount of deferred tax and provision thereof.
- 13 Amount set aside as provision for diminution in value of any asset.
- 14 Amount standing in revaluation reserve relating to revalued asset on retirement/disposal.
- 15 Gain on transfer of units referred to in sec. 47(xvii).

As reduced by:

- 1 Amount withdrawn from any reserve or provision if credited to P&L (conditions apply).
- 2 Amount of income to which sec. 10/11/12 apply.
- 3 Share of profit from AOP if exempt u/s 86.
- 4 Certain income of foreign company if tax payable under normal provisions < 15%.
- 5 Notional gain on transfer of capital asset being share of SPV to business trust.
- 6 Amount of loss on transfer of units referred to in sec. 47(xvii).
- 7 Amount of royalty income in respect of patent chargeable u/s 115BBF.
- 8 Amount of depreciation debited to P&L (excluding depreciation on revaluation).
- 9 Amount withdrawn from revaluation reserve credited to P&L.
- 10 Amount of brought forward loss or unabsorbed depreciation, whichever is less as per books.
- 11 Amount of deferred tax if credited to P&L.
- 12 Amount of profits of sick industrial company.

1.2.6 Tax on Income from Securitisation Trusts [Sec. 115TCA]

Meaning of Securitisation Trust

Securitisation Trust means a trust (which fulfils prescribed conditions), being a: **Special purpose distinct entity** — as per SEBI Regulations, 2008; **Special Purpose Vehicle** — regulated by RBI guidelines; **Trust** — set-up by securitisation/reconstruction company formed under SARFAESI Act, 2002 or RBI guidelines.

Tax Treatment

- ▶ **Investor:** Income chargeable to income-tax as if investments made directly. Income paid/credited deemed same nature and proportion. Income not paid/credited deemed credited on last day of PY. Statement in **Form 64E**. Double taxation avoided.
- ▶ **Securitisation Trust:** Income from activity of securitisation is **exempt u/s 10(23DA)**.

TDS on Income from Investment in Securitization Fund [Sec. 194LBC]

PAYEE	RATE OF TDS
Resident	10%
Non-Resident — Foreign Company	40%
Non-Resident — Other than foreign company	30%

1.2.7 Tax on Income of Unit Holder and Business Trust [Sec. 115UA]

Meaning [Sec. 2(13A)]

Business Trust means a trust registered as: (i) Infrastructure Investment Trust under SEBI (Infrastructure Investment Trusts) Regulations, 2014; or (ii) Real Estate Investment Trust under SEBI (Real Estate Investment Trusts) Regulations, 2014.

Tax Treatment in Hands of Business Trust

Exempt Income: Income by way of interest/dividend received/receivable from SPV [Sec. 10(23FC)]. Income of REIT by way of renting/leasing/letting out real estate asset owned directly [Sec. 10(23FCA)]. **Other Income:** Total income of business trust shall be charged to tax at maximum marginal rate.

Tax Treatment in Hands of Unit Holders

CASE	REIT	INVIT	UNIT HOLDERS
Dividend from SPV (not opted 115BAA)	Exempt	Exempt	Exempt
Dividend from SPV (opted 115BAA)	Exempt	Exempt	Taxable
Dividend other than from SPV	Taxable	Taxable	Exempt
Interest from SPV	Exempt	Exempt	Taxable
Interest other than above	Taxable	Taxable	Exempt
Rental income from SPV	Taxable	Taxable	Exempt
Rental income for property owned by REIT	Exempt	Taxable	REIT: Taxable; INVIT: Exempt
Capital Gain	Special rate/MMR	Special rate/MMR	Exempt

TDS on Income from Units of a Business Trust [Sec. 194LBA]

PAYEE	SEC. 10(23FC)	SEC. 10(23FCA)
Resident unit holder	10%	10%
Non-resident (not being a company)	Dividend: 10%; Other: 5%	30% + SC + HEC

1.2.8 Tax on Income of Investment Fund and its Unit Holders [Sec. 115UB]

Meaning of Investment Fund

Investment fund means any fund established or incorporated in India in form of trust/company/LLP/body corporate which has been granted certificate of registration as Category I or Category II Alternative Investment Fund and is regulated under SEBI (AIF) Regulations, 2012 or IFSCA (Fund Management) Regulations, 2022.

Tax Treatment

- ▶ **Investment Fund:** Any income other than income chargeable under head "Profits and gains of business or profession" is **exempt u/s 10(23FBA)**. Total income of investment fund shall be charged to tax: (a) Where fund is a company or firm: at rate specified in Finance Act; (b) In any other case: at maximum marginal rate.
- ▶ **Unit Holders:** Income being proportion of income chargeable under head "Profits and gains of business or profession" in hands of investment fund is **exempt u/s 10(23FBB)**. Any income accruing/received by unit holder out of investments made in investment fund shall be chargeable to income-tax as if investments had been made directly by him.

TAXPOINT

Carry Forward of Loss: Business loss — allowed to be carried forward by investment fund; not passed to unit holders. Other loss — not passed to unit holders if unit not held for at least 12 months. Loss accumulated at level of investment fund as on 31-03-2019 deemed to be loss of unit holder who held unit on 31-03-2019.

TDS on Income of Units of Investment Fund [Sec. 194LBB]

PAYEE	RATE OF TDS
Resident	10%
Non-resident (not being a company)	30%
Foreign Company	40%

1.2.9 Tax on Income from Patent [Sec. 115BBF] & Carbon Credit [Sec. 115BBG]

Patent Royalty — Sec. 115BBF

Where total income of an eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, tax @ **10%** shall be payable on such royalty income.

- ▶ **Eligible Assessee:** Person resident in India and who is a patentee.
- ▶ **Patentee:** Person being true and first inventor whose name is entered on patent register.
- ▶ **Developed:** At least **75% of expenditure** incurred in India for invention.
- ▶ No deduction for any expenditure or allowance. Option to be exercised in prescribed manner on or before due date.

Carbon Credit — Sec. 115BBG

Where total income of an assessee includes any income by way of transfer of carbon credits, tax @ **10%** shall be payable. **Carbon credit:** Reduction of one tonne of carbon dioxide emissions or equivalent gases validated by UNFCCC. No deduction for any expenditure or allowance.

1.3 Trust

"Charity begins at home but should not end there." — Francis Bacon

The essence of the above quote has been fully captured in the definition of "charitable purpose" as envisaged in the Income Tax Act, 1961. Under the Indian Income Taxation Laws, a trust is considered as charitable, if its objects are directed to the benefit of the society at large and not for an individual or group of individuals. Various deductions or exemptions are available under the law to the charitable trust.

1.3.1 Religious or Charitable Trust

Income of a religious or charitable trust or institution is exempt from tax u/s 11. Trust must be created in accordance with law for charitable purposes.

Meaning of Certain Terms

TERM	MEANING
Trust	Obligation annexed to ownership; arising out of confidence reposed by owner; declared and accepted by him; for benefit of another. Includes "any other legal obligation".
Author of Trust	Person who reposes or declares confidence and creates trust.
Beneficiary	Person for whose benefit trust is created.
Trustee	Person who accepts confidence, manages trust property and looks after interest of beneficiary.
Trust Property	Property set aside for benefit of beneficiary.
Instrument of Trust	Deed or instrument by which trust is created. No trust in relation to immovable property unless non-testamentary instrument in writing signed by author.
Charitable Purpose [Sec. 2(15)]	Relief of poor, education, yoga, medical relief, preservation of environment (including watersheds, forests, wildlife), preservation of monuments/places/objects of artistic or historic interest, and advancement of any other object of general public utility.
Public Trust	Beneficiaries are general public or class thereof.
Private Trust	Beneficiary is specific person(s).

Contents

SECTION	DESCRIPTION
Sec. 11	Exemption of income from property held in trust for religious/charitable purpose wholly.
Sec. 12	Exemption of income derived from voluntary contribution.
Sec. 12A/12AB	Conditions relating to registration of trust.
Sec. 13	Withdrawal of exemptions u/s 11 and 12.

Conditions for Exemption [Sec. 11]

- A. Property must be held under a trust:** Income-yielding property must be held under trust or other legal obligation.
- B. Purpose of trust:** Trust must be created wholly for charitable/religious and lawful purposes.
- C. Registration of trust:** Trust must be registered.
- D. Audit of Accounts:** Books maintained; accounts audited; audit report uploaded one month prior to due date if total income exceeds maximum amount not chargeable.
- E. Application of Income:** Income must be applied for purpose of trust.
- F. Return of Income:** Return u/s 139(4A) furnished within due date.
- G. Additional conditions for charitable trust created on or after 1/4/1962:** (i) Should not be created for benefit of any particular religious community or caste; (ii) No part of income applied directly/indirectly for benefit of settlor or other specified persons; (iii) Property should be held wholly for charitable purposes.

Meaning of Charitable Purpose [Sec. 2(15)]

As per Sec. 2(15), charitable purpose includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

Exception: The advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of: (a) any activity in the nature of trade, commerce or business; or (b) any activity of rendering any service in relation to any trade, commerce or business for cess/fee/other consideration, unless: (i) such activity is undertaken in the course of actual carrying out of such advancement; and (ii) aggregate receipts from such activity do not exceed **20% of total receipts**.

Meaning of Religious Purpose & Lawful Purpose

Religious Purpose: Different from charitable purpose. A private trust held for religious purpose is not eligible for exemption u/s 11; however, a public trust held for religious purpose can claim exemption u/s 11. A charitable trust created on or after 1/4/1962 should not be created for benefit of any particular religious community or caste.

Lawful Purpose: The trust shall not be treated as lawful if the purpose: for which it is created is forbidden by law; is fraudulent; is regarded as immoral or opposed to public policy; causes injury to others. Where a trust has two objects one of which is unlawful, it shall be treated as illegal trust unless and until it can be separately carried on with legal object.

Exemption [Sec. 11]

As per sec. 11(1)(a), income derived from property held under trust wholly for charitable or religious purpose(s), shall be exempted from tax, to the extent to which such income is applied to such purposes in India.

TAXPOINT

Taxpoint: Any amount credited or paid to any fund/trust/institution/university/hospital referred to in sec. 10(23C) or other registered trust: (i) With specific direction to form part of corpus — Not treated as application of income; (ii) Without such direction — Treated as application only to extent of **85%** of such amount.

Anonymous Donation [Sec. 115BBC]

Where total income of an assessee (University, hospital, fund, institution, trust referred to in sec. 10(23C) or sec. 11) includes any income by way of anonymous donation in excess of specified limit, such donation shall be taxed @ **30% (+SC+EC+SHEC)**.

Anonymous donation means any voluntary contribution where person receiving does not maintain record of identity indicating name and address of person making contribution.

Specified limit: Higher of: 5% of total donations received by the assessee; or ₹1,00,000.

Exceptions: Not applicable to anonymous donation received by: (i) trust/institution created wholly for religious purposes; (ii) trust/institution created wholly for religious and charitable purposes (other than with specific direction for University/hospital run by trust); (iii) anonymous donation received up to specified limit.

Free Accumulation & Deferment

Trust is allowed to accumulate **15% of its income** and such accumulation shall be treated as application of income. In order to claim 100% exemption, trust must apply 85% of its income for charitable purposes. Income means accounting income and not income as per Income Tax Act.

Σ FORMULA

Taxable Income = Total Income – 15% Free Accumulation – Amount Applied for Charitable Purpose

Deferment of Application of Income

REASONS	DEFERRED PERIOD	EFFECT WHEN INCOME NOT APPLIED
Whole/part of income not received during that year	PY in which income actually received and PY subsequent to such year	Treated as income of year following PY in which income actually received; unspent part taxable
Any other reason	Subsequent to PY in which income derived	Treated as income of year following PY in which income derived

Registration of Trust [Sec. 12A & 12AB]

S.NO.	CASE	TIME LIMIT
i	Trust registered u/s 12AB and period of registration due to expire	At least 6 months prior to expiry
ii	Trust has been provisionally registered	At least 6 months prior to expiry or within 6 months of commencement of activities, whichever is earlier
iii	Registration become inoperative due to sec. 11(7)	At least 6 months prior to commencement of AY
iv	Modifications of objects not conforming to conditions	Within 30 days from date of adoption/modification
v	Activities not commenced	At least 1 month prior to commencement of PY
v	Activities commenced and no income excluded on or before date of application	Any time after commencement of activities

Forfeiture of Exemption [Sec. 13]

Nothing contained in section 11 [or section 12] shall operate in respect of:

- ▶ **Income for private religious purposes:** Any part of income from property held under trust for private religious purposes which does not enure for benefit of public.
- ▶ **Income for benefit of particular religious community:** Any income if trust/institution created for benefit of any particular religious community or caste.
- ▶ **Funds invested in securities/deposits not specified u/s 11(5):** Income to extent of such investment taxable.
- ▶ **Income applied for benefit of Interested Person:** Any income used/applied directly/indirectly for benefit of interested person.

Interested Persons

- ▶ **Author:** Author of trust or founder of institution.
- ▶ **Contributory:** Any person whose total contribution during relevant PY exceeds ₹1 lakh or in aggregate up to end of PY exceeds ₹10 lakh.
- ▶ **Trustee:** Any trustee of trust or manager of institution.
- ▶ **Relatives:** Any relative of any such author, founder, member, trustee or manager.
- ▶ **Other:** Any concern in which any of above-referred person (except contributor) has substantial interest.

Tax on Specified Income [Sec. 115BBI] & Accreted Income [Sec. 115TD]

Sec. 115BBI: Where total income of assessee includes any income by way of specified income, income-tax payable shall be aggregate of: Specified income @ 30%; Other income @ Regular rate. Specified income includes: income accumulated in excess of 15% where not allowed; deemed income referred to in Explanation 4 to third proviso to sec. 10(23C) or sec. 11(1B)/(3); any income not exempt u/s 10(23C) on account of violation; any income deemed under twenty-first proviso to sec. 10(23C); any income not excluded u/s 11(1)(c).

Sec. 115TD (Exit Plan): Where in any PY, a specified person has converted into any form not eligible for registration u/s 12AA/12AB or approval u/s 10(23C); or merged with any entity other than entity having similar objects; or failed to transfer upon dissolution all assets to another specified person within 12 months, then, accreted income of specified person as on specified date shall be charged to tax at maximum marginal rate.

Σ FORMULA

Accreted Income = Aggregate Fair Market Value of Total Assets – Total Liability

- ▶ **Specified date:** Date of conversion/merger/dissolution.
- ▶ **Time limit for payment:** Within 14 days from specified date.
- ▶ Tax treated as final payment; no further credit claimed.
- ▶ **Sec. 12AC:** Merger of charitable trusts — provisions of Chapter XII-EB not applicable if conditions fulfilled.
- ▶ **Sec. 115TE:** Interest @ 1% per month on unpaid tax. **Sec. 115TF:** Deemed assessee in default.

1.4 Mutual Association

- ▶ No one can trade with himself or make income out of himself.
- ▶ A mutual association arises where persons forming a group associate together with a common object and contribute monies for achieving that object and divide the surplus amongst themselves. The cardinal requirement is that all contributors to the fund must be entitled to participate in surplus and vice versa.
- ▶ Participation in surplus need not be immediate but may assume shape of a reduction in future contribution or division on dissolution.
- ▶ Does not make difference whether persons joining together form association or incorporate company.
- ▶ Where there is mutuality, fact that some members alone take advantage would not affect character of mutual association.
- ▶ A mutual association may carry on non-mutual activity, but exemption available only to surplus arising out of mutual activity.
- ▶ Act provides for assessment of income (from mutual activity) of mutual concern in following cases: (i) Where mutual concern is mutual insurance society and income derived from carrying on any business of insurance [Sec. 44 read with sec. 2(24)(vii)]. (ii) Where mutual concern is trade, professional or similar association and income derived from specific service performed for members [Sec. 28(iii) read with sec. 44A].

Trade and Professional Association [Sec. 44A]

A trade association is an association of tradesmen, businessmen or manufacturers for protection and advancement of their common interest. Sec. 44A provides exception to general rule that loss of un-assessable business cannot be adjusted with assessed income. Where amount received from members (by way of subscription or otherwise, not being remuneration for specific services) falls short of expenditure incurred solely for protection/advancement of common interests, the deficiency shall be allowed as deduction.

Σ FORMULA

Maximum deficiency allowed = $\frac{1}{2}$ of Total Income of association (computed before making any allowance under this section)

Income of Professional Institutions [Sec. 10(23A)] & Clubs

Sec. 10(23A): Any income (other than income from house property, specific services, interest or dividends from investments) of professional association shall be exempt provided: (i) Association established in India having as object control, supervision, regulation or encouragement of profession of law, medicine, accountancy, engineering, architecture or other specified profession. (ii) Association applies its income or accumulates it solely to objects for which established. (iii) Association approved by Central Government.

Clubs: Social clubs are not trade associations; hence sec. 28(iii) not applicable. Governed by general principle of mutuality. Excess over expenditure received from facilities extended to members as part of advantages attached to membership shall not be chargeable to tax on principle of mutuality [CIT v. Bankipur Club Ltd. (SC)]. Income derived from non-mutual activity is taxable.

Insurance Business

Profits and gains of any business of insurance, including mutual insurance company or co-operative society, shall be computed in accordance with rules in First Schedule [Sec. 44].

A. Life Insurance Business: Profits computed separately. Profits (after sec. 37) taken to be annual average of surplus arrived at by adjusting surplus/deficit disclosed by actuarial valuation. **Tax [Sec. 115B]:** Aggregate of: (i) Income-tax @ 12.5% on profits and gains of life insurance business; (ii) Income-tax on remaining total income. MAT provisions not applicable.

B. Other Insurance Business: Balance of profits disclosed by annual accounts subject to adjustments: Expenditure/allowance disallowed u/s 30 to 43B; Gain/loss on realisation of investments added/deducted; Provision for diminution in value of investment added back; Amount carried to reserve for unexpired risks allowed as deduction (Fire/Engineering 100%, Fire/Misc 50%, Marine 100%).

C. Non-resident Person: Profits of branches in India calculated on basis of reliable data. In absence, profit deemed to be proportion of world income corresponding to proportion of premium income from India to total premium income.

Solved Illustrations — Step by Step

ILLUSTRATION

Illustration 1: Computation of Income of USA Airlines

Facts: USA Airlines operates flights to India and vice versa during year 2025-26 and collects charges of ₹150 lakh for carriage of passengers and cargo, out of which ₹90 lakh received in US Dollars for passenger fare booked from New York to Mumbai. Total expenses: ₹195 lakh. Compute income chargeable to tax of foreign airlines.

RULE / CONCEPT

Applicable Rule: Section 44BBA — Presumptive taxation for non-resident engaged in business of operation of aircraft. Income estimated at 5% of aggregate of: (1) Amount paid/payable (in or out of India) for carriage from any place in India; (2) Amount received/deemed to be received in India for carriage from any place outside India.

Step 1: Identify amounts received for carriage from India

Fare booked from Mumbai to New York = ₹150 lakh – ₹90 lakh = **₹60 lakh** (payable in India or outside India — both included)

Step 2: Identify amounts received in India for carriage from outside India

Fare booked from New York to Mumbai = ₹90 lakh. If paid in India (or deemed received) = **₹90 lakh**. If paid outside India = **₹90 lakh** (but not taxable under sec. 44BBA).

✓ SOLUTION

Computation of income of USA Airlines:

PARTICULARS	FARE BOOKED MUMBAI TO NEW YORK	FARE BOOKED NEW YORK TO MUMBAI	
	IF PAID IN INDIA (OR DEEMED RECEIVED)	IF PAID OUTSIDE INDIA	
Fare	₹60 lakh	₹90 lakh	₹90 lakh
Taxable Income @ 5%	₹3,00,000	₹4,50,000	—

Note: Expenses of ₹195 lakh are irrelevant under presumptive taxation — no deduction allowed.

ILLUSTRATION

Illustration 2: Capital Gain on Transfer of Shares by Non-Resident

Facts: Mr. X, non-resident, sold 1,000 shares of Indian company acquired by utilizing foreign currency. Sale consideration ₹45,000 on 16/09/2025. Expenditure on transfer ₹5,000. Cost of acquisition ₹20,000 on 18/08/2025. Exchange rates: 18/08 (Buying 45, Selling 46); 13/09 (Buying 48, Selling 50); 16/09 (Buying 46, Selling 48).

RULE / CONCEPT

Applicable Rule: First Proviso to Sec. 48 read with Rule 115A — Capital gain computed in foreign currency using: (1) Sale consideration at average rate on date of transfer; (2) Expenditure on transfer at average rate on date of transfer; (3) Cost of acquisition at average rate on date of acquisition. The resulting capital gain in foreign currency is reconverted at buying rate on date of transfer.

Step 1: Compute Average Exchange Rates

On 16/09/2025: Average rate = $(₹46 + ₹48) \div 2 = ₹47$

On 18/08/2025: Average rate = $(₹45 + ₹46) \div 2 = ₹45.5$

Step 2: Convert amounts into GBP (£)

Sale consideration in GBP = $₹45,000 \div ₹47 = £957.4$

Expenditure on transfer in GBP = $₹5,000 \div ₹47 = £106.4$

Cost of acquisition in GBP = $₹20,000 \div ₹45.5 = £439.6$

Step 3: Compute Capital Gain in GBP

Net Sale Consideration = $£957.4 - £106.4 = £851.0$

Less: Cost of acquisition = $£439.6$

Capital Gain in GBP = **£411.4**

Step 4: Reconversion into INR at Buying Rate

Taxable STCG = $£411.4 \times ₹46 = ₹18,924$

✓ SOLUTION

PARTICULARS	WORKING	RATE	AMOUNT (£)	AMOUNT (₹)
Sale consideration	₹45,000/₹47	Avg rate 16/09	957.4	
Less: Expenditure on transfer	₹5,000/₹47	Avg rate 16/09	106.4	
Net Sale Consideration				851.0
Less: Cost of acquisition	₹20,000/₹45.5	Avg rate 18/08	439.6	
Less: Cost of improvement	Nil			439.6
STCG				411.4
Taxable STCG	411.4 × ₹46	Buying rate 16/09		₹18,924

ILLUSTRATION

Illustration 3: Total Income & Tax Liability of Non-Resident (Intra-head vs Inter-head Set-off)

Facts: Smart (non-resident) has computed tax liability: Income from business A ₹3,80,000; LTCG ₹10,000; Less: Income from business B u/s 71 ₹10,000 → Nil; Income from other sources ₹30,000; Total Income ₹4,10,000; Tax liability (after rebate u/s 87A) ₹520. Comment.

RULE / CONCEPT

Applicable Rule: Sec. 70 — Intra-head set-off (loss from one business against profit from another business of same head).
Sec. 71 — Inter-head set-off (loss from one head against income from another head). Order: First intra-head, then inter-head.
Also, **rebate u/s 87A is not available to non-resident individual.**

Step 1: Intra-head set-off under PGBP

Business A income = ₹3,80,000; Business B loss = ₹10,000 → Net PGBP = ₹3,70,000 (first adjust same head loss)

Step 2: Compute Gross Total Income

PGBP = ₹3,70,000; LTCG = ₹10,000; Other sources = ₹30,000 → GTI = ₹4,10,000

Step 3: Compute Tax Liability

LTCG @ 12.50% = ₹10,000 × 12.5% = ₹1,250; Add HEC 4% = ₹50; Total tax = **₹1,300**

Rebate u/s 87A is not available to non-resident individual.

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Income from business A	3,80,000
Less: Loss from business B u/s 70 (Intra-head)	(10,000)
	3,70,000
Long term capital gain	10,000
Income from Other Sources	30,000
Gross Total Income	4,10,000
Tax Liability [(₹10,000 × 12.5%) × 104%]	₹1,300

Conclusion: Smart's computation was incorrect because (i) he set off business loss against LTCG (inter-head) before adjusting same head, and (ii) wrongly claimed rebate u/s 87A as non-resident.

ILLUSTRATION

Illustration 4: Total Income of Mr. Crown (Non-Resident)

Facts: Interest on Govt. securities ₹12,21,000; Dividend from foreign companies ₹52,000; Interest from Indian companies ₹30,000; Horse races ₹20,000. Donation ₹2,00,000; Mediclaim ₹20,000; Medical treatment minor handicapped son ₹16,000.

RULE / CONCEPT

Rules Applied: (i) Dividend from foreign company — Not taxable for non-resident if received abroad. (ii) Sec. 80DD — Deduction for handicapped dependent not available to non-resident. (iii) Sec. 80G — Donation to Municipal Corporation for family planning — Qualifying amount = 10% of Adjusted GTI, deduction @ 100%. (iv) Sec. 80D — Medical insurance available.

Step 1: Compute Gross Total Income

Interest on Govt. securities ₹12,21,000 + Interest from Indian companies ₹30,000 = ₹12,51,000 + Casual income (Horse races) ₹20,000 = **GTI ₹12,71,000** (Dividend from foreign company ₹52,000 not taxable)

Step 2: Compute Adjusted GTI for Sec. 80G

Adj. GTI = ₹12,71,000 – ₹20,000 (80D) = **₹12,51,000**

Step 3: Compute Qualifying Amount & Deduction u/s 80G

Qualifying amount = 10% of ₹12,51,000 = ₹1,25,100

Deduction @ 100% = **₹1,25,100**

✓ SOLUTION

PARTICULARS	WORKING	AMOUNT (₹)
Income from other sources		
Dividend from foreign company	Non-resident – Nil	—
Interest from Government securities		12,21,000
Indian company deposits		30,000
		12,51,000
Casual income — Horse races		20,000
Gross Total Income		12,71,000
Less: U/s 80D (Medical insurance)		20,000
Less: U/s 80DD	Non-resident – Nil	—
Less: U/s 80G	100% of ₹1,25,100	1,25,100
		1,45,100
Total Income		11,25,900

ILLUSTRATION

Illustration 5: Total Income of Roger (Foreign National)

Facts: Royalty ₹3,00,000 (expenditure ₹2,00,000); Interest ₹11,00,000 (expenditure ₹90,000); Gross sale ₹30,00,000 (expenditure ₹28,00,000).

RULE / CONCEPT

Rule Applied: Sec. 115A — No deduction for any expenditure or allowance allowed from royalty and interest income of non-resident. However, business income computed normally.

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Sale less expenditure (Business income)	2,00,000
Royalty income (No expenditure allowed u/s 115A)	3,00,000
Interest income (No expenditure allowed u/s 115A)	11,00,000
Total Income	16,00,000

ILLUSTRATION

Illustration 6: Tax under Chapter XIIA (NRI)

Facts: Investment income (net) ₹50,000; LTCG ₹25,000; Other income ₹4,15,000.

RULE / CONCEPT

Rule Applied: Sec. 115E — Investment income @ 20%; LTCG @ 12.50%. Other income taxable at slab rates as per Finance Act.

✓ SOLUTION

PARTICULARS	INCOME (₹)	RATE	TAX (₹)
Investment income (Net)	50,000	20%	10,000
LTCG	25,000	12.50%	3,125
Other income	4,15,000	[(4L×Nil) + (15K×5%)]	750
Tax before surcharge			13,875
Add: HEC @ 4%			555
Tax Liability (Rounded off)			14,430

ILLUSTRATION

Illustration 7: Income of Foreign Airlines

Facts: Mr. Q, non-resident: (i) ₹2 cr in India — passengers from Chennai; (ii) ₹1 cr in India — goods from Chennai; (iii) ₹3 cr in India — passengers from Singapore; (iv) ₹1 cr in Singapore — passengers from Chennai.

RULE / CONCEPT

Rule Applied: Sec. 44BBA — 5% of aggregate of (1) Amount paid/payable for carriage from any place in India; (2) Amount received/deemed to be received in India for carriage from any place outside India. Total expenditure is irrelevant.

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Passengers from Chennai (received in India)	2,00,00,000
Goods from Chennai (received in India)	1,00,00,000
Passengers from Singapore (received in India)	3,00,00,000
Passengers from Chennai (received in Singapore)	1,00,00,000
Total	7,00,00,000
Total Income (5% u/s 44BBA)	35,00,000

ILLUSTRATION

Illustration 8: Branch of Foreign Company — Sec. 44C

Facts: Net loss ₹50 lakhs after charging head office expenses ₹100 lakhs.

RULE / CONCEPT

Rule Applied: Sec. 44C — Head office expenditure allowed = Higher of (i) 5% of adjusted total income; or (ii) Amount of head office expenditure attributable to business in India. Adjusted Total Income = Total income without considering head office expenditure.

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Net Income for year ended 31-03-2026	(50,00,000)
Add: Head office expenses	1,00,00,000
Adjusted Total Income	50,00,000
Less: Head office expenses allowable u/s 44C (lower of):	
– 5% of ₹50,00,000	2,50,000
– Actual Expenses	1,00,00,000
	2,50,000

ILLUSTRATION

Illustration 9: Tax Liability of Non-Resident Sportsman — Sec. 115BBA

Facts: Roger Federer: Prize ₹15 lakh; Articles ₹1 lakh; Advertisement ₹4 lakh; Travel cost ₹1,30,000.

RULE / CONCEPT

Rule Applied: Sec. 115BBA — Where a sportsman who is not a citizen of India receives income by way of (i) participating in game in India; or (ii) advertisement; or (iii) contributing articles relating to game in newspapers/magazines/journals, tax @ 20% + cess @ 4%. No deduction for any expenditure/allowance allowed. Not necessary to furnish return if income consists only of income u/s 115BBA and TDS deducted.

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Tennis tournament prize	15,00,000
Contribution of articles	1,00,000
Advertisement	4,00,000
Total Income	20,00,000
Tax [₹20,00,000 × 20% × 104%]	4,16,000

ILLUSTRATION

Illustration 10: Income-tax on Royalty and LTCG

(a) Royalty of ₹10 lakh received by foreign company from Indian concern (agreement approved by CG).

(b) ₹10 lakh LTCG received by overseas financial organisation on transfer of unit purchased in foreign currency.

RULE / CONCEPT

Rules Applied: (a) Sec. 115A(i)(b) — Royalty @ 20%. (b) Sec. 115AB — LTCG from units of offshore fund @ 12.50%.

✓ SOLUTION

(a) Income tax = 20% of ₹10,00,000 = ₹2,00,000; HEC = 4% of ₹2,00,000 = ₹8,000; **Total = ₹2,08,000**

(b) Income-tax u/s 115AB = 12.50% of ₹10,00,000 = ₹1,25,000; HEC = 4% of ₹1,25,000 = ₹5,000; **Total = ₹1,30,000**

ILLUSTRATION

Illustration 11: Foreign Company with PE in India — Sec. 44DA

Facts: Royalty ₹101 lakh (agreement 10-06-2016), expenditure on PE ₹12,37,600.

RULE / CONCEPT

Rule Applied: Sec. 44DA — Royalty/FTS received by non-resident having PE in India computed under head PGBP after allowing allowable expenses. Tax rate for foreign company = 35% + SC 2% + HEC 4% (effective 37.128%).

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Royalty covered u/s 44DA	1,01,00,000
Less: Expenses	(12,37,600)
Income	88,62,400
Tax [104% × (₹88,62,400 × 35%)] (Rounded off)	32,25,910

ILLUSTRATION

Illustration 12: Gross Total Income of Minakshi Ltd.

Facts (extract): Opening stock ₹4,00,000; Purchase ₹5,00,000; Conversion ₹4,00,000; Customs duty ₹1,70,000; Salary ₹80,000; Bonus ₹15,000; Carriage inward ₹20,000; Advertisement ₹30,000; Interest ₹2,000; Carriage outward ₹38,000; Depreciation ₹50,000; Provision for income tax ₹20,000; Compensation to director ₹1,00,000; Provision for bad debt ₹10,000; Audit fees ₹20,000; Bad debt ₹30,000; Traveling ₹25,000; Municipal tax ₹5,000; Net profit ₹4,46,000. By Sales ₹17,80,000; Closing Stock ₹5,00,000; Interest on debenture ₹10,000; Bad debt recovery ₹25,000; Interest on income tax refund ₹6,000; Rent from house property ₹40,000.

RULE / CONCEPT

Rules Applied: (i) Municipal tax allowed from House Property, not PGBP. (ii) Depreciation as per IT Act allowed. (iii) Sec. 40A(3) disallowance if cash payment > ₹10,000. (iv) Sec. 43B — Bonus paid only allowed. (v) Capital expenditure disallowed. (vi) Excess payment to related party disallowed u/s 40A(2).

✓ SOLUTION

Computation of GTI:

PARTICULARS	AMOUNT (₹)
Rent from house property (NAV ₹35,000 – 30%)	24,500
Net profit as per P&L A/c	4,46,000
Add: Disallowed expenditure	3,93,000
Less: Allowed but not debited / Income other head	4,66,750
Business income	3,72,250
Income from other sources	14,000
Gross Total Income	5,05,250

ILLUSTRATION

Illustration 13: Sec. 79 — Carry Forward & Set-off

Facts: X Pvt Ltd: PY 2024-25 Business Loss ₹12 lakh, Unabsorbed dep ₹2 lakh. PY 2025-26 Business Profit ₹25 lakh. Shareholders 31-03-2025: A=30%, B=25%, C=20%, D=25%. Shareholders 31-03-2026: E=30%, F=25%, C=20%, D=25%.

RULE / CONCEPT

Rule Applied: Sec. 79 — In closely held company, no loss carried forward unless at least 51% of voting power held by same person(s) on last day of loss year AND last day of set-off year. Exception: Unabsorbed depreciation can always be carried forward. Gift to relative is not considered change.

✓ SOLUTION

Shareholders holding 51% are not the same persons → B/f business loss NOT available. Unabsorbed depreciation ₹2 lakh available.

Business income for A.Y. 2026-27 = ₹25L – ₹2L = ₹23 lakhs

If Mr. B gifted shares to Mr. F (relative): Not considered change → Loss of ₹12 lakh available for set off.

ILLUSTRATION

Illustration 14: Sec. 79 — Shareholding Change

Facts: 4 equal shareholders A, B, C, D. Losses: AY 2022-23 Unabs dep ₹15L; AY 2023-24 Unabs dep ₹12L; AY 2024-25 Loss ₹9L + Unabs dep ₹9L. PY 31-3-2025: A sold to Y. PY 31-3-2026: B sold to Z. Profits: 31-3-2025 ₹18L (before dep ₹9L); 31-3-2026 ₹45L (before dep ₹7.5L).

RULE / CONCEPT

Rule Applied: Sec. 79 not applicable to unabsorbed depreciation. Only business loss requires 51% same shareholding. Since shareholding changed, business loss of ₹9L not available, but all unabsorbed depreciation available.

✓ SOLUTION

PARTICULARS	AMOUNT (₹ LACS)
Income before depreciation (FY 2025-26)	45
Less: Depreciation current year	7.5
Income after current depreciation	37.50
Less: Unabsorbed Dep AY 22-23 (15) + 23-24 (12) + 24-25 (9)	36

ILLUSTRATION

Illustration 15: MAT Computation — X Ltd.

RULE / CONCEPT

Rule Applied: Sec. 115JB — Tax = Higher of (A) Tax on business income @ 30%; (B) 15% of Book Profit. Add HEC 4%. Surcharge only if total income > ₹1 crore.

✓ SOLUTION

PARTICULARS	YEAR 1	YEAR 2	YEAR 3
Business Income (₹)	(-) 2,00,000	1,50,000	1,50,000
Book Profit (₹)	1,00,000	60,000	2,50,000

PARTICULARS	YEAR 1	YEAR 2	YEAR 3
Business Income after set off (₹)	(-) 2,00,000	Nil	1,00,000
Tax @ 30% [A] (₹)	Nil	Nil	30,000
15% of Book Profit [B] (₹)	15,000	9,000	37,500
Tax [Higher] (₹)	15,000	9,000	37,500
Add: HEC (₹)	600	360	1,500
Tax Liability (₹)	15,600	9,360	39,000

ILLUSTRATION

Illustration 16: Book Profit of Apple Industries Ltd.

Facts: Net profit ₹120 lakh; Proposed dividend ₹30 lakh; SEZ profit ₹20 lakh; Provision for income-tax ₹18 lakh; Provision for deferred tax ₹10 lakh; Provision for permanent diminution ₹3 lakh; Depreciation ₹10 lakh (incl. ₹1 lakh revaluation). B/f losses: 2022-23 ₹14L; 2023-24 ₹11L; 2024-25 ₹10L, Unabs dep ₹5L.

RULE / CONCEPT

Rule Applied: Book Profit adjustments — Add back: proposed dividend, provisions, depreciation. Deduct: depreciation (excluding revaluation), lower of b/f loss or unabsorbed dep as per books.

✓ SOLUTION

PARTICULARS	AMOUNT (₹ LAKH)
Net profit	120
Add: Proposed Dividend ₹30L + Provision for income tax ₹18L + Deferred tax ₹10L + Permanent diminution ₹3L + Depreciation ₹10L	71
	191
Less: Depreciation (ignoring revaluation) ₹9L	9
Less: Lower of b/f loss (₹10L) and unabsorbed dep (₹5L) = ₹5L	5
Book Profit	177

ILLUSTRATION

Illustration 17: Tax Liability under MAT

Facts: Book profits u/s 115JB = ₹60,00,000; Total income = ₹12,00,000.

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Tax on Total Income [A] (30% of ₹12L)	3,60,000
Tax on Book Profit [B] (15% of ₹60L)	9,00,000
Tax liability [Higher of A & B]	9,00,000
Add: HEC 4%	36,000

ILLUSTRATION

Illustration 18: MAT — Z Ltd.

Facts: Net Profit ₹45,80,000 after: Interest b/f ₹1,00,000 paid; Customs duty unpaid ₹40,000; Deduction u/s 80G ₹1,00,000; IT Depreciation ₹4,00,000. Turnover ₹65 cr. Unabsorbed: IT Act Dep ₹3,50,000 + Losses ₹4,00,000.

RULE / CONCEPT

Rules Applied: (i) Sec. 43B — Customs duty allowed only on payment. (ii) Interest b/f allowed on payment. (iii) Depreciation as per IT Act allowed. (iv) B/f loss set off before unabsorbed depreciation.

✓ SOLUTION

Computation of Total Income (Regular):

PARTICULARS	AMOUNT (₹)
Net profit as per books	45,80,000
Add: Disallowed (Depreciation excess ₹1,00,000 + Provisions ₹75,000 + Wealth Tax ₹50,000 + Loss of subsidiary ₹50,000 + Proposed Dividend ₹1,00,000 + Provision for Income Tax ₹1,05,000 + Unpaid Customs Duty ₹40,000)	5,20,000
	51,00,000
Less: Allowed but not debited (Interest b/f ₹1,00,000)	1,00,000
	50,00,000
Less: B/f business loss	42,50,000
Gross Total Income	7,50,000
Less: Deduction u/s 80G	1,00,000
Total Income	6,50,000

Computation of Book Profit:

PARTICULARS	AMOUNT (₹)
Net profit	45,80,000
Add: Provisions, dividend, income-tax, depreciation	8,30,000
	54,10,000
Less: Depreciation (as assets not revalued)	5,00,000
Less: Lower of unabsorbed dep (₹3,50,000) and b/f loss (₹4,00,000) = ₹3,50,000	3,50,000
Book Profit	45,60,000

Tax Liability: Higher of ₹1,62,500 (25% of ₹6,50,000) or ₹6,84,000 (15% of ₹45,60,000) = ₹6,84,000 + HEC 4% (₹27,360) = ₹7,11,360

ILLUSTRATION

Illustration 19: Book Profit — Renuka Ltd.

Facts: Net profit ₹90,00,000 after: Provision for income-tax ₹5,00,000; Deferred tax ₹3,00,000; Proposed dividend ₹7,50,000; Depreciation ₹60,00,000 (incl. revaluation ₹20,00,000); SEZ profit ₹80,000; Provision for permanent diminution ₹70,000.

✓ SOLUTION

Book Profit: ₹90,00,000 + ₹5,00,000 + ₹3,00,000 + ₹70,000 + ₹7,50,000 + ₹60,00,000 – ₹40,00,000 = ₹1,26,20,000

Tax Liability u/s 115JB: 15% = ₹18,93,000 + SC 7% (₹1,32,510) + HEC 4% (₹81,020) = ₹21,06,530

ILLUSTRATION

Illustration 20: Sun Bright Ltd. — Total Income & Tax

Facts: Business ₹5,00,000; Dividend (Indian ₹20,000; foreign ₹5,000); STCG ₹25,000; LTCG ₹50,000; Agri ₹35,000. Business expenses include ₹10,000 revenue + ₹30,000 capital on family planning. PM Care Fund donation ₹50,000.

RULE / CONCEPT

Rules Applied: (i) Sec. 36(1)(ix) — Capital expenditure on family planning allowed in 5 equal instalments (1/5th = ₹6,000). (ii) Sec. 80G — 100% deduction for PM Care Fund. (iii) Agricultural income exempt. (iv) LTCG @ 12.5%.

ILLUSTRATION

Illustration 21: Trust — Taxable Income

RULE / CONCEPT

Rule Applied: Sec. 11 — 15% of income freely allowed as accumulation. Corpus contribution with specific direction not treated as income. Taxable income = Total income – 15% free accumulation – amount applied for charitable purposes.

✓ SOLUTION

PARTICULARS	CASE 1	CASE 2	CASE 3
Income other than voluntary contribution	4,00,000	5,00,000	15,00,000
Add: Voluntary contribution	1,00,000	80,000	2,00,000
Total income of trust	5,00,000	5,80,000	17,00,000
Less: 15% Free accumulation	(75,000)	(87,000)	(2,55,000)
Balance	4,25,000	4,93,000	14,45,000
Less: Applied for charitable purpose	4,25,000	4,93,000	2,00,000
Total Income	Nil	Nil	12,45,000

ILLUSTRATION

Illustration 22: Trade Association [Sec. 44A]

Facts: Subscription receipts ₹60,000; expenditure ₹85,000; other income ₹75,000.

RULE / CONCEPT

Rule Applied: Sec. 44A — Deficiency allowed as deduction from other income. Maximum deficiency = 50% of other income. If no other income, deficiency not carried forward.

✓ SOLUTION

(a) Total income: Other income ₹75,000 – Deficiency ₹25,000 = **₹50,000**

Deficiency: ₹60,000 – ₹85,000 = ₹25,000. Maximum = Lower of Actual (₹25,000) or 50% of other income (₹37,500) = **₹25,000**

(b) If no other taxable income, total income = Nil; deficiency ₹25,000 not carried forward.

★ Quick Revision Summary

★ QUICK REVISION

Key Rates & Thresholds

PARTICULARS	RATE / LIMIT
Shipping business — Sec. 44B / Mineral oils — Sec. 44BB	7.5% / 10%
Aircraft — Sec. 44BBA / Turnkey — Sec. 44BBB	5% / 10%
Cruise ships — Sec. 44BBC / Electronics — Sec. 44BBD	20% / 25%
Investment income (NRI) / LTCG — Sec. 115E	20% / 12.5%
Sec. 115BBA (Sportsman) / Patent — Sec. 115BBF / Carbon — Sec. 115BBG	20% / 10% / 10%
MAT — Sec. 115JB	15% (9% for IFSC)
Sec. 115BA / 115BAA / 115BAB	25% / 22% / 15% + SC + Cess
Life insurance — Sec. 115B / Anonymous donation — Sec. 115BBC	12.5% / 30%
Specified income — Sec. 115BBI / Accreted income — Sec. 115TD	30% / MMR
Sec. 79 — Shareholding threshold / Sec. 44A — Max deficiency	51% / 50% of total income
Trust — Free accumulation / Max accumulation period	15% / 5 years
Sec. 115F — NRI exemption / Sec. 286 — Report	6 months & 3-year lock-in / 12 months

★ QUICK REVISION

Key Formulas

Σ FORMULA

MAT Credit: Tax paid u/s 115JB – Tax payable as per other provisions

Multiple Choice Questions

1. As per section 115JB, every taxpayer being a company is liable to pay MAT, if the Income tax payable on the total income is less than — a. 15.50% b. 18.00% c. 15.00% d. 20.00% [Ans: c]

2. MAT shall not apply to any income accruing or arising to a company from — a. Life insurance business b. Banking business c. Business of transmission of electricity d. All of the above [Ans: a]

3. Book profit u/s 115JB means net profit as shown in the Statement of Profit and Loss prepared in accordance with _____ of the Companies Act. — a. Schedule V b. Schedule IV c. Schedule III d. Schedule II [Ans: c]

4. Every company to whom MAT applies is required to obtain a report from a chartered accountant in Form No. _____. — a. 29 b. 29A c. 29B d. 29C [Ans: c]

5. While computing book profit u/s 115JB, one of the following is required to be reduced from the net profit — a. Unabsorbed Depreciation as per books b. Brought forward business loss as per books c. Brought forward loss or unabsorbed depreciation, whichever is less as per books d. Income-tax paid or payable if not already debited [Ans: c]

6. The provisions of sec. 92 will apply only if the aggregate value of specified domestic transactions entered into by the taxpayer during the year exceeds a sum of ₹ _____. — a. 100 crore b. 5 crore c. 10 crore d. 20 crore [Ans: d]

7. As per section _____ when any specified domestic transaction is carried out between associated enterprises, the said transaction should be carried out at arm's length price. — a. 90 b. 91 c. 92 d. 90A [Ans: c]

8. Section _____ deals with methods of computation of arm's length price. — a. 94 b. 93 c. 92C d. 91 [Ans: c]

9. Advance Pricing Agreement shall be valid for such period not exceeding _____ consecutive previous years. — a. 5 b. 3 c. 10 d. 2 [Ans: a]

10. As per sec. 94B, interest expenses claimed by an entity to its associated enterprises shall be restricted to _____ of its EBITDA. — a. 30% b. 25% c. 20% d. 50% [Ans: a]

Short Essay Type Questions

- 1 How to compute book profit u/s 115JB?
- 2 State the provisions relating to registration of trust.
- 3 State the provisions relating to carbon credit.
- 4 What do you mean by advance pricing agreement?
- 5 What is thin capitalisation?
- 6 State the provisions relating to secondary adjustments.
- 7 State the provisions of sec. 91.
- 8 Write a brief note on Model tax conventions.
- 9 State the cases when provisions relating to GAAR are not applicable.
- 10 Define impermissible avoidance arrangement.



Comprehensive Numerical Problems

Problem 1: From the following particulars of Shri Khote for the year ending 31st March, 2026, find out his taxable income from business for A.Y. 2026-27:

PARTICULARS	AMOUNT (₹)	PARTICULARS	AMOUNT (₹)
To Opening Stock	1,20,000	By Sales	2,14,20,000
To Purchases	2,10,00,000	By Profit on sale of import licence	5,000
To Salaries	25,000	By Gift received	24,000
To Printing Expenses	10,000	By Closing Stock	2,00,000
To Bad Debts	5,000		
To Rent	50,000		
To Interest on loan	2,500		
To Depreciation	15,000		
To Income tax paid	2,000		
To Outstanding Customs Duty	25,000		
To Advertisement	2,000		
To Legal expenses	12,000		
To Contribution towards URPF	5,000		
To General expenses	17,500		
To Traveling expenses	1,00,000		
To Net Profit	2,58,000		
	2,16,49,000		2,16,49,000

Additional Information: (i) Interest paid to brother for loan taken for advance income tax. (ii) PY 2021-22 bad debt claimed ₹45,000; allowed ₹35,000. Recovers ₹25,000. (iii) URPF paid within time. (iv) Legal expenses include ₹2,000 for income tax return. (v) Stock undervalued by 10%. (vi) Gift from supplier for target sale. (vii) Customs duty paid on 31-12-2026. (viii) Embezzlement ₹5,000 on 31-3-2025. (ix) Traveling includes ₹50,000 Singapore trip (8 days business, 2 days holiday). (x) Rent includes extension ₹26,000 (completed 1-5-2026, total ₹50,000). (xi) General expenses include salary ₹1,200 to domestic servant, compensation ₹2,000.

[Answer: ₹3,38,589]

Problem 2 (Case Study): Barun Co. Ltd. — Net Profit ₹35,60,000. Turnover never exceeded ₹25 crores. (a) Depreciation ₹19,40,000 (incl. revaluation ₹3,00,000); IT depreciation ₹13,15,000. (b) Interest payable to FI ₹5,20,000; ₹3,90,000 paid by due date. (c) Provision for doubtful debts ₹8 lakhs. (d) Bonus shares ₹2 lakhs + MOA alteration ₹1 lakh. (e) Cash purchase: 15.08.2025 ₹60,000; 26.01.2026 ₹40,000; 03.05.2025 ₹50,000 (previous year). (f) Contract payments ₹5,10,000; no TDS on ₹1,50,000. (g) Provision for taxation ₹2 lakhs + proposed dividend ₹80,000.

Required: (i) Bonus shares & authorized capital; (ii) Sec. 40A(3); (iii) Total income (without 115JB); (iv) Book profit additions; (v) Book profit u/s 115JB; (vi) Tax liability.

[Hint: (i) ₹1,00,000; (ii) ₹50,000; (iii) ₹55,90,000; (iv) Nil; (v) ₹49,40,000; (vi) ₹14,53,400]

Problem 3 (Case Study): AC Flow Mills Ltd. — Net profit ₹77 lakhs. Consider: (ii) Share income ₹9 lakhs from AOP; expenditure ₹90,000. (iii) Provision for income-tax ₹3 lakhs (incl. ₹62,000 interest); share in loss of foreign subsidiary ₹5 lakhs. (iv) Interest to PFI ₹12 lakhs; ₹4 lakhs paid 12-12-2025. (v) Compounding fee ₹1 lakh. (vi) Fee for delayed TDS u/s 234E ₹70,000. (vii) Revaluation surplus ₹10 lakhs.

Required: (i) Addition for fee u/s 234E; (ii) Total income (without 115JB); (iii) Net impact AOP for book profit; (iv) Book profit u/s 115JB; (v) Tax liability.

[Hint: (i) Nil; (ii) ₹85,90,000; (iii) (₹8,10,000); (iv) ₹76,90,000; (v) None of the above]

Problem 4 (Case Study): S Textiles (P) Ltd. — Profit ₹20 lakhs. Debits: Subsidiary loss ₹2L; Doubtful debts ₹1.5L; Income-tax ₹3L; Gratuity ₹7L; Depreciation ₹5.6L (incl. ₹1.6L revaluation); Interest to FI ₹2.5L; Penalty ₹60K. Credits: Patent royalty ₹6L; Share income ₹1.2L; Agri ₹75K; LTCG ₹4L. IT Depreciation ₹2.80L. Regular tax ₹1,22,070 excluding royalty u/s 115BBF.

Required: (i) Book Profits u/s 115JB; (ii) Tax on Book Profits; (iii) Tax credit eligible for carry forward.

[Hint: (i) ₹22,15,000; (ii) ₹4,07,940; (iii) ₹2,23,470]

Problem 5 (Case Study): Father Ltd. — ₹54 lakhs. Debits: Subsidiary loss ₹83K; Doubtful debts ₹92K; Income-tax ₹1.45L; Gratuity ₹4.17L; Depreciation ₹3.07L; Interest to FI ₹72K; Penalty ₹14K. Credits: SEZ profit ₹15.20L; Share income AOP ₹1.95L; LTCG ₹3.20L. Depreciation includes ₹81K on revaluation; IT Dep ₹4.12L; P&L balance 31.3.2025 ₹32L (incl. unabs dep ₹18L); AOP paid tax at MMR; Provision for income-tax includes ₹65K interest.

Required: (i) Book profit u/s 115JB; (ii) Tax liability; (iii) Tax u/s 115JB if IFSC unit.

[Hint: (i) ₹42,06,000; (ii) ₹6,56,140; (iii) ₹3,93,680]

Problem 6 (Case Study): X Ltd. — Net profit ₹75,00,000. Debits: Depreciation ₹24,00,000 (incl. ₹4,00,000 revaluation); Interest to FI ₹6,00,000; Provision for doubtful debts ₹1,00,000; Provision for unascertained liabilities ₹2,00,000; Transfer to General Reserve ₹5,00,000. Credits: Net agricultural income ₹16,00,000; Amount withdrawn from reserve (2020-21) ₹3,00,000. B/f loss (books) ₹12,00,000; Unabsorbed dep (books) ₹10,00,000.

Required: (i) Book profit u/s 115JB; (ii) Tax liability.

[Hint: (i) ₹58,00,000; (ii) ₹9,04,800]

Problem 7 (Comprehensive): From the following particulars of Mamta for the year ending 31st March, 2026, compute her total income and tax liability for the assessment year 2026-27:

Facts: (a) Two house properties — 2nd self occupied, 1st let-out ₹10,000 p.m. Municipal tax: 2nd ₹5,000, 1st ₹3,000. Interest on loan for 1st house ₹22,000. (b) Working with A Ltd.: Basic ₹5,000 p.m.; Bonus ₹40,000; D.A. ₹2,000 p.m.; HRA ₹3,000 p.m. (resides in Kolkata); Car of 1.4 ltr for office & personal use. (c) Interest: FD ₹5,000; SB ₹6,000; Public Ltd deposits ₹5,000. (d) Mediclaim for dependent mother (62 years) ₹5,000. (e) Donation to Rajiv Gandhi Memorial Fund ₹10,000. (f) Handicapped brother fully dependent. (g) LIC premium ₹8,000; Housing loan repayment ₹43,000 (incl. ₹22,000 interest). (h) Sold 200 debentures of X Ltd. on behalf of minor son for ₹1,00,000 (acquired 1-4-2005 for ₹50,000; gifted to minor on 1-4-2014). (i) Tuition fees: Elder son (Mumbai University) ₹10,000; Younger son (Melbourne University) ₹25,000.

[Answer: Total Income ₹1,14,000; Tax Nil]



References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material



Module 1 — Complete Coverage Checklist

★ QUICK REVISION

- | | |
|--|--|
| ▶ ☒ Individual — Total Income & Tax Liability | ▶ ☒ Company — Definitions & Types |
| ▶ ☒ Non-Resident — Definition & Residential Status | ▶ ☒ Company — Rates & Surcharge |
| ▶ ☒ POEM Guidelines | ▶ ☒ Sec. 115BA/115BAA/115BAB |
| ▶ ☒ Foreign Company Resident [Sec. 115JH] | ▶ ☒ Sec. 79 — Carry Forward & Set-off |
| ▶ ☒ Presumptive Taxation — Sec. 44B to 44BBD | ▶ ☒ Sec. 79A — Search Cases |
| ▶ ☒ Sec. 44C — Head Office Expenditure | ▶ ☒ Sec. 115JB — MAT & Book Profit |
| ▶ ☒ Sec. 44DA — Royalty/FTS with PE | ▶ ☒ Sec. 115JAA — MAT Credit |
| ▶ ☒ Capital Gain — Non-Resident Shares | ▶ ☒ Sec. 115TCA — Securitisation Trust |
| ▶ ☒ Sec. 115ACA to 115BBA | ▶ ☒ Sec. 115UA — Business Trust |
| ▶ ☒ Sec. 115C to 115-I — NRI Provisions | ▶ ☒ Sec. 115UB — Investment Fund |
| ▶ ☒ Sec. 115JG — Branch Conversion | ▶ ☒ Sec. 115BBF — Patent |
| ▶ ☒ Sec. 285, 285BAA, 286 | ▶ ☒ Sec. 115BBG — Carbon Credit |
| ▶ ☒ TDS — Sec. 194E to 196D | ▶ ☒ Trust — Charitable & Religious |
| ▶ ☒ Recovery — Sec. 163, 173, 228A | ▶ ☒ Mutual Association & Insurance |

CMA Knowledge — Direct Tax Laws & International Taxation

Master Revision Handbook | December 2026 Edition

Module 1: Assessment of Income and Computation of Tax Liability of Various Entities

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CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

02

MODULE

Tax Management, Return and Assessment Procedure

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 2

Tax Management, Return and Assessment Procedure

Comprehensive coverage of Return of Income, Assessment Procedure including Dispute Resolution Process, Interest and Fees, Survey / Search & Seizure, and Collection, Recovery & Refund of Tax as per the official CMA Final syllabus.

 Syllabus Structure**Section A: Direct Tax Laws — 60% (Module 2 covered)**

5 SUB-MODULES	2.1 RETURN OF INCOME	2.2 ASSESSMENT PROCEDURE	2.3 INTEREST & FEES
2.4 SURVEY, SEARCH & SEIZURE	2.5 COLLECTION, RECOVERY & REFUND	10+ SOLVED ILLUSTRATIONS	30 PAGES COVERAGE

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2.1 Return of Income

Tax management involves the compliance of law regularly and timely as well as the arrangement of the affairs of the business in such a manner that it reduces the tax liability. Functions under tax management includes maintenance of accounts, filing of return, deduction and deposit of TDS on timely basis, payment of tax on time. Poor tax management can lead to imposition of interest, penalty, prosecution.

Tax Management relates to Past (Assessment Proceedings, Appeals, Revisions), Present (Filing of Return, payment of advance tax) and Future (To take corrective action).

2.1.1 Compulsory Filing of Return [Sec. 139(1)]

Applicable to	Every person being a company or a firm; or being a person other than a company or a firm, if his total income exceeds the maximum amount which is not chargeable to income-tax.
Time Limit	On or before the due date, furnish a return of his income in the prescribed form and verified in the prescribed manner.
Income for Limit	Income before giving effect to sec. 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54GB and Chapter VIA (deductions u/s 80C to 80U).

TAXPOINT

Compulsory Filing for Residents (other than Not Ordinarily Resident): Must file return irrespective of income level if he:

- ▶ (i) holds, as a beneficial owner or otherwise, any asset (including financial interest in any entity) located outside India or has signing authority in any account located outside India; or
- ▶ (ii) is a beneficiary of any asset (including financial interest in any entity) located outside India.

IMPORTANT

7th Proviso to Sec. 139(1) — Prescribed Conditions [Rule 12AB]: A person (other than firm and company), who is not required to furnish a return as per aforesaid provision, and who during the previous year:

- ▶ (a) has deposited aggregate amount exceeding ₹1 crore in one or more current accounts; or
- ▶ (b) has incurred expenditure exceeding ₹2 lakh for foreign travel; or
- ▶ (c) has incurred expenditure exceeding ₹1 lakh towards consumption of electricity; or
- ▶ (d) fulfils prescribed conditions: total sales/turnover > ₹60 lakh; professional gross receipts > ₹10 lakh; aggregate TDS/TCS ≥ ₹25,000 (₹50,000 for senior citizen); savings bank deposits ≥ ₹50 lakh.

Forms — Return of Income [Rule 12]

FORM	APPLICABLE TO
ITR-1 (Sahaj)	Individuals having Income from Salaries, one house property, LTCG u/s 112A up to ₹1.25 lakh, other sources (except lottery / race horses) and total income up to ₹50 lakh. Not for: director, unlisted equity holder, foreign assets, etc.
ITR-2	Individuals and HUFs not carrying out business or profession under any proprietorship.
ITR-3	Individuals and HUFs having income from a proprietary business or profession.
ITR-4 (Sugam)	Individuals, HUFs and Firms (other than LLP) being resident having total income up to ₹50 lakh and income computed u/s 44AD, 44ADA or 44AE, and LTCG u/s 112A up to ₹1.25 lakh.
ITR-5	For a person other than (i) Individual; (ii) HUF; (iii) Company; & (iv) Person filing Form ITR-7.
ITR-6	For Companies other than companies claiming exemption u/s 11.
ITR-7	For persons including companies required to furnish return u/s 139(4A) or 139(4B) or 139(4C) or 139(4D) or 139(4F).
ITR-V	Income Tax Return Verification Form [Where data transmitted electronically without digital signature].

Mode of Furnishing Income-tax Return

PERSON	CONDITION	MODE
Company	—	Electronically with digital signature
Political Party	—	
Firm or LLP	—	

Due Date for Filing Return [Explanation 2 to Sec. 139(1)]

ASSESSEE	DUE DATE
Where the assessee (including partners of firm) is required to furnish report in Form 3CEB u/s 92E (international transaction)	30th November
Where the assessee is a partner in a firm and the firm is required to furnish Form 3CEB u/s 92E	30th November
Where the assessee is a company not having international transaction(s)	31st October
Where accounts of the assessee are required to be audited under any law	31st October
Where the assessee is a partner in a firm and accounts of firm are required to be audited	31st October
In any other case	31st July

Fee for Default in Furnishing Return [Sec. 234F]

CASE	FEE
Total income does not exceed ₹5 lakh	₹1,000
Total income exceeds ₹5 lakhs	₹5,000

Belated Return [Sec. 139(4)]

If an assessee fails to file return within the time limit u/s 139(1) or within the time allowed under notice u/s 142(1), he can file a belated return. **Time limit:** Before **31 December** of the relevant assessment year; or before completion of assessment u/s 144 — whichever is earlier.

Consequences: (i) Liable to fee u/s 234F; (ii) Liable to interest u/s 234A; (iii) Certain profit-based deductions under Chapter VIA & u/s 10AA are not available; (iv) Certain losses of previous year [as provided in sec. 139(3)] not allowed to be carried forward.

Revised Return [Sec. 139(5)]

If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he can revise his return u/s 139(5). **Time limit:** Before **31 December** of the relevant assessment year; or before completion of regular assessment — whichever is earlier.

Notes: (i) Revised return replaces original return; (ii) Revised return can be revised again; (iii) Belated return can be revised; (iv) Loss return can be revised; (v) Return filed pursuant to notice u/s 142(1) cannot be revised.

Updated Return [Sec. 139(8A)]

Any person, whether or not he has furnished a return u/s 139(1) or (4) or (5), may furnish an updated return of his income for the previous year. **Time limit:** At any time within **48 months** from the end of the relevant assessment year.

Cannot be filed if: (i) it is a return of loss; (ii) it has effect of decreasing total tax liability; (iii) it results in refund or increases refund due. **Also not eligible if:** Search u/s 132 has been initiated; Survey u/s 133A conducted; notice issued regarding seized assets; updated return already furnished for AY; assessment/reassessment pending or completed; prosecution proceedings initiated.

Tax on Updated Return [Sec. 140B]

IF UPDATED RETURN IS FURNISHED AFTER EXPIRY OF	ADDITIONAL INCOME TAX PAYABLE
Time available u/s 139(4) or (5) and before completion of 12 months from end of relevant AY	25%
12 months from end of relevant AY but before completion of 24 months	50%
24 months from end of relevant AY but before completion of 36 months	60%

When a Return of Loss Should be Filed [Sec. 139(3)]

An assessee, other than few, is not compulsorily required to furnish return of loss. However, the following losses cannot be carried forward if the return of loss is not submitted within the time allowed u/s 139(1):

- ▶ (a) Business loss (speculative or otherwise);
- ▶ (b) Capital loss;
- ▶ (c) Loss from the activity of owning and maintaining race horses;
- ▶ (d) Loss from business specified u/s 35AD.

TAXPOINT

Notes: (i) Loss declared in belated return cannot be carried forward. However, set-off of losses of current year is not prohibited while computing total income, even if the return of loss is filed after the due date. (ii) Delay in filing the return of loss may be condoned in certain cases. (iii) Unabsorbed depreciation u/s 32 and loss under the head "Income from house property" can be carried forward even if the loss return is filed after the due date u/s 139(1).

Return of Income of Charitable Trust [Sec. 139(4A)]

Every person who is in receipt of: (i) income from property held under the trust or other legal obligation wholly or partly for charitable or religious purpose; or (ii) income by way of voluntary contribution on behalf of such trust or institution, and if such income before allowing exemption u/s 11 or 12 exceeds the maximum amount which is not chargeable to tax, must file a return before the due date as per sec. 139(1).

Penalty: Where an assessee fails to file return of income under this section within the time limit, it shall be liable to pay a penalty of ₹100 per day during which such failure continues [Sec. 272A(2)].

Return of Income of Political Party [Sec. 139(4B)]

The chief executive officer (whether known as Secretary or by any other designation) of any political party is required to furnish a return in respect of income of such political party, if the amount of gross total income before allowing exemption u/s 13A exceeds the maximum amount not chargeable to tax.

Return of Income of Scientific Research Association, etc. [Sec. 139(4C)]

Every: Research Association u/s 10(21); News agency u/s 10(22B); Association or institution u/s 10(23A) or 10(23B); Specified Employee Welfare Fund u/s 10(23AAA); University or other educational institution u/s 10(23C)(iiad) or (iiab); Hospital or other medical institution u/s 10(23C)(iiiae) or (iiiac); Fund or institution u/s 10(23C)(iv); Trust or institution u/s 10(23C)(v); University or other educational institution u/s 10(23C)(vi); Hospital or other medical institution u/s 10(23C)(via); Mutual Fund u/s 10(23D); Securitisation trust u/s 10(23DA); Investor Protection Fund u/s 10(23EC) or (23ED); Core Settlement Guarantee Fund u/s 10(23EE); Venture Capital Company or Venture Capital Fund u/s 10(23FB); Trade union u/s 10(24); Body / authority u/s 10(46) or (29A); Infrastructure debt fund u/s 10(47), must file a return if total income (before giving effect to sec. 10) exceeds maximum amount not chargeable to income-tax.

Penalty: ₹100 per day during which failure continues [Sec. 272A(2)].

Other Return Requirements

SECTION	APPLICABLE TO & REQUIREMENT
Sec. 139(4D)	Every University, college or other institution referred to in sec. 35(1)(ii) or (iii) required to furnish a return in respect of income or loss irrespective of size.
Sec. 139(4E)	Every business trust not required to furnish return under any other provision shall furnish return of its income in every previous year.
Sec. 139(4F)	Every investment fund referred to in sec. 115UB not required to furnish return under any other provision shall furnish return of income in every previous year.

Annual Information Statement (AIS) / Form 26AS

Form 26AS / AIS contains: Tax paid through TDS/TCS; Details of TDS for 15G/15H; TDS/TCS defaults; Details u/s

Defective Return [Sec. 139(9)]

Where the Assessing Officer considers that the return of income furnished by the taxpayer is defective, he may intimate the defect to the taxpayer and give him an opportunity to rectify the defect(s).

Time limit for rectification: 15 days from date of intimation (or extended time as allowed by AO). If defect rectified after 15 days but before assessment completed, AO can condone delay.

Consequence when defect not rectified: AO shall treat return as invalid return and provisions of Act apply as if taxpayer had failed to furnish return at all.

△ IMPORTANT

Return regarded defective if: (a) Annexures, statements and columns relating to computation of income, GTI and total income not duly filled in; (b) Not accompanied by proof of payment of taxes (advance tax or self-assessment tax).

Verification of Return [Sec. 140]

ASSESSEE	CASE	VERIFIED BY
Individual	In general	Individual himself
	Absent from India	Individual himself or duly authorized person
	Mentally incapacitated	Guardian or other competent person
	Any other reason	Any person duly authorised by him (with power of attorney)
HUF	In general	Karta
	Karta absent / mentally incapacitated	Any adult member of family
Firm	In general	Managing partner
	No managing partner or unable to verify	Any adult partner
LLP	In general	Designated partner
	Unavoidable reason / no designated partner	Any partner or prescribed person
Local authority	—	Principal Officer
Political party	—	Chief Executive Officer
Company	In general	Managing Director (MD)
	MD unable / no MD	Any director or prescribed person
	Corporate Insolvency Resolution Process admitted	Insolvency professional
	Non-resident company	Person holding valid power of attorney
Company winding up	—	Liquidator
Any other association	Management taken over by Government	Principal Officer
Any other person	—	Such person or any other person competent to act on its behalf

Quoting of Aadhaar Number [Sec. 139AA]

Every person who is eligible to obtain Aadhaar number shall quote Aadhaar number: (a) in the application form for allotment of PAN; (b) in the return of income.

Note: Every person allotted PAN before 01-07-2017 and eligible to obtain Aadhaar number shall intimate Aadhaar to such authority by 31-03-2022. Mandatory to quote and link Aadhaar while filing return. Failure = PAN made inoperative from 01-07-2023.

△ IMPORTANT

Consequence of PAN becoming inoperative: (a) No refund of any amount of tax due; (b) No interest payable on refund from 01-07-2023 to date operative; (c) TDS at higher rate u/s 206AA; (d) TCS at higher rate u/s 206CC.

Fee for default relating to Aadhaar [Sec. 234H]: Failure to intimate Aadhaar by prescribed date = fee up to ₹1,000. PAN becomes operative within 30 days from date of intimation of Aadhaar.

2.2 Assessment Procedure including Dispute Resolution Process

Assessment means to assess the income of the assessee i.e. to decide the income and tax liability of the assessee on the basis of the return filed, information gathered, or to the best of the judgment of the income tax department. It begins with self-assessment i.e. assessment by the assessee himself.

2.2.1 Self-Assessment [Sec. 140A]

- ▶ (a) Where any tax is payable (after deducting relief, rebate, advance payment of tax or TDS/TCS or MAT/AMT credit, if any) on the basis of return furnished, the assessee is required to pay such tax before filing the return.
- ▶ (b) Taxpoint: A return furnished without paying self-assessment tax & interest, if any, shall be treated as defective return.
- ▶ (c) If interest payable for delayed filing of return (u/s 234A) or default in payment of advance tax (u/s 234B) or for deferment of advance tax (u/s 234C) or fee (u/s 234F) is payable, then such interest or fee should be paid along with self-assessment tax.
- ▶ (d) Where the amount paid falls short of aggregate of tax, interest and fee, amount paid shall first be adjusted towards fee, thereafter towards interest, and the balance towards tax.
- ▶ (e) If an assessee fails to pay whole or any part of such tax or interest in accordance with sec. 140A, he shall be deemed to be an assessee in default.

Inquiry before Assessment

SECTION	NATURE OF PROVISION
142(1)(i)	Notice to submit a return if assessee has not submitted return within specified time.
142(1)(ii)	Notice to produce accounts, documents, etc.
142(1)(iii)	Notice to furnish information in writing (including statement of all assets and liabilities) — prior approval of Joint Commissioner required for non-accounted statement.
142(2)	Making inquiry — AO may make such inquiry as he considers necessary (from any source).
142(2A)-(2D)	Direction to get books of account audited — with prior approval of PCCIT/PCIT/CCIT/CIT. Report in Form 6B within 180 days. Fees paid by Central Government.
142(3)	Opportunity of being heard in respect of any material gathered.
142A	Estimate by Valuation Officer — AO may make reference to VO to estimate value of asset/property/investment. Report within 6 months from end of month of reference.
142B	Faceless inquiry or Valuation — Central Government may notify scheme.

△ IMPORTANT

Taxpoint: Notice u/s 142(1)(i) can be served only if return has not been submitted; notice u/s 142(1)(ii) & (iii) can be served whether return has been furnished or not. AO shall not require production of accounts for period more than 3 years prior to previous year.

≡ CASE LAW

Consequences of failure to follow direction u/s 142(2A): (i) Liable to Best Judgment Assessment u/s 144; (ii) Attracts penalty and prosecution. Note: Penalty etc. are attracted only if default by assessee. If nominated accountant refuses to audit, assessee cannot be held responsible.

Intimation [Sec. 143(1)]

Where a return has been made u/s 139 or in response to a notice u/s 142(1), such return shall be processed in the following manner:

- 1 The total income or loss shall be computed after making adjustments:
 - 2 (i) any arithmetical error in the return;
 - 3 (ii) an incorrect claim apparent from any information in the return;
 - 4 (iii) inconsistency with information in return of preceding previous year;
 - 5 (iv) disallowance of loss claimed if return of previous year furnished after due date;
 - 6 (v) disallowance of expenditure indicated in audit report but not taken into account;
 - 7 (vi) disallowance of deduction u/s 10AA or Chapter VI-A "C" if return furnished after due date.
- 8 The tax, interest and fee, if any, shall be computed on the total income computed above.
- 9 The sum payable by (or the amount of refund due to) the assessee shall be determined.
- 10 An intimation shall be prepared or generated and sent to the assessee.
- 11 The amount of refund due shall be granted.
- 12 An intimation shall also be sent where the loss declared is adjusted but no tax/interest/fee is payable or no refund is due.

△ IMPORTANT

Time limit for intimation: No intimation shall be sent after expiry of **12 months** from the end of the financial year in which the return is made. The period of limitation will run from date of filing of latest revised return.

Withholding refund [Sec. 241A]: Where refund becomes due u/s 143(1) and AO is of the opinion that grant of refund is likely to adversely affect revenue, he may with prior approval of PCIT/CIT withhold the refund up to date of assessment.

Scrutiny Assessment [Sec. 143(3)]

Where AO considers it necessary to ensure that the assessee has not understated his income; or declared excessive loss; or under paid the tax, he can make scrutiny and pass an assessment order. Such order shall be treated as regular assessment order.

Conditions: (a) A return has been furnished u/s 139 or in response to notice u/s 142(1); and (b) AO considers it necessary or expedient to ensure that assessee has not understated income, declared excessive loss, or under-paid tax.

Notice for Scrutiny [Sec. 143(2)]	AO shall serve on assessee a notice requiring him on a specified date to produce evidence on which assessee may rely in support of the return. Time limit: No notice shall be served after expiry of 3 months from the end of financial year in which return is furnished.
Order	After collecting information and hearing evidence, AO shall, by an order in writing, make an assessment of total income or loss of the assessee and determine the sum payable or refund due.
Time Limit for Completion	Assessment u/s 143(3) should be completed within 12 months from the end of relevant AY. However, where updated return u/s 139(8A) is furnished, order may be made before expiry of 12 months from end of FY in which such return was furnished.

📌 TAXPOINT

Special Procedures: (i) **First Proviso to Sec. 143(3):** For research association, news agency, etc. — assessment after giving effect to sec. 10, unless approval withdrawn. (ii) **Second Proviso:** For trust / institutions u/s 10(23C) / 11 — if specified violation, reference to PCIT/CIT to withdraw approval; no assessment without giving effect to such order. (iii) **Third Proviso:** For university/college u/s 35(1)(ii) & (iii).

Best Judgment Assessment [Sec. 144]

Under this section, assessment shall be made by the AO to the best of his judgment after considering all relevant materials which he has gathered. AO cannot reduce the tax liability of the assessee by assessment under this section. **A refund cannot be granted u/s 144.**

△ IMPORTANT

Situations where Best Judgment Assessment applies:

- ▶ (a) Person fails to file return u/s 139(1), 139(4) or 139(5) or updated return u/s 139(8A); or
- ▶ (b) Person fails to comply with terms of notice u/s 142(1); or
- ▶ (c) Person fails to comply with directions u/s 142(2A) requiring him to get accounts audited; or
- ▶ (d) Person fails to comply with terms of notice u/s 143(2).

Note: Best judgment assessment is not discretionary but **mandatory** in these cases.

Opportunity of being heard: Assessment u/s 144 can only be made after giving assessee reasonable opportunity of being heard by serving a "Show cause notice". **Exception:** Such opportunity need not be given where notice u/s 142(1) has already been issued.

Time limit [Sec. 153(1)]: 12 months from end of relevant AY. Where updated return u/s 139(8A) is furnished, order may be made before expiry of 12 months from end of FY in which such return was furnished.

Non-maintenance of proper accounts [Sec. 145(3)]: If AO is not satisfied with correctness / completeness of accounts or no regular method of accountancy / accounting standards followed, AO may make assessment u/s 144.

Income Escaping Assessment [Sec. 147]

If any income chargeable to tax has escaped assessment for any AY, AO may, subject to provisions of sec. 148 to 153, assess or reassess such income or recompute the loss or depreciation or any other allowance or deduction for such AY.

Procedure before Issuance of Notice u/s 148 [Sec. 148A]

Where AO has information which suggests income chargeable to tax has escaped assessment, he shall, before issuing notice u/s 148, provide an opportunity of being heard by serving a notice to show cause as to why notice u/s 148 should not be issued. The notice must be accompanied by the information which suggests income escaped assessment.

Process: (i) Assessee may furnish reply within specified period; (ii) AO shall, on basis of material and reply, pass an order with prior approval of specified authority determining whether it is a fit case to issue notice u/s 148; (iii) Section shall not apply where AO received information under scheme u/s 135A.

Time Limit for Notice u/s 148 / 148A [Sec. 149]

CASE	TIME LIMIT U/S 148	TIME LIMIT U/S 148A
AO has books / documents / evidence showing income escaped is ₹50 lakh or more	After 3 years & 3 months but within 5 years & 3 months from end of relevant AY	After 3 years but within 5 years from end of relevant AY
In any other case	Within 3 years and 3 months from end of relevant AY	Within 3 years from end of relevant AY

📍 TAXPOINT

Sanction for issue of notice [Sec. 151]: Specified authority for the purposes of sec. 148 & 148A shall be the Additional Commissioner / Additional Director / Joint Commissioner / Joint Director.

Rate of taxation [Sec. 152(1)]: If assessment / reassessment is made u/s 147, tax shall be chargeable at rates at which it would have been charged had income not escaped assessment.

Time limit for completion: No order u/s 147 after expiry of 12 months from end of financial year in which notice u/s 148 was served.

Faceless Assessment [Sec. 144B]

The assessment, reassessment or recomputation u/s 143(3) or 144 or 147 shall be made in a faceless manner as per the following procedure:

- ▶ The National Faceless Assessment Centre (NaFAC) shall assign the case to a specific assessment unit through an automated allocation system.
- ▶ NaFAC shall intimate assessee that assessment shall be completed in faceless manner.
- ▶ Notice u/s 143(2) or 142(1) shall be served through NaFAC. Assessee files response to NaFAC which forwards to assessment unit.
- ▶ Assessment Unit may request through NaFAC for: (a) further information/documents/evidence; (b) enquiry/verification by verification unit; (c) technical assistance from technical unit.
- ▶ NaFAC shall serve appropriate notice/requisition and forward response to assessment unit.
- ▶ Requests for verification / technical assistance assigned through automated allocation system.
- ▶ Assessment Unit may serve show cause notice u/s 144 (through NaFAC) giving opportunity to show cause why assessment should not be completed to best of its judgment.
- ▶ Assessment Unit prepares income or loss determination proposal and sends to NaFAC.
- ▶ NaFAC may convey to Assessment Unit to prepare draft order or assign proposal to review unit for review.
- ▶ For eligible assessee with variation prejudicial to interest, NaFAC shall serve draft order on assessee; assessee may file acceptance or objections with DRP & NaFAC within specified period.
- ▶ Final assessment order served on assessee along with demand notice.
- ▶ NaFAC shall transfer all electronic records to jurisdictional AO after completion.

UNIT	FUNCTIONS
NaFAC	Facilitate conduct of faceless assessment proceedings in a centralised manner.
Assessment Unit	Perform function of making assessment — identification of points, seeking information, analysis of material.
Verification Unit	Perform function of verification — enquiry, cross verification, examination of books, examination of witnesses, recording of statements.
Technical Unit	Perform function of providing technical assistance — legal, accounting, forensic, IT, valuation, transfer pricing, data analytics, management.
Review Unit	Perform function of review of income determination proposal — checking whether relevant evidence is on record, points of fact and law incorporated.

Reference to Dispute Resolution Panel [Sec. 144C]

Eligible Assessee: (i) Any person in whose case variation arises as consequence of order of Transfer Pricing Officer passed u/s 92CA(3); and (ii) Any non-resident person not being a company or a foreign company.

Procedure	AO shall, in first instance, forward a draft of proposed order of assessment to eligible assessee if he proposes to make any variation prejudicial to interest of such assessee.
Action by Assessee	Within 30 days of receipt of draft order: (a) File acceptance of variations to AO; or (b) File objections with (i) DRP and (ii) AO.
If No Objection	AO shall complete assessment on basis of draft order within 1 month from end of month in which acceptance is received or 30-day period expires.
DRP Composition	Collegium comprising of 3 Commissioners of Income-tax constituted by the Board.
DRP Powers	May confirm, reduce or enhance variations proposed in draft order; may make further enquiry; every direction of DRP shall be binding on AO.
Time Limit for DRP	No direction shall be issued after 9 months from end of month in which draft order forwarded to eligible assessee.
Final Order	AO shall, in conformity with DRP directions, complete assessment within 1 month from end of month in which direction is received.

2.3 Interest and Fees

234A

RETURN DEFAULT

234B

ADVANCE TAX DEFAULT

234C

ADVANCE TAX DEFERMENT

234D

EXCESS REFUND

Important Notes Regarding Calculation of Interest [Rule 119A]

- ▶ **Rounding off amount:** Amount on which interest is calculated shall be rounded off to multiple of ₹100 by ignoring fraction of ₹100.
- ▶ **Rounding off period (monthly):** Any fraction of month shall be taken as full month.
- ▶ **Rounding off period (annual):** Any fraction of month shall be ignored.

2.3.1 Interest for Default in Furnishing Return [Sec. 234A]

Condition	Where a person required to furnish return of income: (a) fails to furnish return; or (b) furnishes it after the due date specified u/s 139(1).
Amount on which charged	Tax determined u/s 143(1) or on regular assessment, as reduced by: Advance Tax paid; Relief u/s 89/90/90A/91; Credit u/s 115JAA/115JD (MAT/AMT); TDS/TCS.
Rate	Simple interest @ 1% per month or part thereof.
Period	From day immediately following the due date for furnishing return, ending on: (a) Date of furnishing return (if furnished after due date); (b) Date of completion of assessment u/s 144 (if not furnished at all).

Interest for Default in Paying Advance Tax [Sec. 234B]

Condition	Where a person required to pay advance tax: (a) fails to pay advance tax at all; or (b) pays less than 90% of assessed tax as advance tax.
Amount	Assessed Tax – Advance Tax Paid (– Tax paid on self-assessment, if applicable).
Rate	Simple interest @ 1% per month or part thereof.
Period	From 1st day of April of relevant AY, ending on date of determination of tax u/s 143(1) or on regular assessment.
Assessed Tax	Tax determined u/s 143(1) or Regular Assessment as reduced by: TDS/TCS; Relief u/s 89/90/90A/91; Credit u/s 115JAA/115JD.

Interest for Deferment of Advance Tax [Sec. 234C]

Payment of advance tax is to be made as per schedule. If assessee fails to pay the amount or pays lesser amount, interest u/s 234C is payable.

DUE DATE	ADVANCE TAX PAYABLE	MINIMUM TO BE PAID (TO AVOID INTEREST)	RATE & PERIOD
15th June	15% of advance tax	12% of tax	1% per month or part thereof; 3 months (1 month for last installment)
15th September	45% of advance tax	36% of tax	
15th December	75% of advance tax	75% of tax	
15th March	100% of advance tax	100% of tax	

△ IMPORTANT

No interest u/s 234C for shortfall if: (a) Shortfall is due to underestimation of capital gains, lottery income, first-time business income, or dividend; and (b) Assessee paid whole of tax in remaining installments.

Updated Return u/s 139(8A): Interest u/s 234C computed after considering total income in updated return as returned income.

Interest for Excess Refund Granted [Sec. 234D]

Condition	Where any refund is granted to assessee u/s 143(1) and: (a) no refund is due on regular assessment; or (b) amount refunded exceeds refundable on regular assessment.
Rate	Simple interest @ 12% per month or part of month.
Amount	On whole or excess amount refunded.
Period	From date of grant of refund to date of such regular assessment.

Fee for Defaults in Furnishing Statements [Sec. 234E]

Where a person fails to deliver quarterly TDS / TCS return within prescribed time, fee of **₹200 per day** during which failure continues, subject to maximum of amount of TDS/TCS. Fee is in addition to other consequences.

Fee for Default in Furnishing Return [Sec. 234F]

CASE	FEE
Total income does not exceed ₹5 lakh	₹1,000
Total income exceeds ₹5 lakh	₹5,000

Fee for Default Relating to Statement or Certificate [Sec. 234G]

Where: (a) research association, university, college or other institution or company u/s 35(1)(ii) or (iii) or (iia) fails to deliver statement within prescribed time u/s 35(1A); or (b) institution or fund fails to deliver statement u/s 80G(5)(viii) or fails to furnish certificate u/s 80G(5)(ix), it shall be liable to pay fee @ **₹200 per day** during which failure continues.

Fee for Default Relating to Intimation of Aadhaar [Sec. 234H]

Where a person fails to intimate his Aadhaar number on or before prescribed date, he shall be liable to pay fee not exceeding **₹1,000** at time of making intimation after said date. PAN becomes operative within 30 days from date of intimation of Aadhaar.

Interest for Failure to Pay Tax According to Demand Notice [Sec. 220(2)]

Condition	Any person fails to pay demand within 30 days (or lesser period specified by AO with prior approval of Joint Commissioner) of service of notice u/s 156.
Rate	Simple interest @ 1% per month or part thereof.
Amount	On amount specified in notice of demand.
Period	From day immediately after expiry of 30 days (or specified period), ending on date on which amount is paid.

Interest for Failure to Deduct / Collect and Pay Tax [Sec. 201(1A), 206C(7)]

SECTION	CONDITION	RATE
201(1A)	Failure to deduct tax at source or deposit after deducting	1% p.m. (for failure to deduct); 1.5% p.m. (for failure to deposit after deducting)
206C(7)	Failure to collect tax at source or deposit after collecting	1% p.m. (for failure to collect); 1.5% p.m. (for failure to deposit after collecting)

Interest on Refund [Sec. 244A]

An assessee who is entitled to get refund shall also be entitled to interest on such refund. Rate: Simple interest @ **0.5% per month** or part thereof.

CASE	PERIOD FOR CALCULATION OF INTEREST
Refund out of TDS/TCS/Advance Tax — Where return furnished within due date	From first day of relevant assessment year to date on which refund is granted.
Refund out of TDS/TCS/Advance Tax — Where return furnished after due date	From date of furnishing return to date on which refund is granted.
Refund out of self-assessment tax	From date of furnishing return or payment of tax, whichever is later, to date on which refund is granted.
Refund due to any other reason	From date of payment of such tax to date on which refund is granted.
Refund due to excess payment of TDS by deductor	From date on which claim for refund is made (or from date of payment of tax if refund arises from an order u/s 250/254/260/262) to date on which refund is granted.

△ IMPORTANT

Notes:

- ▶ (i) Interest on refund due to TDS/TCS: No interest if amount of refund is less than **10% of tax determined** u/s 143(1) or regular assessment.
- ▶ (ii) Refund arising out of giving effect to an order: Additional interest @ **3% p.a.** for period beginning from date following expiry of time allowed u/s 153(5) to date of grant of refund.
- ▶ (iii) Taxability of refund and interest: Refund of tax itself is not taxable. However, interest received on delayed refund is taxable under the head "Income from other sources".
- ▶ (iv) Adjustment in interest: Where tax payable is reduced or enhanced by an order u/s 143(3), 144, 147, 154, 155, 250, 254, 260, 262, 263, 264 & 245D(4), the amount of interest shall be reduced or enhanced accordingly.
- ▶ (v) Delay in refund due to reason attributable to assessee: Such period shall be excluded from period for which interest is payable.
- ▶ (vi) Interest on refund arising on application u/s 155(20): @ **0.5%** for every month from date of application to date on which refund is granted.

Waiver or Reduction of Interest u/s 234A, 234B & 234C

The Chief Commissioners and Directors-General (Investigation) is empowered to reduce or waive penal interest u/s 234A, 234B and 234C in the following circumstances:

- ▶ (a) Where, in course of search and seizure operation, books of account were taken over by Department and not available to taxpayer.
- ▶ (b) Where cash was seized in search operation and not permitted to be adjusted against arrears / advance tax installments.
- ▶ (c) Any income other than capital gains received after first / subsequent installment of advance tax, which was neither anticipated nor contemplated.
- ▶ (d) Where, as a result of retrospective amendment of law or SC decisions, certain exempt receipts became taxable.
- ▶ (e) Where return of income is filed voluntarily without detection by Income Tax Department and due to circumstances beyond control of taxpayer.

Note: Chief Commissioner / Director-General are also empowered to waive or reduce interest u/s 234A, 234B and 234C on income accruing due to operation of order of Court / statutory authority / Government (other than assessment order) passed after close of previous year.

2.4 Survey, Search and Seizure

2.4.1 Power regarding Discovery, Production of Evidence [Sec. 131]

The income-tax authority [being Assessing Officer, DC(A), JC, CIT(A), JC(A), PCCIT/CCIT/PCIT/CIT and DRP] have the same powers as vested in a court under Code of Civil Procedure, 1908 in respect of:

- ▶ (a) Discovery and inspection;
- ▶ (b) Enforcing attendance of any person, including any officer of banking company, and examining him on oath;
- ▶ (c) Compelling production of books of account and other documents; and
- ▶ (d) Issuing commissions.

Search and Seizure [Sec. 132]

Who can authorize	Principal Director General / Director General / Principal Director / Director / Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner.
Circumstances	Where authority has reason to believe (in consequence of information) that: (i) person to whom summons/notice u/s 131(1)/142(1) issued to produce books has omitted/failed to do so; or (ii) will fail to do so; or (iii) person in possession of money, bullion, jewellery, valuable article represents undisclosed income/property.
Power of Authorized Officer	Enter and search any building; break open lock; search any person; require facility to inspect electronic record; seize books/documents/money/bullion/jewellery; place marks of identification; make inventory; examine on oath.
Handing over	Seized asset / document handed over to AO having jurisdiction within 60 days from date of last authorization.
Deemed / Constructive Seizure	Where physical possession not practicable (volume, weight, dangerous), officer may serve order on owner prohibiting removal. Such order deemed to be seizure (except for stock-in-trade).
Provisional Attachment	During search or within 60 days from last authorization, authorized officer may provisionally attach any property belonging to assessee with reasons recorded and prior approval of PDG/DG/PD/D. Such attachment ceases after 6 months .
Presumption [Sec. 132(4A)]	Where books/documents/money are found in possession of any person in course of search, presumed that: (i) belongs to such person; (ii) contents are true; (iii) signature/handwriting is of that person; (iv) document stamped/executed properly.

Power to Requisition Books of Account, Assets [Sec. 132A]

Where income-tax authority has reason to believe that: (a) books of account / documents summoned u/s 131(1) / 142(1) have been taken into custody by any officer or authority under any other law; or (b) such books/documents will be useful for or relevant to any proceeding and will not be produced; or (c) any assets taken into custody by other authority is undisclosed (wholly or partly), such authority may requisition delivery of such books/documents/assets.

Application of seized or requisitioned assets [Sec. 132B]: Seized assets may be adjusted with: (a) existing liability under Income-tax Act, Wealth-tax Act, Black Money Act (existing liability does not include advance tax payable); (b) liability determined on completion of assessment; (c) amount in respect of which person is in default. Order of adjustment: Money first, then asset.

Release of Asset [First Proviso to Sec. 132B]

- ▶ Conditions: (i) Person makes application to AO within **30 days** from end of month in which asset seized; (ii) Nature and source of acquisition explained to satisfaction of AO; (iii) AO obtains prior approval of PCCIT/CCIT/PCIT/CIT.
- ▶ Time limit for release: Within **120 days** from date on which last authorization for search / requisition executed.
- ▶ Interest payable to assessee: If aggregate amount of money seized exceeds aggregate of amount required to meet liabilities, Government shall pay simple interest @ **0.5% p.m.** from date immediately following expiry of 120 days to date of completion of assessment u/s 153A.

Power to Call for Information [Sec. 133]

The income-tax authority may require: (i) any firm — return of names and addresses of partners and their shares; (ii) any HUF — return of names and addresses of manager and members; (iii) any person believed to be trustee, guardian or agent — return of names of persons for whom he is trustee/guardian/agent; (iv) any assessee — statement of names and addresses of all persons to whom rent, interest, commission, royalty, brokerage or annuity (not being salary) exceeding ₹1,000 was paid; (v) any dealer, broker or agent — statement of names and addresses of persons to whom sum paid in connection with transfer of assets; (vi) any person (including banking company) — information relating to such points or matters as will be useful for or relevant to any enquiry or proceeding.

Power of Survey [Sec. 133A]

Who can survey	PCIT/CIT, PD/D, JC/JD, AD/DD, AO, TRO, Inspector (in some circumstances) subordinate to PDG/DG/PCCIT/CCIT.
Jurisdiction	Any place within limits of area assigned to him; or any place occupied by person in respect of whom he exercises jurisdiction; or any place authorised by such authority.
Powers	(1) Enter place of business; (2) Require proprietor/trustee/employee to afford facility to inspect books/documents; (3) Place marks of identification; (4) Impound and retain books/documents (with reasons recorded); (5) Make inventory of cash/stock/valuable article; (6) Record statement of any person.
Restrictions	(a) Cannot impound without recording reasons; (b) Cannot retain beyond 15 days (excl. holidays) without approval; (c) Cannot remove cash/stock/valuable article; (d) Cannot seal place of business.
Time	During business hours; in case of deemed place of business, only after sunrise and before sunset.
Survey of Expenditure [Sec. 133A(5)]	For function/ceremony/event — officer may require information from assessee or any person likely to possess information, and record statement.

Comparison: Survey vs. Search & Seizure

BASIS	SURVEY [SEC. 133A]	SEARCH & SEIZURE [SEC. 132]
Place	Only business premises or place of profession. Residential premises covered if books kept there.	Any building or place within jurisdiction of officer.
Time	Only during working hours and on business days.	Any day. Can start after sunrise; can continue beyond working hours.
Actions	Inspection of books; verification of cash; impound books; record statement. No personal search.	Entire place searched; locks broken; undisclosed assets seized and carried away; personal search of persons possible.
Police help	Cannot take.	Generally accompanied by police officer.

Power to Collect Certain Information [Sec. 133B] — Door to Door Survey

Income-tax authority (JC, AD, DD, AO, authorised Inspector) may, for purpose of collecting information, enter any building or place where business or profession is carried on, and require any proprietor, employee or other person to furnish prescribed information. Only during hours at which place is open for conduct of business. Cannot remove books, cash, stock or valuable article.

Power to Call for Information by Prescribed Income-tax Authority [Sec. 133C] & Inspection of Registers [Sec. 134]

Sec. 133C: Prescribed authority (PDG/DG/PD/D) may issue notice requiring person to furnish information or documents verified in manner specified, which may be useful for or relevant to any inquiry or proceeding. Information received may be processed and utilised in accordance with scheme u/s 135A.

Sec. 134: Income-tax authority may inspect and take copies of any register of members, debenture-holders or mortgagees of any company, or any entry in such register.

Assessment of Total Undisclosed Income as Result of Search [Sec. 158BA]

A search is initiated u/s 132, or books of account, other documents or any assets are requisitioned u/s 132A, in case of any person, then AO shall proceed to assess or reassess the total undisclosed income of the block period.

Block period means	Period comprising previous years relevant to 6 assessment years preceding the previous year in which search was initiated u/s 132 or requisition made u/s 132A and also includes period starting from 1st day of April of previous year in which search was initiated / requisition made and ending on date of execution of last authorization.
Rate of tax	Total undisclosed income of block period charged to tax @ 60% (as per sec. 113), irrespective of previous year to which income relates.

Computation of Total Undisclosed Income of Block Period [Sec. 158BB]

Total undisclosed income of block period shall be aggregate of: (a) undisclosed income declared in return furnished u/s 158BC; (b) undisclosed income determined by AO u/s 158BB(2).

Following income shall NOT be included:

- ▶ (a) Total income determined u/s 143(1) or assessed u/s 143/144/147/153A/153C or earlier u/s 158BC(1)(c) or 245D(4), prior to date of initiation of search / requisition.
- ▶ (b) Total income declared in return u/s 139 or in response to notice u/s 142(1), prior to date of search / requisition.
- ▶ (c) Income computed by assessee (conditions apply).
- ▶ (d) Total income referred to in sec. 115A(5) or 115G or 194P.

Procedure for Block Assessment [Sec. 158BC]

Where search initiated u/s 132 or books / documents / assets requisitioned u/s 132A:

- ▶ (a) AO shall issue notice to person requiring him to furnish within period not exceeding **60 days** a return in prescribed form setting forth undisclosed income for block period. Prior approval of Addl. CIT / Addl. DIT / JC / JD required.
- ▶ (b) Such return considered as if return u/s 139; notice u/s 143(2) issued thereafter. Sec. 143(1) not applicable.
- ▶ (c) No notice u/s 148 required for proceeding under this Chapter.
- ▶ (d) Person who furnished return u/s 158BC not entitled to furnish revised return.
- ▶ (e) Time for furnishing return extended by further **30 days** in specified cases.
- ▶ (f) AO shall determine undisclosed income of block period in manner laid down in sec. 158BB.
- ▶ (g) AO shall pass order of assessment / reassessment and determine tax payable. Sec. 144C not applicable.
- ▶ (h) Assets seized u/s 132 / requisitioned u/s 132A dealt with per sec. 132B.

Time Limit for Completion [Sec. 158BE]

Order u/s 158BC shall be passed within **12 months** from end of quarter in which last authorization for search u/s 132 / requisition u/s 132A was executed. Where reference u/s 92CA made during proceedings, period extended by 12 months.

Undisclosed Income of Any Other Person [Sec. 158BD]

Where AO is satisfied that undisclosed income belongs to any person other than specified person (with respect to whom search initiated / requisition made), then seized material shall be handed over to AO having jurisdiction over such other person and that AO shall proceed u/s 158BC against such other person.

Time limit: 12 months from end of quarter in which notice u/s 158BC in pursuance of sec. 158BD was issued.

△ IMPORTANT

Certain interests and penalties NOT to be levied [Sec. 158BF]: No interest u/s 234A, 234B or 234C or penalty u/s 270A shall be levied upon assessee in respect of undisclosed income assessed for block period.

Levy of interest and penalty in certain cases [Sec. 158BFA]: Where return of undisclosed income not furnished within time / not furnished, assessee liable to pay simple interest @ **1.5%** of tax on undisclosed income determined for every month. Penalty = 50%

2.5 Collection, Recovery and Refund of Tax

2.5.1 Demand Notice [Sec. 156] & Provisions Relating Thereto [Sec. 220]

On completion of assessment (or intimation generated after processing of TDS statement), a demand notice [Form 7] is served for additional demand raised in assessment.

Time limit for payment	Assessee should make payment within 30 days of service of notice. Where AO believes it will be detrimental to revenue if full 30 days allowed, he may with prior approval of Joint Commissioner direct payment within lesser time.
Extension of time limit	On application made before expiry of due date, AO may extend time for payment or allow payment by installments subject to conditions.
Interest on delay	If payment not made within 30 days (or time allowed), interest @ 1% per month or part thereof of delay [Sec. 220(2)].
Assessee in default [Sec. 220(4)]	If amount not paid within time (or extended time) at place and to person mentioned in notice, assessee deemed to be in default.
Waiver or reduction [Sec. 220(2A)]	PCCIT/CCIT/PCIT/CIT may reduce or waive interest u/s 220(2) if: (a) genuine hardship; (b) default due to circumstances beyond control; (c) assessee co-operated in any inquiry.

Penalty Payable When Tax in Default [Sec. 221]

When an assessee is in default or deemed to be in default in making payment of tax, he shall, in addition to arrears and interest payable u/s 220(2), be liable to pay penalty as AO may direct. **Total penalty shall not exceed amount of tax in arrears.**

Notes: (a) Reasonable opportunity of being heard; (b) No penalty if default for good and sufficient reasons; (c) No cessation of liability merely by payment before penalty; (d) If tax reduced by final order, penalty cancelled and refunded.

Certificate to Tax Recovery Officer [Sec. 222]

When assessee is in default, TRO may draw up statement in Form 57 specifying amount of arrears (Certificate) and proceed to recover by modes: (a) attachment and sale of movable property; (b) attachment and sale of immovable property; (c) arrest of assessee and detention in prison; (d) appointing receiver for management of property.

△ IMPORTANT

Assessee's movable / immovable property includes: Any property transferred directly or indirectly after 31-5-1973 by assessee to spouse / minor child / son's wife / son's minor child otherwise than for adequate consideration.

No step in execution of certificate until period of 15 days elapsed since service of notice. If TRO satisfied that defaulter may conceal / remove / dispose property, he may direct attachment of property with reasons recorded.

Other Modes of Recovery [Sec. 226]

Whether or not certificate drawn up u/s 222, AO may recover tax by any of the following modes:

- ▶ **Attachment of salary:** Employer required to deduct from any payment subsequent to date of requisition, arrears of tax due from assessee.
- ▶ **Garnishee order:** AO / TRO may require any person from whom money is due to assessee, or who holds money for or on account of assessee, to pay to AO / TRO so much as is sufficient to pay amount due (subject to maximum of amount payable to assessee). If person fails to make payment, deemed to be assessee in default.
- ▶ **Application to court:** AO / TRO may apply to court in whose custody money belonging to assessee for payment.
- ▶ **Distrainment and sale:** If authorised by CCIT / CIT by general or special order, recover arrears by distrainment and sale of movable property as per Third Schedule.

2.5.2 Meaning of Refund [Sec. 237]

Where the tax paid by the assessee is in excess of his tax liability, then such assessee shall be entitled to receive back such excess amount, called refund. As per sec. 237, if any person satisfies the AO that amount of tax paid by him (or on his behalf) for any AY exceeds the amount with which he is chargeable under this Act, then he shall be entitled to a refund of such excess amount.

Tax paid by assessee includes: (1) Advance tax; (2) TDS; (3) TCS; (4) Self-assessment tax; (5) Tax paid on demand.

Who Can Claim Refund

- ¹ A person who has paid tax more than amount for which he is chargeable under this Act [Sec. 237].
- ² Where income of one person is included in total income of other person, such other person entitled to claim refund [Sec. 238(1)].
- ³ Where due to death, incapacity, insolvency, liquidation or any other cause, a person is unable to claim, his legal representative, trustee, guardian or receiver can claim and receive such refund [Sec. 238(2)].

Form and Time Limit for Claiming Refund [Sec. 239]

Every claim for refund shall be made by furnishing return in accordance with the provisions of sec. 139.

Refund on Appeal, etc. [Sec. 240]

Where any refund becomes due as a result of any order passed in appeal or other proceedings, AO shall refund amount to assessee suo moto (without claim).

Assessment set aside / cancelled and fresh assessment directed	Refund becomes due on completion of such fresh assessment. Amount of refund decided as per fresh assessment.
Assessment annulled	Refund becomes due when such assessment is annulled. Refund shall be only of amount of tax paid in excess of tax as per return.

Correctness of Assessment Not to be Questioned [Sec. 242] & Set-off of Refund [Sec. 245]

Sec. 242: In claim of refund, it shall not be open to assessee to question correctness of any assessment or other matter decided which has become final and conclusive or ask for review. Assessee shall not be entitled to any relief except refund of tax wrongly paid or paid in excess.

Sec. 245: Where refund becomes due to any person, AO / CIT / PCIT / CCIT / PCCIT may, in lieu of payment, set off amount to be refunded against sum if any remaining payable by person to whom refund is due. Action after intimation in writing.

Withholding in anticipation: Where refund becomes due and AO having regard to fact that proceedings for assessment / reassessment are pending, may with prior approval of PCIT/CIT withhold refund up to **60 days** from date on which assessment is made.

Refund for Denying Liability to Deduct Tax in Certain Cases [Sec. 239A]

Tax deducted by a person u/s 195 may be refunded to deductor if: (a) there is agreement in writing under which tax deductible on any income (other than interest) u/s 195 is to be borne by payer of income; (b) person has paid tax to credit of Central Government; (c) after payment, claims no tax was required to be deducted; (d) claim made within **30 days** from date of payment of such tax by filing application before AO. AO shall pass order within **6 months** from end of month in which application received.

Mode of Taking or Accepting Certain Loans, Deposits and Specified Sum [Sec. 269SS]

No person shall take or accept from any other person (depositor) any loan or deposit or specified sum otherwise than by account payee cheque / account payee bank draft / electronic clearing system through bank account / prescribed electronic modes, if:

- ▶ (a) Amount of such loan/deposit/specified sum or aggregate is ₹20,000 or more; or
- ▶ (b) On date of taking, any earlier loan / deposit / specified sum taken from depositor is remaining unpaid (whether due or not) and aggregate is ₹20,000 or more; or
- ▶ (c) Aggregate of (a) + (b) is ₹20,000 or more.

△ IMPORTANT

Exception: Limit of ₹20,000 shall be increased to ₹2,00,000 in case of: (a) deposit accepted by primary agricultural credit society / primary co-operative agricultural and rural development bank from its member; or (b) loan taken from such society / bank by its member.

Exception 2: Provisions not applicable to loan / deposit / specified sum taken from: (a) Government; (b) banking company, post office savings bank or co-operative bank; (c) corporation established by Central/State/Provincial Act; (d) Government company; (e) notified institution, association or body.

Exception 3: Provisions not applicable where both receiver and giver have agricultural income and neither has any income chargeable to tax.

Penalty [Sec. 271D]: Sum equal to amount of loan / deposit / specified sum taken in contravention. Imposed by Joint Commissioner.

Mode of Undertaking Transactions [Sec. 269ST]

No person shall receive an amount of ₹2,00,000 or more: (a) in aggregate from a person in a day; or (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by account payee cheque / bank draft / ECS through bank / prescribed electronic modes.

△ IMPORTANT

Exceptions: (i) Receipt by Government, banking company, post office savings bank or co-operative bank; (ii) Transactions of nature referred to in sec. 269SS; (iii) Notified persons / receipts — business correspondent, white label ATM operator, prepaid payment issuer, credit card issuer, receipt not includible u/s 10(17A), receipt by any person from banking company.

Clarification [Circular 22/2017]: Receipt of one installment of loan repayment by NBFC/HFC constitutes 'single transaction'. All installments not aggregated.

Penalty [Sec. 271DA]: Sum equal to amount of such receipt. No penalty if person proves good and sufficient reasons.

Mode of Repayment of Certain Loans or Deposits [Sec. 269T]

No branch of banking company / co-operative bank, no other company / co-operative society, no firm or other person shall repay any loan / deposit or specified advance otherwise than by account payee cheque / bank draft drawn in name of person who made loan/deposit/paid advance, or by ECS through bank account if: (a) amount of loan/deposit/specified advance together with interest; or (b) aggregate amount of loans/deposits held; or (c) aggregate amount of specified advances received — is ₹20,000 or more.

△ IMPORTANT

Exception: Limit ₹20,000 increased to ₹2,00,000 in case of deposit paid by primary agricultural credit society / primary co-operative agricultural & rural development bank to member; or loan repaid to such society / bank by member.

Penalty [Sec. 271E]: Sum equal to amount of loan / deposit / specified advance so repaid.

Acceptance of Payment Through Prescribed Electronic Modes [Sec. 269SU]

Applicable to: Person carrying on business having total sales / turnover / gross receipts exceeding ₹50 crores during immediately preceding previous year. **Compliance:** Provide facility for accepting payment through prescribed electronic modes, in addition to other electronic modes. **Penalty [Sec. 271DB]:** ₹5,000 per day during which failure continues. No penalty if person proves good and sufficient reasons for failure.

Solved Illustrations — Step by Step

ILLUSTRATION

Illustration 1: Interest u/s 234A — Default in Furnishing Return

Facts: Calculate interest u/s 234A in the following cases:

PARTICULARS	CASE A	CASE B	CASE C
Name of Assessee	A Ltd.	B	C
Due Date of Filing Return	31st July	31st October	31st July
Date of Filing Return	4th December	28th December	Not Filed
Date of Completion of Assessment	1st March 2027	15th April 2027	15th Feb 2027
Assessed Income (₹)	19,10,000	5,50,000	22,00,000
Advance Tax Paid (₹)	39,000	25,000	10,000
TDS (₹)	50,000	15,000	50,000

RULE / CONCEPT

Rule Applied — Sec. 234A: Interest @ 1% p.m. (or part) for every month of default, commencing from day immediately following due date of filing return. Period ends on: (i) date of filing return (if filed after due date); (ii) date of completion of assessment u/s 144 (if not filed at all). Amount on which charged = Tax determined u/s 143(1)/Regular Assessment – Advance Tax – TDS – Relief – MAT/AMT Credit. **Rule 119A:** Amount rounded to nearest ₹100; fraction of month treated as full month.

✓ SOLUTION

Computation of interest u/s 234A:

PARTICULARS	CASE A	CASE B	CASE C
Period of default	Aug-Dec (5 months)	Nov-Dec (2 months)	Aug-Feb (7 months)
Assessed Income (₹)	19,10,000	5,50,000	22,00,000
Tax Rate	Slab (individual)	Slab	Slab
Tax Liability before cess (₹)	1,82,000	1,65,000	2,50,000
Add: HEC 4% (₹)	7,280	6,600	10,000
Total Tax (₹)	1,89,280	1,71,600	2,60,000
Less: Advance Tax (₹)	(39,000)	(25,000)	(10,000)
Less: TDS (₹)	(50,000)	(15,000)	(50,000)
Shortfall for interest (₹)	1,00,280	1,31,600	2,00,000
Rounded off (Rule 119A)	1,00,200	1,31,600	2,00,000
Rate × Period	1% × 5	1% × 2	1% × 7
Interest u/s 234A (₹)	5,010	2,632	14,000

Note: For Case A, the slab-rate calculation would be done as per applicable slab rates for individual (assuming age below 60). The tax on ₹19,10,000 = ₹1,82,000 (approx. as per applicable slab).

ILLUSTRATION

Illustration 2: Interest u/s 234B — Default in Paying Advance Tax

Facts: A firm furnished its return of income on 30th June, 2026 showing income of ₹1,00,000. The return shows: Advance tax ₹20,000; TDS ₹1,000. The AO passed assessment order enhancing income by ₹5,000 on 29-3-2027. Compute interest u/s 234B.

RULE / CONCEPT

Rule Applied — Sec. 234B: Interest @ 1% p.m. (or part) from 1st day of April of relevant AY, ending on date of determination of tax u/s 143(1) or Regular Assessment. Charged when advance tax paid is less than 90% of assessed tax.

Step 1: Compute Assessed Tax

Assessed Income = ₹1,05,000 (₹1,00,000 + ₹5,000)

Tax @ 30% (Firm) = ₹31,500

Add: HEC 4% = ₹1,260

Total Tax = ₹32,760

Less: TDS = ₹1,000

Assessed Tax = ₹31,760

Step 2: Check 90% Threshold

90% of ₹31,760 = ₹28,584

Advance tax paid = ₹20,000 (which is less than ₹28,584) → Sec. 234B applicable

Step 3: Compute Interest

Shortfall = ₹31,760 – ₹20,000 = ₹11,760 → Rounded = ₹11,700

Period = April 2026 to March 2027 = 12 months

Interest = ₹11,700 × 1% × 12 = **₹1,404**

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Assessed Income	1,05,000
Tax liability before surcharge [₹1,05,000 × 30%]	31,500
Add: HEC @ 4%	1,260
Tax and cess payable	32,760
Less: TDS	1,000
Assessed tax	31,760
90% of above	28,584
Advance tax paid	20,000
Shortfall (Assessed tax – Advance tax)	11,760
Rounded off	11,700
Period of default (April 2026 to March 2027)	12 months
Interest u/s 234B (1% × 11,700 × 12)	1,404

ILLUSTRATION

Illustration 3: Interest u/s 234B — Impact of Self-Assessment Tax

Facts: Same as Illustration 2, but assessee pays ₹10,200 as self-assessment tax along with return. Ignore interest u/s 234C.

RULE / CONCEPT

Rule: When self-assessment tax is paid, interest u/s 234B up to the date of payment is calculated on the pre-payment shortfall, and after payment, on the reduced shortfall. Amount paid u/s 140A is first adjusted towards interest, then towards tax.

Step 1: Compute interest for the period before payment (April 2026 to June 2026)

Shortfall as per returned income = ₹31,200 – ₹21,000 = ₹10,200

But as per assessed income, shortfall = ₹11,760 (rounded ₹11,700)

Interest for 3 months = ₹11,700 × 1% × 3 = ₹351

ILLUSTRATION

Illustration 4: Interest u/s 234C — Deferment of Advance Tax

Facts: A firm made the following payments of advance tax during FY 2025-26:

DATE	AMOUNT (₹ IN LAKH)
15-06-2025	7.00
15-09-2025	7.75
15-12-2025	10.75
18-03-2026	25.50

The return of income is filed on 31-7-2026 showing:

- Business income: ₹80.00 lakh
- Long term capital gain taxable @ 12.5% (arising on 1-12-2025): ₹10.00 lakh

RULE / CONCEPT

Rule Applied — Sec. 234C: Interest @ 1% p.m. for 3 months (1 month for last installment) on shortfall at each due date. Minimum payment thresholds: 12% by 15/6, 36% by 15/9, 75% by 15/12, 100% by 15/3. **Exception:** No interest on shortfall due to capital gains / lottery / first-time business income / dividend if paid in remaining installments.

Step 1: Compute Total Tax Liability

Business income ₹80.00 lakh @ 30% = ₹24.00 lakh; Add HEC 4% = ₹0.96 lakh → ₹24.96 lakh

LTCG ₹10.00 lakh @ 12.5% = ₹1.25 lakh; Add HEC 4% = ₹0.05 lakh → ₹1.30 lakh

Total tax liability = ₹26.26 lakh

Step 2: Compute Tax for Advance Tax Purposes

Business income portion = ₹24.96 lakh (LTCG excluded as it arose on 1-12-2025 and can be paid in remaining installments)

Step 3: Compute Installment-wise Shortfall

INSTALLMENT	DUE DATE	REQUIRED %	AMOUNT PAYABLE (₹L)	PAID (₹L)	SHORTFALL (₹L)	PERIOD	INTEREST (₹)
1st	15/06/2025	15%	3.744	Nil	3.744	3 months	11,232
2nd	15/09/2025	45%	11.232	7.00	4.232	3 months	12,696
3rd	15/12/2025	75%	19.685	14.75	4.935	3 months	14,805
4th	15/03/2026	100%	26.26	25.50	0.76	1 month	760
Total interest payable u/s 234C							39,493

△ IMPORTANT

Important Observations:

- 1st Installment:** Since assessee did NOT pay at least 12% of tax (₹2,99,520) on or before 15-06-2025, interest u/s 234C is levied on 15% of tax shortfall.
- 2nd Installment:** Since assessee fails to pay 36% of tax (₹8,98,000) on or before 15-09-2025, interest u/s 234C is levied on 45% of tax shortfall.
- 4th Installment:** Payment made on 18-03-2026 (after due date 15-03-2026) → NOT considered for advance tax. Hence higher shortfall at 4th installment.
- LTCG Exemption:** No interest on shortfall attributable to LTCG if paid in remaining installments (assumed here).

ILLUSTRATION

Illustration 5: Interest on Refund u/s 244A

Facts: Mr. Raj, a resident individual (age 42), filed his return of income for AY 2026-27 on 15-08-2026. Due date for filing was 31-07-2026. He had paid advance tax of ₹50,000 and TDS of ₹25,000. His total tax liability as per return was ₹60,000. Refund was granted on 30-11-2026. Compute interest u/s 244A.

RULE / CONCEPT

Rule Applied — Sec. 244A: Interest on refund @ 0.5% per month or part thereof. For refund out of TDS/TCS/Advance Tax where return filed after due date, period = from date of furnishing return to date on which refund is granted. **Rule 119A:** Amount rounded to nearest ₹100; fraction of month treated as full month.

Step 1: Determine Refund Amount

Total Tax Liability = ₹60,000

Less: Advance Tax = ₹50,000

Less: TDS = ₹25,000

Total Prepaid = ₹75,000

Refund = ₹75,000 – ₹60,000 = ₹15,000

Step 2: Determine Period of Interest

Return filed on: 15-08-2026

Refund granted on: 30-11-2026

Period: Aug 15 to Nov 30 = 4 months (fraction of month treated as full month) → **4 months**

Step 3: Compute Interest

Refund = ₹15,000 → Rounded = ₹15,000

Interest = ₹15,000 × 0.5% × 4 = **₹300**

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Total Tax Liability	60,000
Less: Advance Tax	(50,000)
Less: TDS	(25,000)
Refund Amount	15,000
Rate of interest	0.5% p.m.
Period (Aug 15 to Nov 30)	4 months
Interest u/s 244A	300

Note: The interest of ₹300 is taxable in the hands of Mr. Raj under the head "Income from Other Sources".

ILLUSTRATION

Illustration 6: Refund of TDS by Deductor u/s 239A

Facts: XYZ Ltd. made a payment of ₹10,00,000 to a non-resident (not being a company) and deducted tax @ 20% u/s 195, remitting ₹2,00,000 to Government on 10-09-2026. As per agreement, tax was to be borne by XYZ Ltd. (payer). Now XYZ Ltd. contends that no tax was required to be deducted. Compute refund and timeline.

RULE / CONCEPT

Rule Applied — Sec. 239A: Tax deducted u/s 195 may be refunded to deductor if: (a) agreement in writing under which tax is to be borne by payer; (b) tax paid to Central Government; (c) claim made within 30 days from date of payment. AO passes order within 6 months from end of month in which application received.

Step 1: Verify Conditions

- ✓ Agreement in writing — Yes (tax to be borne by payer)
- ✓ Tax paid — ₹2,00,000 paid on 10-09-2026
- ✓ Claim — To be made within 30 days (by 10-10-2026)

Step 2: Timeline for AO Order

Application filed on, say, 05-10-2026 (within 30 days)

AO shall pass order within 6 months from end of month → By **30-04-2027**

ILLUSTRATION

Illustration 7: Interest u/s 220(2) — Failure to Pay Tax per Demand Notice

Facts: Mr. Sanjay received a demand notice u/s 156 on 15-01-2026 requiring payment of ₹1,50,000 within 30 days. He paid ₹50,000 on 20-02-2026 and ₹1,00,000 on 31-05-2026. Compute interest u/s 220(2).

RULE / CONCEPT

Rule Applied — Sec. 220(2): Simple interest @ 1% p.m. (or part) from date immediately after expiry of 30 days (or specified period) to date of actual payment. **Rule 119A:** Amount rounded to ₹100; fraction of month = full month.

Step 1: Determine Due Date

Notice served: 15-01-2026

30-day period ends: 14-02-2026

Interest commences from: **15-02-2026**

Step 2: Period-wise Interest Calculation

Period 1 (15-02-2026 to 20-02-2026): On ₹1,50,000 for 1 month (fraction treated as full)

Interest = ₹1,50,000 × 1% × 1 = ₹1,500

Period 2 (21-02-2026 to 31-05-2026): On balance ₹1,00,000 for 4 months

Interest = ₹1,00,000 × 1% × 4 = ₹4,000

✓ SOLUTION

PERIOD	AMOUNT (₹)	MONTHS	INTEREST (₹)
15-02-2026 to 20-02-2026	1,50,000	1	1,500
21-02-2026 to 31-05-2026	1,00,000	4	4,000
Total Interest u/s 220(2)			5,500

Note: The interest shall be paid in addition to tax demand. If not paid, it becomes part of arrears.

ILLUSTRATION

Illustration 8: Interest for Excess Refund Granted [Sec. 234D]

Facts: AO granted refund of ₹80,000 to Mr. Krishna u/s 143(1) on 30-06-2026 based on his return. However, on regular assessment u/s 143(3) completed on 31-01-2027, it was determined that only ₹50,000 was refundable. Compute interest u/s 234D.

RULE / CONCEPT

Rule Applied — Sec. 234D: Where refund granted u/s 143(1) exceeds refund due on regular assessment, interest @ 12% p.a. (i.e., 1% per month) on excess refunded amount, from date of grant of refund to date of regular assessment.

Step 1: Compute Excess Refund

Refund granted u/s 143(1) = ₹80,000

Refund as per Regular Assessment = ₹50,000

Excess Refund = ₹30,000

Step 2: Compute Period

From 30-06-2026 to 31-01-2027 = 7 months (fraction treated as full)

Step 3: Compute Interest

Interest = ₹30,000 × 1% × 7 = ₹2,100

✓ SOLUTION

Conclusion: AO shall recover ₹2,100 as interest u/s 234D from Mr. Krishna, in addition to the excess refund of ₹30,000.

ILLUSTRATION

Illustration 9: Interest u/s 201(1A) — Failure to Deduct / Pay TDS

Facts: PQR Ltd. made payment of ₹5,00,000 to a contractor on 15-09-2025. TDS @ 2% should have been deducted u/s 194C = ₹10,000. PQR Ltd. failed to deduct tax. The AO issued notice and the company paid tax (with interest) on 31-01-2026. Compute interest u/s 201(1A).

RULE / CONCEPT

Rule Applied — Sec. 201(1A): Where a person responsible for deducting tax fails to deduct tax at source, simple interest @ 1% per month from date on which tax was deductible to date on which it is actually paid. Where tax deducted but not paid, interest @ 1.5% per month from date of deduction to date of payment.

Step 1: Determine Date of Deduction (Failure)

Payment made on 15-09-2025 → TDS should have been deducted on this date

Period of default: From 15-09-2025 to 31-01-2026

Step 2: Compute Period (Rule 119A — Fraction = Full Month)

Sep 15 to Jan 31 = 5 months (Sep, Oct, Nov, Dec, Jan — partial months treated as full)

Step 3: Compute Interest

Interest = ₹10,000 × 1% × 5 = ₹500

✓ SOLUTION

Total Payment = ₹10,000 (Tax) + ₹500 (Interest) = ₹10,500

Note: Interest u/s 201(1A) is mandatory and is not waiver-able except in specified circumstances.

ILLUSTRATION

Illustration 10: Interest u/s 206C(7) — Failure to Collect TCS

Facts: ABC Ltd. is a seller of scrap. It sold scrap worth ₹50,00,000 to a buyer on 10-10-2025. TCS @ 1% = ₹50,000 should have been collected u/s 206C(1). However, ABC Ltd. failed to collect TCS. The AO initiated action, and ABC Ltd. paid TCS on 28-02-2026. Compute interest u/s 206C(7).

RULE / CONCEPT

Rule Applied — Sec. 206C(7): Where a person responsible for collecting tax fails to collect tax, simple interest @ 1% per month from date on which tax was collectible to date of actual payment. Where tax collected but not paid, interest @ 1.5% per month.

Step 1: Determine Period of Default

From 10-10-2025 to 28-02-2026 = 5 months (Oct, Nov, Dec, Jan, Feb — partials treated as full)

Step 2: Compute Interest

Interest = ₹50,000 × 1% × 5 = ₹2,500

✓ SOLUTION

Total Payment = ₹50,000 (Tax) + ₹2,500 (Interest) = ₹52,500

ILLUSTRATION

Illustration 11: Comprehensive Interest Computation**Facts:** Ms. Devi for FY 2025-26:

- ▶ Tax on total income (paid on 10.08.2026): ₹1,50,000
- ▶ Date of filing the return: 10.08.2026
- ▶ Due date for filing the return: 31.07.2026

Compute the total interest payable u/s 234A, 234B & 234C.

RULE / CONCEPT

Rules Applied: (i) Sec. 234A — Late filing: 1% p.m. from day after due date to date of filing. (ii) Sec. 234B — Advance tax default: 1% p.m. from 1st April of AY to date of determination. (iii) Sec. 234C — Deferment: 1% p.m. for 3 months (1 for last) on shortfall at each installment.

✓ SOLUTION

Answer: ₹15,075**Working Notes (Step-by-Step):**

Sec. 234A: Period = Aug (1 month, as 31-07-2026 to 10-08-2026 is partial month treated as full). Interest = ₹1,50,000 × 1% × 1 = ₹1,500.

Sec. 234B: Period = Apr to Aug = 5 months. Interest = ₹1,50,000 × 1% × 5 = ₹7,500.

Sec. 234C: Shortfall at each installment:

- ▶ 15/06: 15% of ₹1,50,000 = ₹22,500 × 1% × 3 = ₹675
- ▶ 15/09: 45% = ₹67,500 × 1% × 3 = ₹2,025
- ▶ 15/12: 75% = ₹1,12,500 × 1% × 3 = ₹3,375
- ▶ 15/03: 100% = ₹1,50,000 × 1% × 1 = ₹1,500
- ▶ Sub-total = ₹7,575

Total Interest = 1,500 + 7,500 + 7,575 = ₹16,575

Note: The stated answer of ₹15,075 assumes some adjustment (possibly TDS/advance tax); the working shows the standard computation.

ILLUSTRATION

Illustration 12: Sec. 269SS / 269ST Violations**Facts:** Mr. Sharma, a trader, during FY 2025-26:

- ▶ (a) Accepted a loan of ₹1,00,000 in cash from his friend on 15-05-2025.
- ▶ (b) Received ₹2,50,000 cash from a customer on 20-08-2025 against sale of goods.
- ▶ (c) Received ₹1,80,000 cash from another customer on 10-12-2025 in a single transaction.
- ▶ (d) Repaid a loan of ₹50,000 in cash to his uncle on 25-03-2026.

Analyse the penalty implications under various sections.

RULE / CONCEPT

Rules Applied: (i) Sec. 269SS — No loan/deposit ≥ ₹20,000 other than by account payee cheque/DD/ECS. (ii) Sec. 269ST — No receipt ≥ ₹2,00,000 from a person in a day/single transaction/event other than by account payee cheque/DD/ECS. (iii) Sec. 269T — No repayment of loan/deposit ≥ ₹20,000 otherwise than by account payee cheque/DD/ECS.

✓ SOLUTION

Analysis:

TRANSACTION	SECTION	VIOLATION?	PENALTY
(a) Loan ₹1,00,000 in cash	269SS	Yes (≥ ₹20,000)	₹1,00,000 u/s 271D
(b) Receipt ₹2,50,000 in cash (single transaction)	269ST	Yes (≥ ₹2,00,000)	₹2,50,000 u/s 271DA
(c) Receipt ₹1,80,000 cash (single transaction)	269ST	No (< ₹2,00,000)	Nil
(d) Repayment ₹50,000 in cash	269T	Yes (≥ ₹20,000)	₹50,000 u/s 271E

Total Penalty = ₹1,00,000 + ₹2,50,000 + ₹50,000 = ₹4,00,000

Note: No penalty under sec. 271DA if person proves good and sufficient reasons for contravention. Similarly, no penalty u/s 271D/271E if reasonable cause is proved u/s 273B.

ILLUSTRATION

Illustration 13: Search & Seizure — Sec. 132

Facts: A search operation was conducted at the business premises of Mr. Gupta on 15-07-2025. The following were seized:

- ▶ Cash found in locker: ₹25,00,000
- ▶ Jewellery valued: ₹40,00,000
- ▶ Books of account showing unaccounted transactions: ₹15,00,000
- ▶ Fixed Deposit Receipts (FDRs): ₹30,00,000

The authorised officer wanted to provisionally attach property on 01-09-2025. Advise on the legal position.

RULE / CONCEPT

Rules Applied: (i) Sec. 132(1) — Authorised officer can seize books, money, bullion, jewellery, valuable article if representing undisclosed income. (ii) Sec. 132(8A) — Provisional attachment possible during search OR within 60 days from last authorization, with reasons recorded and prior approval of PDG/DG/PD/D. (iii) Provisional attachment ceases after 6 months. (iv) Stock-in-trade cannot be seized but inventory made.

Step 1: Determine Legality of Provisional Attachment

Search conducted on: 15-07-2025

Last authorization executed on: 15-07-2025

60-day limit from last authorization = 13-09-2025

Provisional attachment on 01-09-2025 → **Within 60 days → Valid** ✓

Step 2: Conditions for Provisional Attachment

- (i) Authorised officer satisfied it is necessary to protect revenue ✓
- (ii) Reasons recorded in writing ✓ (must be ensured)
- (iii) Prior approval of PDG/DG/PD/D taken in writing ✓ (must be ensured)

Step 3: Duration of Attachment

Provisional attachment shall cease to have effect after **6 months** from date of such order, i.e., by 28-02-2026 (unless extended by higher authority as per proviso — up to 2 years or 60 days after assessment, whichever is later).

✓ SOLUTION

Conclusion: The provisional attachment on 01-09-2025 is valid as it falls within 60-day limit. The authorised officer must ensure reasons are recorded and prior approval obtained. The attachment ceases after 6 months unless extended.

Seized Assets: All items (cash, jewellery, books, FDRs) can be seized (except stock-in-trade which is inventoried). Seized assets to be handed over to AO within 60 days (by 13-09-2025).

ILLUSTRATION

Illustration 14: Block Assessment Period & Rate

Facts: A search was initiated at the business premises of M/s ABC Traders on 20-08-2025. The last authorization for search was executed on 25-08-2025. Determine the block period and the rate of tax applicable.

RULE / CONCEPT

Rule Applied — Sec. 158BA & 158BB: Block period = Previous years relevant to 6 AYs preceding the PY in which search initiated + Period from 1st April of PY in which search initiated to date of execution of last authorization.

Step 1: Determine Block Period

PY in which search initiated: FY 2025-26 (AY 2026-27)

6 AYs preceding AY 2026-27: AY 2020-21, 2021-22, 2022-23, 2023-24, 2024-25, 2025-26

Relevant PYs: FY 2019-20 to FY 2024-25

Current period: 01-04-2025 to 25-08-2025 (date of last authorization)

Block Period: FY 2019-20 to FY 2025-26 (partial, ending 25-08-2025)

Step 2: Determine Rate of Tax

Total undisclosed income of block period charged @ **60%** as per sec. 113, irrespective of PY to which income relates.

Add: Surcharge (as applicable) + HEC 4%

✓ SOLUTION

Total Tax Rate = 60% + Surcharge + HEC

Note: No interest u/s 234A, 234B, 234C leviable in respect of undisclosed income assessed for block period [Sec. 158BF].

★ Quick Revision Summary

★ QUICK REVISION

Key Dates, Rates & Thresholds

PARTICULARS	RATE / LIMIT
Due date — Audit required / Company (non-TP)	31st October
Due date — TP report required (Form 3CEB)	30th November
Due date — Other cases	31st July
Belated / Revised Return — Time Limit	31st December of relevant AY / before completion of assessment
Updated Return — Time Limit	48 months from end of relevant AY
Updated Return — Additional Tax (12-24 months / 24-36 / 36-48)	25% / 50% / 60% / 70%
Defective Return — Rectification Time	15 days from intimation
Intimation u/s 143(1) — Time Limit	12 months from end of FY in which return made
Scrutiny Notice u/s 143(2) — Time Limit	3 months from end of FY in which return furnished
Scrutiny Assessment Completion	12 months from end of relevant AY
Income Escaping — Notice u/s 148 (Normal)	Within 3 years 3 months from end of relevant AY
Income Escaping — Notice u/s 148 ($\geq$ ₹50 lakh)	3 years 3 months to 5 years 3 months
Sec. 234A / 234B / 234C / 220(2) — Interest Rate	1% per month or part
Sec. 234D — Excess Refund Interest	12% per month or part
Sec. 244A — Interest on Refund	0.5% per month or part
Sec. 201(1A) / 206C(7) — Failure to Deduct/Collect	1% p.m. (failure); 1.5% p.m. (deposit)
Sec. 234E — TDS/TCS Statement Default	₹200 per day (max = TDS/TCS amount)
Sec. 234F — Late Filing Fee	₹1,000 (Income $\leq$ ₹5L) / ₹5,000 (Income $>$ ₹5L)
Sec. 234G / 234H — Fee	₹200 per day / ₹1,000
Sec. 269SS / 269ST / 269T — Threshold	₹20,000 / ₹2,00,000 / ₹20,000
Sec. 269SU — Applicability	Turnover $>$ ₹50 crores
Block Assessment Rate	60% + Surcharge + HEC
Block Period	6 AYs + Current Period

★ QUICK REVISION

Key Formulas

Σ FORMULA

Interest u/s 234A = Shortfall $\times$ 1% $\times$ Months of Default (from day after due date)

Σ FORMULA

Interest u/s 234B = Shortfall $\times$ 1% $\times$ Months (from 1st April of AY)

Σ FORMULA

Interest u/s 234C = Shortfall at each installment $\times$ 1% $\times$ 3 months (1 for last)

Σ FORMULA

Interest u/s 244A = Refund $\times$ 0.5% $\times$ Months of Delay

Σ FORMULA

Interest u/s 234D = Excess Refund $\times$ 12% $\times$ Months from grant to regular assessment

★ QUICK REVISION

Section-wise Quick Reference — Module 2

- | | |
|--------------------------------------|-----------------------------------|
| ▶ 139(1) — Compulsory filing | ▶ 144 — Best judgment |
| ▶ 139(3) — Loss return | ▶ 144B — Faceless assessment |
| ▶ 139(4) — Belated return | ▶ 144C — DRP |
| ▶ 139(4A) to (4F) — Special entities | ▶ 147 — Income escaping |
| ▶ 139(5) — Revised return | ▶ 148 / 148A — Notice & Procedure |
| ▶ 139(8A) — Updated return | ▶ 153 — Time limits |
| ▶ 139(9) — Defective return | ▶ 156 — Demand notice |

 Multiple Choice Questions

1. What is the due date of filing the return of income in case of a company who is required to furnish a report in Form No. 3CEB under section 92E?

- ▶ A. September 30 of the assessment year
- ▶ B. November 30 of the assessment year
- ▶ C. July 31 of the assessment year
- ▶ D. June 30 of relevant assessment year

[Answer: B]

2. One of the following can be carried forward even if return of income is filed after due date:

- ▶ A. Unabsorbed Depreciation
- ▶ B. Business Loss
- ▶ C. Short term capital loss
- ▶ D. Long term capital loss

[Answer: A]

3. Return filed under following sections can be revised u/s 139(5):

- ▶ A. 139(1) B. 139(4) C. 139(5) D. All of the above

[Answer: D]

4. Assessment under following section is termed as scrutiny assessment:

- ▶ A. 143(3) B. 144 C. Both of the above D. None of the above

[Answer: A]

5. When an assessee has paid advance tax more than the tax due on the returned income and the return is filed before the 'due date' specified in section 139(1), the refund amount is eligible for interest @

- ▶ A. 1% per month B. ½% per month C. ¾% per month D. 1.50% per month

[Answer: B]

6. Every company to whom the provisions of MAT apply is required to obtain a report from a chartered accountant in Form No. _____.

- ▶ A. 29 B. 29A C. 29B D. 29C

[Answer: C]

7. Time limit for filing updated return u/s 139(8A) is:

- ▶ A. 12 months from end of relevant AY
- ▶ B. 24 months from end of relevant AY
- ▶ C. 36 months from end of relevant AY
- ▶ D. 48 months from end of relevant AY

[Answer: D]

8. Interest u/s 234B is levied @ 1% p.m. when advance tax paid is less than:

- ▶ A. 75% of assessed tax B. 90% of assessed tax
- ▶ C. 100% of assessed tax D. 50% of assessed tax

[Answer: B]

9. Under section 269SS, no person shall take or accept loan / deposit / specified sum otherwise than by account payee



Comprehensive Numerical Problems

Problem 1 (Interest u/s 234A, 234B, 234C): Mr. Rohan, an individual (age 35), filed his return of income for AY 2026-27 on 15-12-2026. His due date for filing was 31-07-2026. His tax liability as per assessment was ₹2,50,000. He had paid advance tax of ₹50,000 and TDS of ₹30,000. Compute total interest u/s 234A, 234B & 234C.

[Hint: 234A = $2,50,000 \times 1\% \times 5 = ₹12,500$; 234B = $1,70,000 \times 1\% \times 12 = ₹20,400$; 234C approx. ₹11,475 → Total ≈ ₹44,375]

Problem 2 (Interest on Refund): Ms. Priya, a resident, filed her return of income for AY 2026-27 on 31-10-2026 (due date 31-07-2026). Her total tax liability was ₹80,000. She had paid advance tax of ₹1,00,000 and TDS of ₹20,000. Refund was granted on 15-01-2027. Compute interest u/s 244A.

[Hint: Refund = ₹40,000; Period = 4 months (Oct 31 to Jan 15); Interest = $₹40,000 \times 0.5\% \times 4 = ₹800$]

Problem 3 (Interest u/s 220(2)): Mr. Vikram received a demand notice u/s 156 on 10-09-2026 requiring payment of ₹2,00,000 within 30 days. He paid ₹1,20,000 on 15-11-2026 and ₹80,000 on 20-02-2027. Compute interest u/s 220(2).

[Hint: Period 1 (11-10-2026 to 15-11-2026) on ₹2,00,000 for 2 months = ₹4,000; Period 2 (16-11-2026 to 20-02-2027) on ₹80,000 for 4 months = ₹3,200; Total = ₹7,200]

Problem 4 (Interest u/s 201(1A)): PQR Ltd. failed to deduct TDS u/s 194J on payment of ₹10,00,000 to a professional on 05-08-2025. TDS @ 10% = ₹1,00,000. The company deposited tax on 28-02-2026. Compute interest u/s 201(1A).

[Hint: Period = Aug 2025 to Feb 2026 = 7 months (fraction treated as full); Interest = $₹1,00,000 \times 1\% \times 7 = ₹7,000$]

Problem 5 (Sec. 269SS/269ST/269T): Mr. Ashok during FY 2025-26:

- ▶ (a) Accepted cash loan of ₹60,000 on 15-06-2025
- ▶ (b) Received ₹3,00,000 cash from customer in single transaction on 10-09-2025
- ▶ (c) Repaid cash loan of ₹2,00,000 on 15-01-2026
- ▶ (d) Received ₹1,50,000 cash from customer for single transaction on 20-02-2026

Determine penalties u/s 271D, 271DA, 271E.

[Hint: (a) ₹60,000 penalty u/s 271D; (b) ₹3,00,000 penalty u/s 271DA; (c) ₹2,00,000 penalty u/s 271E; (d) No penalty (₹1.5 lakh < ₹2 lakh). Total = ₹5,60,000]

Problem 6 (Block Assessment): A search was initiated at M/s XYZ Ltd. on 10-11-2025. Last authorization was executed on 15-11-2025. Undisclosed income of ₹5,00,00,000 was determined. Compute tax liability under block assessment.

[Hint: Block Period: FY 2019-20 to FY 2025-26 (till 15-11-2025). Tax @ 60% = ₹3,00,00,000; Add Surcharge (as applicable, say 25% for company) + HEC 4%]

Problem 7 (Defective Return): Mr. Suresh filed his return u/s 139(1) on 25-07-2026. AO found that the return was not accompanied by proof of payment of taxes and issued intimation u/s 139(9) on 10-08-2026. Suresh rectified the defect on 30-09-2026 (beyond 15 days). Analyse the legal position.

[Hint: AO may condone delay if rectified before assessment. If condoned → valid return. If not → invalid return treated as if no return was filed → Best Judgment Assessment u/s 144 may apply]

References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material

✓ Module 2 — Complete Coverage Checklist

★ QUICK REVISION

- | | |
|---|---|
| ▶ ✓ Sec. 139(1) — Compulsory Filing & Forms | ▶ ✓ Quoting of Aadhaar [Sec. 139AA] |
| ▶ ✓ ITR-1 to ITR-7 & ITR-V | ▶ ✓ Self-Assessment [Sec. 140A] |
| ▶ ✓ Mode of Filing Return | ▶ ✓ Inquiry before Assessment [Sec. 142] |
| ▶ ✓ Due Dates — Sec. 139(1) | ▶ ✓ Faceless Inquiry [Sec. 142B] |
| ▶ ✓ Belated Return [Sec. 139(4)] | ▶ ✓ Intimation u/s 143(1) |
| ▶ ✓ Revised Return [Sec. 139(5)] | ▶ ✓ Scrutiny Assessment [Sec. 143(3)] |
| ▶ ✓ Updated Return [Sec. 139(8A)] | ▶ ✓ Best Judgment [Sec. 144] |
| ▶ ✓ Tax on Updated Return [Sec. 140B] | ▶ ✓ Income Escaping [Sec. 147] |
| ▶ ✓ Loss Return [Sec. 139(3)] | ▶ ✓ Faceless Assessment [Sec. 144B] |
| ▶ ✓ Return of Charitable Trust [Sec. 139(4A)] | ▶ ✓ DRP [Sec. 144C] |
| ▶ ✓ Return of Political Party [Sec. 139(4B)] | ▶ ✓ Interest — Sec. 234A, 234B, 234C, 234D |
| ▶ ✓ Return of Scientific Research Assoc. [Sec. 139(4C)] | ▶ ✓ Fees — Sec. 234E to 234H |
| ▶ ✓ Other Return Requirements [Sec. 139(4D) to (4F)] | ▶ ✓ Interest on Refund [Sec. 244A] |
| ▶ ✓ Defective Return [Sec. 139(9)] | ▶ ✓ Survey, Search & Seizure — Sec. 131, 132, 132A |
| ▶ ✓ Verification of Return [Sec. 140] | ▶ ✓ Sec. 133, 133A, 133B, 133C, 134 |
| | ▶ ✓ Block Assessment — Sec. 158BA to 158BG |
| | ▶ ✓ Demand Notice & Recovery — Sec. 156, 220, 221, 222, 226 |
| | ▶ ✓ Refund — Sec. 237 to 245 |
| | ▶ ✓ Sec. 269SS, 269ST, 269T, 269SU |

CMA Knowledge — Direct Tax Laws & International Taxation

Master Revision Handbook | December 2026 Edition

Module 2: Tax Management, Return and Assessment Procedure

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CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

03

MODULE

Grievance Redressal

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 3

Grievance Redressal

Comprehensive coverage of Appeal (JCIT(A), CIT(A), ITAT, High Court, Supreme Court), Rectification (Sec. 154), Revision (Sec. 263 / 264), Settlement Commission, Dispute Resolution Committee, and Advance Ruling as per the official CMA Final syllabus.

 Module Structure**Section A: Direct Tax Laws — Grievance Redressal****3.1**

APPEAL

3.2

RECTIFICATION

3.3

REVISION

3.4

SETTLEMENT COMMISSION

3.5

ADVANCE RULING

5

APPELLATE LEVELS

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DISPUTE REDRESSAL FORUMS

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3.1 Appeal

One Law Dictionary defines 'appeal' as the act of asking a higher authority to change a decision of a lower authority. Right to appeal under income tax law is a creation of statute and not an inherent right. Appeal can be filed only against orders listed in the Income Tax Act and not any order.

Appellate Authorities in Income-tax Act

LEVEL	APPELLATE AUTHORITY	AGAINST WHICH ORDER	APPELLANT
1st	Joint Commissioner (Appeals) or Commissioner (Appeals)	Against specified orders of the Assessing Officer	Assessee only
2nd	Income Tax Appellate Tribunal (ITAT)	Against the order of Commissioner (Appeals)	Assessee or the Commissioner / Principal Commissioner
3rd	High Court	Against the order of ITAT (involving substantial question of law)	Assessee or the Department
Final	Supreme Court	Against the order of High Court	Assessee or the Department

3.1.1 Appeals to Joint Commissioner (Appeals) [Sec. 246]

As per existing scheme, first appellate authority for assessee aggrieved by any order under the Act is Commissioner (Appeals). However, as first authority for appeal, Commissioner (Appeals) were overburdened. To clear this bottleneck, a new authority for appeals is created at Joint Commissioner / Additional Commissioner level to handle certain class of cases involving small amount of disputed demand.

Appealable Orders	Any assessee aggrieved by any of following orders of Assessing Officer (below rank of Joint Commissioner) may appeal to JCIT(A) against: ▶ (a) Intimation u/s 143(1), where assessee objects to making of adjustments; or ▶ (b) Order of assessment u/s 143(3) or 144, where assessee objects to amount of income assessed, tax determined, loss computed, or status; ▶ (c) Order of assessment, reassessment or recomputation u/s 147; ▶ (d) Intimation u/s 200A(1); ▶ (e) Order u/s 201; ▶ (f) Intimation u/s 206C(6A); ▶ (g) Order u/s 206CB(1); ▶ (h) Order imposing penalty under Chapter XXI; and ▶ (i) Order u/s 154 or 155 amending any of the above orders.
Exception	No appeal shall be filed before JCIT(A) if any order is passed by or with prior approval of an income-tax authority above rank of Deputy Commissioner.
Transfer of Appeals	Board or authorised authority may transfer appeal pending before CIT(A) to JCIT(A), and vice versa. After transfer, appellant shall be given opportunity of being reheard.
Scheme for Disposal	Central Government may make scheme to dispose of appeals in expedient manner with transparency and accountability, eliminating interface between JCIT(A) and appellant.



Note: The provision shall not apply to any case or class of cases as specified by the Board. Also, this scheme does not apply to any case where the disputed demand exceeds the limit prescribed by the Board.

Appealable Orders u/s 246A

- ▶ Order passed by a Joint Commissioner u/s 115VP(3)(ii);
- ▶ Order against the assessee, where assessee denies his liability to be assessed under this Act;
- ▶ Intimation u/s 143(1) or 143(1B) or 200A(1) or 206CB(1) or Order of assessment u/s 143(3) [except order passed in pursuance of DRP directions or order referred to in sec. 144BA(12)] or u/s 144 [Best Judgment] in respect of income assessed or tax determined or loss computed or residential status;
- ▶ Order of assessment, reassessment or recomputation u/s 147, 150 & 153A [except order passed in pursuance of DRP directions];
- ▶ Order u/s 154 (Rectification) or u/s 155 (other amendments) having effect of enhancing assessment or reducing refund or order refusing to allow claim [except where it is in respect of order referred to in sec. 144BA(12)];
- ▶ Order u/s 92CD(3);
- ▶ Order u/s 163 treating assessee as an agent of non-resident;
- ▶ Order u/s 170 relating to assessment on succession;
- ▶ Order u/s 171 refusing to recognize partition of HUF;
- ▶ Order u/s 201 or 206C(6A) for default of provisions of TDS/TCS;
- ▶ Order u/s 237 relating to refunds or sec. 239A;
- ▶ Order of assessment made by AO u/s 158BC(1)(c) in respect of search initiated u/s 132 or books of account, other documents or any assets requisitioned u/s 132A;
- ▶ Order relating to Penalty;
- ▶ Order imposing penalty under Chapter XXI;
- ▶ Order of penalty imposed under Chapter XXI or order of imposing or enhancing penalty u/s 275(1A);
- ▶ Any order made by AO other than Joint Commissioner, as the Board may direct.

PARTICULARS	DETAILS
Time limit for filing	Appeal should be filed within 30 days from: (a) Where appeal is u/s 248 → Date of payment of tax; (b) Where appeal relates to assessment or penalty → Date of service of notice of demand; (c) In any other case → Date on which intimation or order sought to be appealed against is served.
Period to be excluded [Sec. 268]	(a) Day on which order complained of was served; and (b) Time required for obtaining copy of order where copy was not furnished with notice of demand; (c) Where application made u/s 270AA (seeking immunity), period from date of application to date order rejecting application is served.
Delay in filing	JCIT(A) or CIT(A) may admit belated application on sufficient cause being shown. Statutory obligation of appellate authority (where condonation application filed) to consider whether sufficient cause was shown.
Form of Appeal	Form 35 (Mode of filing depends on mode of filing return of income of assessee).
Documents to be submitted	Memorandum of appeal; Order against which appeal made; Statement of facts; Grounds of appeal; Notice of demand (Original); Challan.
Verification	Form & grounds of appeal must be verified by person authorised to verify return u/s 140.

Fee for Filing Appeal

ASSESSED INCOME AS COMPUTED BY AO	FEE
Up to ₹1,00,000	₹250
Exceeds ₹1,00,000 but does not exceed ₹2,00,000	₹500
Exceeds ₹2,00,000	₹1,000
Where subject matter of appeal is not covered in above cases	₹250

Procedure at CIT(A)

Fixation of Hearing	JCIT(A) / CIT(A) shall fix a day and place for hearing of appeal and give notice to appellant and AO.
Hearing	Appellant (in person or by authorised representative) and AO shall have right to be heard. Where assessee doesn't insist on personal hearing, appeal may be decided on basis of written submission.

Appeal against an order of Commissioner (Appeals) lies with the Income Tax Appellate Tribunal (ITAT). Both taxpayer and Assessing Officer can file appeal before Appellate Tribunal. Several Benches of ITAT are constituted all over India by Central Government, functioning under Ministry of Law. It consists of as many judicial and accountant members as Central Government thinks fit.

Qualification of Members

MEMBER	QUALIFICATION
Judicial	(i) Held post of Judicial Officer in territory of India for at least 10 years; or (ii) Served as member of Indian Legal Service in Grade II post or higher for at least 3 years; or (iii) Been an advocate for at least 10 years.
Accountant	(i) Practiced as Chartered Accountant for at least 10 years; or (ii) Practiced as registered accountant for at least 10 years; or (iii) Practiced partly as registered accountant and partly as CA for at least 10 years; or (iv) Been a member of Indian Income-tax Service Group A and held post of Additional Commissioner or equivalent/higher for at least 3 years.
President	Central Government shall appoint: (a) a person who is sitting or retired Judge of High Court and who has completed not less than 7 years of service as Judge; or (b) one of Vice-Presidents of Appellate Tribunal.
Vice-President	Central Government may appoint one or more members to be Vice-President(s).

Appealable Orders before ITAT

Appeal by Assessee	- Order passed by CIT(A) u/s 154, 158BFA, 250, 270A, 271, 271A, 271AAB, 271AAC, 271AAD, 271J or 272A; or - Order passed by JCIT(A) u/s 154, 250, 270A, 271, 271A, 271AAC, 271AAD or 271J; or - Order passed by: (i) PCIT/CIT u/s 12AA or 12AB or 80G(5)(vi) or 263 or 270A or 271 or 272A or order u/s 154 amending any such order; (ii) PCCIT/CCIT/PDG/DG/PD/D u/s 263 or 272A or order u/s 154 amending any such order; - Order passed by AO u/s 143(3) or 147 or 153A or 153C in pursuance of DRP directions or with approval of CIT as referred to in sec. 144BA(12) or order u/s 154 or 155 in respect of such order; - Order passed by AO u/s 115VZC(1); - Order passed by prescribed authority u/s 10(23C)(iv) or (v) or (vi) or (via).
Appeal by PCIT / CIT	The PCIT / CIT may direct AO to appeal against order passed by JCIT(A) or CIT(A) u/s 154 or 250. [Board directed appeal not filed where tax effect does not exceed ₹60,00,000, subject to certain exceptions]

PARTICULARS	DETAILS
Time limit for filing	Within 2 months from end of month in which order sought to be appealed against is communicated to assessee or PCIT/CIT, as the case may be.
Delay in filing	Tribunal may admit belated application on sufficient cause being shown.
Withdrawal	An assessee cannot withdraw an appeal filed to Tribunal.
Form	Form 36.
Documents	Memorandum of Appeal (triplicate); Two copies of order appealed against (one certified); Two copies of order of AO; Two copies of grounds of appeal before first appellate authority; Two copies of statement of facts filed before first appellate authority; In case of penalty appeal, relevant order (two copies).

Fee Payable by Assessee

ASSESSED INCOME AS COMPUTED BY AO	FEE
Up to ₹1,00,000	₹500
Exceeds ₹1,00,000 but does not exceed ₹2,00,000	₹1,500
Exceeds ₹2,00,000	1% of Assessed income [Max. ₹10,000]
Stay petition	₹500
Any other case	₹500

Cross Objections

Assessing Officer or assessee, on receipt of notice that an appeal has been filed by the other party, may file a memorandum of cross objection with the Tribunal.

- ▶ **Time limit:** Within **30 days** of receipt of notice that appeal has been filed by the other party. Tribunal may admit belated memorandum of cross objection on sufficient cause being shown.
- ▶ **Form for filing:** Form 36A.
- ▶ **Fee:** Nil.

Order of Tribunal

Appellate Tribunal may, after giving both parties opportunity of being heard, pass such orders as it thinks fit. Tribunal must record reasons for its decisions. Order should set out all facts and contentions.

Communication: Tribunal shall send copy of order passed to assessee and to PCIT/CIT.

△ IMPORTANT

Notes:

- ▶ (a) Decision of Tribunal on matter involving question of fact is **final**. However, one can file a writ petition.
- ▶ (b) A decision of Tribunal, when passed in appeal, is final not only for assessee but also for Tribunal itself.
- ▶ (c) Assessee cannot seek to reopen and reargue the whole matter, i.e., order of Tribunal cannot be reviewed by Tribunal.
- ▶ (d) On question of fact determined by ITAT, writ petition can be filed to High Court challenging the fact-finding process adopted by ITAT. If HC satisfied fact-finding process was not correct, it will quash ITAT order and direct proper fact-finding.
- ▶ (e) If writ petition is dismissed by HC, assessee can file Special Leave Petition to Apex Court challenging fact-finding process of ITAT.

Rectification of Mistake (Miscellaneous Application)

- ▶ Tribunal may, at any time within **6 months** from end of month in which order was passed, with a view to rectify any mistake apparent from record, amend any order passed by it.
- ▶ Mistake may be brought to notice of Tribunal by assessee or AO.
- ▶ Where assessee applies for rectification, it shall be accompanied by fee of **₹50**.
- ▶ Amendment which has effect of enhancing assessment or reducing refund or otherwise increasing liability shall not be made unless Tribunal has given notice to assessee and allowed reasonable opportunity of being heard.
- ▶ Income tax authority [including CIT(A)] can rectify order u/s 154 — assessee not required to pay any fee; time limit is **4 years** from end of financial year in which order sought to be rectified was passed.

Additional Grounds & Evidence

Additional Grounds: Tribunal has discretionary power to refuse additional ground to be raised. Tribunal may permit assessee to urge grounds of appeal not mentioned in memorandum of appeal.

Additional Evidence: Parties to appeal are not entitled to produce additional evidence of any kind, either oral or documentary, before Tribunal. However, if Tribunal requires production of document, examination of witness or filing of affidavit, it may allow.

Time Limit for Passing Order & Stay

Appellate Tribunal, where it is possible, may hear and decide appeal within period of **4 years** from end of financial year in which appeal is filed. Tribunal, after considering merits, may pass order of stay in any proceedings for period not exceeding **180 days** (provided assessee deposits not less than **20% of amount of tax, interest, fee, penalty** or any other sum payable or furnishes security of equal amount).

△ IMPORTANT

Extension of Stay: No extension of stay shall be granted by Appellate Tribunal where appeal is not disposed of within said period of stay, unless assessee makes application and complied with condition and Tribunal satisfied delay in disposing appeal is not

Appeal to High Court [Sec. 260A]

Who can file appeal	Assessee or PCCIT / CCIT / PCIT / CIT, being aggrieved by order of ITAT. Only order passed by ITAT (which involves substantial question of law) can be appealed in High Court. [Board directed appeal by Department only if tax effect exceeds ₹2,00,00,000, subject to certain exceptions]
Appealable order	Any order of Tribunal, if High Court satisfied that case involves substantial question of law.
Substantial question of law	(i) Word "substantial" means having substance, essential, real, of sound worth, important or considerable; (ii) Substantial question of law need not necessarily be substantial question of law of general importance (i.e., question of law between parties); (iii) To be "substantial", question of law must be debatable, not previously settled by law of land or binding precedent, and must have material bearing on decision of case.
Time limit	Within 120 days from date on which order of Tribunal is received by assessee or PCCIT/CCIT/PCIT/CIT. High Court may admit appeal after expiry if satisfied that there was sufficient cause.
Court Fee	As specified in relevant law relating to Court fees for filing appeal to High Court.
Form	Memorandum of appeal, precisely stating the substantial question of law involved.
Formulation	Where HC satisfied substantial question of law is involved, it shall formulate question. Appeal heard only on questions formulated. Respondents may argue case does not involve such question.
Hearing	Appeal heard by Bench of not less than 2 judges of HC. Decision according to opinion of majority. Where equally divided, case heard by one or more other judges.
Power	Court has power to hear appeal on any other substantial question of law not formulated, if satisfied case involves such question.
Decision	HC shall decide question of law so formulated and deliver judgment containing ground on which decision founded. HC may determine any issue not determined by Tribunal or wrongly determined.
Stay	HC has power to stay proceedings for recovery of demand arising out of assessment order pending disposal of appeal.

Appeal to Supreme Court [Sec. 261]

Who can file	Assessee or PCCIT / CCIT / PCIT / CIT aggrieved by judgment of High Court. [Board directed appeal by Department only if tax effect exceeds ₹5,00,00,000, subject to certain exceptions]
Order against which	Any order passed in High Court, provided High Court: (i) is satisfied case involves substantial question of law; and (ii) certifies case is fit for appeal to Supreme Court.
If HC refuses to certify	Aggrieved party may make application to Supreme Court under Article 136 of Constitution of India.
Cost	As decided by Supreme Court.
Effect of judgment	Where judgment of High Court is varied or reversed by Supreme Court, Tribunal should pass necessary order to dispose case in conformity with such judgment.

3.1.4 Special Provision for Avoiding Repetitive Appeals [Sec. 158A]

Where an assessee claims (a declaration in Form 8 verified in prescribed manner) that:

- ▶ Any question of law arising in his case for an AY which is pending before AO or any appellate authority (relevant case) is identical
- ▶ With a question of law arising in his case for another AY which is pending before High Court or Supreme Court (other case),
- ▶ And if AO or appellate authority agrees to apply in relevant case the final decision on question of law in other case,
- ▶ He shall not raise such question of law in relevant case in appeal before any appellate authority or HC or SC.

TAXPOINT

Procedure: AO or appellate authority may, by order in writing: (i) admit claim of assessee if satisfied question of law is identical; or (ii) reject claim if not satisfied. Such order shall be final and shall not be called in question in any proceeding by way of appeal or revision. Where claim is admitted: (a) AO or appellate authority may make order disposing of relevant case without awaiting final decision in other case; and (b) assessee shall not be entitled to raise, in relation to relevant case, such question of law in appeal. When decision on question of law in other case becomes final, it shall be applied to relevant case.

Procedure where Identical Question of Law is Pending before High Courts or Supreme Court [Sec. 158AR]

3.2 Rectification of Mistake [Sec. 154]

An income-tax authority is empowered (suo moto or on application by assessee) to:

- ▶ (a) rectify any mistake apparent in an order passed by him; or
- ▶ (b) amend any intimation issued u/s 143(1) or deemed intimation;
- ▶ (c) amend any intimation issued u/s 200A(1) or 206CB(1).

Taxpoint: Such order of rectification must be passed in writing.

Time Limit for Rectification [Sec. 154(7)]

General Time Limit	Within 4 years from end of financial year in which order sought to be amended was passed.
Application by Assessee	Authority shall, within period of 6 months from end of month in which application is received, pass order: (a) making amendment; or (b) refusing to allow the claim.

Opportunity of Being Heard [Sec. 154(3)]

If such rectification order is prejudicial to assessee or deductor or collector, an opportunity of being heard must be given to assessee before passing such order.

Taxpoint — Effect of Amendment

Reducing Assessment	Where any such amendment has effect of reducing assessment or otherwise reducing liability, AO shall make any refund which may be due.
Enhancing Assessment	Where amendment has effect of enhancing assessment or reducing refund already made or otherwise increasing liability, AO shall serve on assessee notice of demand in prescribed form specifying sum payable, and such notice shall be deemed issued u/s 156.
Mistake Apparent from Record	May be mistake of fact or mistake of law.

Faceless Rectification [Sec. 157A]

The Central Government may make a scheme for purposes of rectification of any mistake apparent from record u/s 154 or other amendments u/s 155 or issue of notice of demand u/s 156 or intimation of loss u/s 157, so as to impart greater efficiency, transparency and accountability by:

- ▶ (a) Eliminating interface between income-tax authority and assessee or any other person to extent technologically feasible;
- ▶ (b) Optimising utilisation of resources through economies of scale and functional specialisation;
- ▶ (c) Introducing team-based rectification of mistakes, amendment of orders, issuance of notice of demand or intimation of loss, with dynamic jurisdiction.

≡ CASE LAW

Key Principle: Section 154 is a beneficial provision meant to rectify genuine mistakes apparent from record. It cannot be used for re-appreciation of evidence or for deciding debatable issues. Where the issue requires long-drawn reasoning or where two views are possible, it cannot be said to be a "mistake apparent from record".

★ QUICK REVISION

Key Points to Remember:

- ▶ ✓ Power exercised suo moto or on application
- ▶ ✓ Time limit: 4 years from end of FY of passing order
- ▶ ✓ Application disposal: 6 months from end of month of receipt
- ▶ ✓ Opportunity of being heard if prejudicial
- ▶ ✓ Mistake may be of fact or of law
- ▶ ✓ Section cannot be used for debatable issues
- ▶ ✓ Faceless rectification scheme available

3.3 Revision

3.3.1 Revision of Order Prejudicial to Revenue [Sec. 263]

Orders which may be revised	Any order passed by AO or Transfer Pricing Officer, which is: ▶ (a) Erroneous; ▶ (b) Prejudicial to interests of revenue; and ▶ (c) Passed by authority subordinate to PCCIT/CCIT/PCIT/CIT.
Notes	Orders passed by AO or TPO includes: (i) Order of assessment made by AC on basis of directions u/s 144A; (ii) Order made by JC as an AO or TPO; (iii) Order u/s 92CA by TPO. Even intimation u/s 143(1) can be revised.

TAXPOINT

Taxpoint:

- ▶ Order made by AO after making proper enquiries and considering relevant details and decisions of Supreme Court cannot be said to be erroneous and prejudicial to interest of revenue — cannot be revised.
- ▶ An order passed by AO or TPO shall be deemed to be erroneous in so far as it is prejudicial to interests of revenue, if, in opinion of PCCIT/CCIT/PCIT/CIT:
 - ▶ (a) Order is passed without making inquiries or verification which should have been made;
 - ▶ (b) Order is passed allowing any relief without inquiring into claim;
 - ▶ (c) Order has not been made in accordance with any order, direction or instruction issued by Board u/s 119; or
 - ▶ (d) Order has not been passed in accordance with any decision which is prejudicial to assessee, rendered by jurisdictional High Court or Supreme Court in case of assessee or any other person.

Treatment of Order which is Subject Matter of Appeal

Revision u/s 263 of an order which is subject matter of appeal **cannot be made**. However, PCIT/CIT can revise such order which had **not been considered and decided in such appeal**. This is known as the **doctrine of partial merger**.

Example: From order u/s 143(3), Point A against assessee, Point B in favour. Assessee preferred appeal against Point A. Commissioner wants to revise for Point B — possible (partial merger). Commissioner cannot revise for Point A (subject matter of appeal).

An order cannot be said to have been made subject of appeal if appeal disposed of by appellate authority without passing an order.

Procedure to be Followed

1. Examination of Records	PCIT/CIT may call for and examine records of any proceeding under Act. If considers any order passed by AO prejudicial to interest of revenue, he can revise and rectify assessment. Record shall include all records relating to any proceeding available at time of examination. Material not available at time of assessment but available at time of examination shall also be considered.
2. Inquiry	Must make or cause to be made such inquiry as he deems necessary.
3. Opportunity of Being Heard	No revision order shall be passed u/s 263 without giving assessee opportunity of being heard.
4. Order	Finally, may pass such revision order as circumstances justify including: (a) order enhancing or modifying assessment or cancelling assessment and directing fresh assessment; or (b) order modifying order u/s 92CA; or (c) order cancelling order u/s 92CA and directing fresh order.
Time limit for passing revision order	2 years from end of financial year in which order sought to be revised was passed.
Exception	No time limit for passing revision order to give effect to, or in consequence of, an order of ITAT, High Court or Supreme Court.
Appeal against u/s 263	Revisional order passed by PCIT/CIT u/s 263 can be appealed to Tribunal.

CASE LAW

Revision of Order not Prejudicial to Revenue [Sec. 264]

Orders which may be revised	Any order which is: (a) erroneous; (b) not covered u/s 263 (i.e., not prejudicial to interest of revenue); (c) passed by authority subordinate to PCCIT/CCIT/PCIT/CIT.
Taxpoint	No order under this section can be passed which is prejudicial to assessee.
Notes	Order which is not appealable before JCIT(A) or CIT(A) can also be referred to aforesaid authorities for revision.
On whose motion	Either on own motion of PCCIT/CCIT/PCIT/CIT or on application by assessee for revision.

Procedure

- 1. Examination of Records:** Once revision proceedings initiated, PCCIT/CCIT/PCIT/CIT may call for and examine record of any proceeding.
- 2. Inquiry:** He must also make or cause to be made such inquiry as he deems necessary.
- 3. Order:** He may pass such revision order as circumstances justify. However, order passed should not be prejudicial to assessee.

Time limit for filing application (by assessee)	Application must be made within 1 year from date on which order in question was communicated to assessee or date on which he otherwise came to know of it, whichever is earlier. PCIT/CIT can admit belated application if assessee prevented by sufficient cause.
Time limit for passing order (own motion)	Within 1 year from date of original order.
Time limit (application by assessee)	Within 1 year from end of financial year in which such application is made.
Exception	No time limit for passing revision order for giving effect to, or in consequence of, order of ITAT, HC or SC.

Orders which Cannot be Revised [Sec. 264]

- (a) Where an order is appealable but no appeal has been made to JCIT(A) or CIT(A) or to Tribunal and time within which such appeal can be made has not expired. **Note:** Where appeal lies and right of appeal is waived by assessee, PCIT/CIT may revise order even before expiry of time limit of appeal.
- (b) Where order has been made subject of an appeal to JCIT(A) or CIT(A) or to Tribunal. **Doctrine of total (or complete) merger** applies — assessee cannot file revision petition u/s 264 for point B if point A is subject of appeal. He has to choose either way.

TAXPOINT

Important Note: For purposes of sec. 264, doctrine of **total merger** is applicable. On the other hand, for purposes of sec. 147, 154 and 263, doctrine of **partial merger** is applicable.

Assessment order could not be said to have been made subject matter of appeal where appeal was dismissed: (a) on ground that same was incompetent; or (b) as barred by limitation.

PARTICULARS	SEC. 263	SEC. 264
Which order	Prejudicial to interest of revenue	Prejudicial to interest of assessee
Proceedings at motion of	Own motion only	Own motion or on application
Scope	Partial merger applicable	Total merger applicable
Time limit (application)	N/A	1 year from communication of order
Time limit (order)	2 years from end of FY of passing order	Own motion: 1 year from original order; Application: 1 year from end of FY of application
Fee	Not applicable	₹500 (application by assessee)
Appeal against order	Appeal to Tribunal	No appeal; Writ petition under Article 226
Beneficial to	Revenue	Assessee

Faceless Revision of Orders [Sec. 264A & 264B]

Sec. 264A: Central Government may make scheme for purposes of revision of orders u/s 263 or 264 so as to impart greater

3.4 Settlement Commission

△ IMPORTANT

Important: Settlement Commission shall **cease to operate after 31/01/2021**. No application for settlement shall be made after aforesaid date. In respect of pending applications, Central Government shall constitute one or more **Interim Boards for Settlement**, as may be necessary, for settlement of pending applications.

Interim Board: Consists of 3 members, each being officer of rank of Chief Commissioner, as may be nominated by Board. If Members differ in opinion, point decided according to opinion of majority.

Dispute Resolution Committee [Sec. 245MA]

Central Government shall constitute Dispute Resolution Committees (one or more) for dispute resolution in case of such persons or class of persons, as may be specified by Board.

The assessee has an option to opt (or not to opt) for dispute resolution in respect of dispute arising from any variation in specified order in his case and who fulfils specified conditions.

AO's Obligation on Receipt

Upon receipt of order of Dispute Resolution Committee, the AO shall: (a) in case where specified order is draft of proposed order of assessment u/s 144C(1), pass order of assessment, reassessment or recomputation; or (b) in any other case, modify order of assessment, reassessment or recomputation, in conformity with directions within period of **1 month** from end of month in which such order is received.

Powers of DRC

Subject to prescribed conditions, has powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence punishable under this Act in case of person whose dispute is resolved under this Chapter.

"Specified Conditions" — Who Can Opt for DRC

Specified conditions in relation to a person means a person who fulfils following conditions:

I. Where he is not a person:

- ▶ (a) in respect of whom order of detention has been made under provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;
- ▶ (b) in respect of whom prosecution for any offence punishable under Indian Penal Code, Unlawful Activities (Prevention) Act, 1967, Narcotic Drugs and Psychotropic Substances Act, 1985, Prohibition of Benami Transactions Act, 1988, Prevention of Corruption Act, 1988 or Prevention of Money-laundering Act, 2002 has been instituted and he has been convicted of any offence punishable under any of those Acts;
- ▶ (c) in respect of whom prosecution has been initiated by income-tax authority for any offence punishable under provisions of this Act or IPC or for purpose of enforcement of any civil liability under any law, or such person has been convicted of any such offence consequent upon prosecution initiated by income-tax authority;
- ▶ (d) who is notified u/s 3 of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;

II. Such other conditions, as may be prescribed.

"Specified Order" — Disputes Eligible for DRC

"Specified order" means such order, including draft order, as may be specified by Board, and:

- ▶ (i) Aggregate sum of variations proposed or made in such order does not exceed **₹10 lakhs**;
- ▶ (ii) Where return has been filed by assessee for AY relevant to such order, total income as per such return does not exceed **₹50 lakhs**.

△ IMPORTANT

Exception: Specified order does NOT include the order which is based on search initiated u/s 132 or requisition u/s 132A in case of assessee or any other person or survey u/s 133A or information received under an agreement referred to in sec. 90 or 90A.

Faceless Proceedings & e-DRC Scheme

Central Government may make a scheme (for faceless proceedings) for purposes of dispute resolution, so as to impart greater

3.5 Advance Ruling

3.5.1 Board For Advance Ruling (BAR)

The Central Government shall constitute Boards for Advance Rulings (one or more) for giving advance rulings. The Board for Advance Rulings shall consist of **two members**, each being an officer not below rank of Chief Commissioner, as may be nominated by Board. [Sec. 245-OB]

TAXPOINT

Taxpoint:

- ▶ No proceeding before, or pronouncement of advance ruling by, the Board shall be questioned or shall be invalid on ground merely of existence of any vacancy or defect in constitution of Board for Advance Rulings [Sec. 245P].
- ▶ The Ruling or Order of Board will **NOT be binding** on Department or on applicant.

3.5.2 Advance Ruling [Sec. 245N(a)]

Advance ruling means:

- ▶ (i) A determination by Board for Advance Rulings in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or
- ▶ (ii) A determination by Board for Advance Rulings in relation to tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident; or
- ▶ (iia) A determination by Board for Advance Rulings in relation to tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant.

In above cases, such determination shall include determination of any question of law or of fact specified in application.

- ▶ (iii) A determination or decision by Board for Advance Rulings in respect of an issue relating to computation of total income which is pending before any income-tax authority or Appellate Tribunal and such determination or decision shall include determination or decision of any question of law or of fact relating to such computation of total income specified in application.
- ▶ (iv) A determination or decision by Board for Advance Rulings whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.

3.5.3 Applicant [Sec. 245N(b)]

Applicant means any person who is:

- ▶ (a) A non-resident referred to in sub-clause (i) of clause (a) above; or
- ▶ (b) A resident referred to in sub-clause (ii) of clause (a) above; or
- ▶ (c) A resident who has undertaken or proposes to undertake one or more transactions of value of **₹100 crore or more** in total [Notification No. 73, dated 28-11-2014];
- ▶ (d) A public sector company [Notification No. 725, dated 03-08-2000];
- ▶ (e) A resident or a non-resident referred to in sub-clause (iv) of clause (a) above,

— makes an application u/s 245Q.

3.5.4 Application for Advance Ruling [Sec. 245Q]

Application	Applicant desirous of obtaining advance ruling may make application stating question on which advance ruling is sought.
Fee	Application shall be accompanied by fee of: (a) ₹10,000; or (b) such fees as may be prescribed — whichever is higher.
Withdrawal	Applicant may withdraw application within 30 days from date of application.

3.5.5 Procedure on Receipt of Application [Sec. 245R]

- ▶ On receipt of application, Board for Advance Rulings shall cause copy to be forwarded to PCIT/CIT and, if necessary, call upon him to furnish relevant records. Where records called for, such records shall be returned to PCIT/CIT as soon as possible.
- ▶ Board may, after examining application and records called for, by order, either allow or reject application. However, where question raised in application:
 - ▶ (i) Is already pending before any income-tax authority or Appellate Tribunal [except in case of resident applicant falling in sec. 245N(b)(iii)] or any court;
 - ▶ (ii) Involves determination of fair market value of any property;
 - ▶ (iii) Relates to a transaction or issue which is designed prima facie for avoidance of income-tax [except in case of resident applicant falling in sec. 245N(b)(iii)]
 — shall be rejected by Board.
- ▶ Words 'already pending' should be interpreted to mean: 'already pending as on date of application' and not with reference to any future date [**Monte Harris v. CIT (AAR)**].
- ▶ No application shall be rejected unless opportunity given to applicant of being heard. Further, where application is rejected, reasons for rejection shall be given in order.
- ▶ Copy of every order (allowing or rejecting) shall be sent to applicant and to PCIT/CIT.
- ▶ Where application is allowed, Board shall, after examining further material as may be placed before it by applicant or obtained by Board, pronounce its advance ruling on question specified in application.
- ▶ On request received from applicant, Board shall, before pronouncing advance ruling, provide an opportunity to applicant of being heard, either in person or through duly authorised representative.
- ▶ Board shall pronounce advance ruling in writing within **6 months** of receipt of application.
- ▶ Copy of advance ruling duly signed by Members and certified in prescribed manner shall be sent to applicant and to PCIT/CIT as soon as may be after such pronouncement.

TAXPOINT

Faceless Proceedings: Central Government may make a scheme for purposes of giving advance rulings by Board for Advance Rulings, so as to impart greater efficiency, transparency and accountability by: (a) eliminating interface between Board and applicant to extent technologically feasible; (b) optimising utilisation of resources through economies of scale and functional specialisation; (c) introducing system with dynamic jurisdiction. [e-Advance Rulings Scheme, 2022 is notified.]

3.5.6 Appellate Authority Not to Proceed in Certain Cases [Sec. 245RR]

No Income-tax authority or Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, u/s 245Q.

3.5.7 Advance Ruling to be Void in Certain Circumstances [Sec. 245T]

Where Board for Advance Rulings finds, on representation made by PCIT/CIT or otherwise, that an advance ruling pronounced has been obtained by applicant by **fraud or misrepresentation of facts**, it may, by order, declare such ruling to be **void ab initio** and thereupon all provisions of Act shall apply to applicant as if such advance ruling had never been made. A copy of such order shall be sent to applicant and PCIT/CIT.

3.5.8 Powers of Board for Advance Rulings [Sec. 245U]

Board for Advance Rulings shall, for purpose of exercising its powers, have all powers of a civil court under Code of Civil Procedure, 1908 as are referred to in section 131 of this Act.

3.5.9 Appeal [Sec. 245W]

Who can appeal	Applicant, if aggrieved by any ruling pronounced or order passed by Board for Advance Rulings, or the AO, on directions of PCIT/CIT, may appeal to High Court against such ruling or order.
Time limit	Within 60 days from date of communication of that ruling or order, in such form and manner as may be prescribed.

Solved Illustrations — Step by Step

ILLUSTRATION

Illustration 1: Appeal to CIT (Appeals) — Fee Calculation & Timeline

Facts: Mr. Raman filed his return of income for AY 2026-27 on 31-07-2026. AO passed scrutiny assessment order u/s 143(3) on 20-12-2026 determining assessed income of ₹8,50,000 and raising a demand of ₹2,20,000. Mr. Raman received the notice of demand on 25-12-2026. He is aggrieved by certain disallowances and wants to file an appeal before the CIT(A).

RULE / CONCEPT

Rule Applied: Sec. 246A — Appeal to CIT(A) within 30 days from date of service of notice of demand. Fee for filing appeal as per assessed income: Up to ₹1 lakh — ₹250; ₹1-2 lakh — ₹500; Above ₹2 lakh — ₹1,000. Form 35. Documents required include memorandum of appeal, order copy, statement of facts, grounds of appeal, notice of demand, challan.

Step 1: Determine Time Limit for Filing Appeal

Date of service of notice of demand: 25-12-2026

30 days from 25-12-2026 = **24-01-2027**

Excluded periods [Sec. 268]: Day on which order was served; Time for obtaining copy

Step 2: Compute Fee Payable

Assessed income = ₹8,50,000 (exceeds ₹2,00,000)

Fee = **₹1,000**

Step 3: Determine Documents Required

- ▶ Form 35 (Memorandum of Appeal)
- ▶ Copy of Assessment Order u/s 143(3) dated 20-12-2026
- ▶ Statement of Facts
- ▶ Grounds of Appeal
- ▶ Notice of Demand (Original)
- ▶ Challan evidencing payment of fee

✓ SOLUTION

Conclusion:

- ▶ File appeal in **Form 35** with CIT(A) on or before **24-01-2027**
- ▶ Pay appeal fee of **₹1,000** (since assessed income > ₹2 lakh)
- ▶ Attach all required documents
- ▶ Verify Form 35 by person authorised to verify return u/s 140

ILLUSTRATION

Illustration 2: Appeal to ITAT — Fee Calculation

Facts: ABC Ltd. is aggrieved by an order passed by CIT(A) on 15-11-2026. The company received the order on 20-11-2026. The assessed income as computed by the AO was ₹75,00,000. The company wants to file appeal before ITAT.

RULE / CONCEPT

Rule Applied: Sec. 253 — Appeal to ITAT within 2 months from end of month in which order is communicated. Fee payable: Up to ₹1 lakh — ₹500; ₹1-2 lakh — ₹1,500; Above ₹2 lakh — 1% of assessed income [Max. ₹10,000]. Form 36.

Step 1: Determine Time Limit

Order received: 20-11-2026

End of month = 30-11-2026

2 months from end of month = **31-01-2027**

Step 2: Compute Fee

Assessed income = ₹75,00,000 (exceeds ₹2,00,000)

Fee = 1% of ₹75,00,000 = ₹75,000 → **Capped at ₹10,000**

✓ SOLUTION

ILLUSTRATION

Illustration 3: Appeal to High Court — Substantial Question of Law

Facts: XYZ Ltd. lost its appeal before ITAT on 10-09-2026. The company received certified copy of ITAT order on 25-09-2026. The company wants to appeal to High Court on the ground that ITAT failed to consider a binding precedent of jurisdictional High Court. The tax effect involved is ₹3 crore.

RULE / CONCEPT

Rule Applied — Sec. 260A: Appeal to HC only if case involves substantial question of law. Time limit: 120 days from date of receipt of ITAT order. Substantial question of law means debatable, not previously settled by law of land or binding precedent, and must have material bearing on decision. HC formulates question; hearing by Bench of not less than 2 judges.

Step 1: Check Eligibility — Substantial Question of Law

ITAT failed to consider a **binding precedent of jurisdictional High Court** → This constitutes a substantial question of law ✓
The issue is debatable and not settled → Qualifies as substantial question of law ✓

Step 2: Determine Time Limit

ITAT order received: 25-09-2026
120 days from 25-09-2026 = **23-01-2027**

Step 3: Fee & Court

Court fee as per relevant law (State-specific Court Fees Act)
Appeal filed before jurisdictional High Court

✓ SOLUTION

Conclusion:

- ▶ Appeal to HC is **maintainable** since failure to consider binding precedent constitutes substantial question of law
- ▶ File appeal on or before **23-01-2027** (120 days from receipt of order)
- ▶ Memorandum of appeal must precisely state the substantial question of law
- ▶ Department's appeal threshold: Board has directed appeal only if tax effect exceeds ₹2 crore (here ₹3 crore, so both parties can appeal)

ILLUSTRATION

Illustration 4: Rectification u/s 154 — Mistake Apparent from Record

Facts: Mr. Karan filed his return for AY 2024-25. AO passed assessment order u/s 143(3) on 15-03-2025. In the order, AO computed tax on total income but forgot to give credit for TDS of ₹25,000 appearing in Form 26AS. Mr. Karan noticed this in July 2026 and wants rectification.

RULE / CONCEPT

Rule Applied — Sec. 154: AO may rectify any mistake apparent from record in order passed by him. Time limit: 4 years from end of financial year in which order sought to be amended was passed. On application by assessee, authority shall pass order within 6 months from end of month in which application is received. If prejudicial to assessee, opportunity of being heard required.

Step 1: Check if Mistake is "Apparent from Record"

Credit for TDS not given despite appearing in Form 26AS → This is a clear, obvious mistake apparent from record ✓

Step 2: Determine Time Limit

Order passed: 15-03-2025 (FY 2024-25)
4 years from end of FY 2024-25 = **31-03-2029**
Application filed in July 2026 → **Within time limit** ✓

Step 3: Determine Timeline for AO's Order

Application received: July 2026
AO shall pass order by **31-01-2027** (within 6 months from end of month of application)

✓ SOLUTION

Conclusion:

- ▶ Rectification application u/s 154 is **maintainable**
- ▶ Time limit for AO's order: 6 months from end of month of application

ILLUSTRATION

Illustration 5: Revision u/s 263 — Erroneous & Prejudicial Order

Facts: PCIT noticed that AO while completing scrutiny assessment of Mr. Vijay on 10-06-2026 allowed deduction u/s 80G of ₹5,00,000 without making any inquiry. The claim was supported by a certificate which was later found to be invalid. PCIT issued notice u/s 263 on 15-09-2026. Advise.

RULE / CONCEPT

Rule Applied — Sec. 263: PCIT/CIT may revise order if: (i) Erroneous; (ii) Prejudicial to interests of revenue; and (iii) Passed by authority subordinate to PCIT/CIT. Deemed erroneous if AO passed order without making inquiries which should have been made OR allowed any relief without inquiring into claim. Time limit: 2 years from end of FY in which order sought to be revised was passed. Opportunity of being heard required.

Step 1: Check Whether Order is Erroneous

AO allowed deduction without making inquiry into claim → Deemed erroneous as per Explanation to Sec. 263 ✓

Step 2: Check Whether Prejudicial to Revenue

Wrong deduction of ₹5,00,000 reduced tax liability → Prejudicial to revenue ✓

Step 3: Check Time Limit

Order passed: 10-06-2026 (FY 2026-27)

2 years from end of FY 2026-27 = **31-03-2029**

Notice on 15-09-2026 → **Within time limit** ✓

✓ SOLUTION

Conclusion:

- ▶ Revision u/s 263 is **valid** and maintainable
- ▶ AO allowed relief without inquiry → deemed erroneous
- ▶ Prejudicial to revenue → satisfies second condition
- ▶ PCIT must provide reasonable opportunity of being heard to assessee before passing order
- ▶ PCIT may enhance/modify/cancel assessment and direct fresh assessment
- ▶ Appeal against order u/s 263 lies to Tribunal

ILLUSTRATION

Illustration 6: Revision u/s 264 — Assessee's Grievance

Facts: Mr. Sundar received an intimation u/s 143(1) on 20-04-2026 disallowing his claim of deduction u/s 80C of ₹50,000 on the ground that investment proof was not uploaded. Mr. Sundar had actually made the investment within time. He did not file any appeal. He wants to file revision u/s 264 on 15-10-2026.

RULE / CONCEPT

Rule Applied — Sec. 264: PCIT/CIT may revise order on own motion or on application by assessee if order is erroneous but not prejudicial to revenue (i.e., prejudicial to assessee). Time limit for application: 1 year from date on which order was communicated or came to know of it, whichever is earlier. Fee for application: ₹500. No order prejudicial to assessee can be passed. Doctrine of total merger applies.

Step 1: Check Whether Order is Eligible for Revision

Intimation u/s 143(1) disallowing deduction → erroneous and prejudicial to assessee ✓

No appeal has been filed → Not covered by doctrine of total merger ✓

Step 2: Check Time Limit

Intimation received: 20-04-2026

1 year from 20-04-2026 = **19-04-2027**

Application filed: 15-10-2026 → **Within time limit** ✓

Step 3: Determine Fee & Processing

Fee: **₹500**

PCIT/CIT may call for records, make inquiry, and pass order beneficial to assessee

✓ SOLUTION

Conclusion:

ILLUSTRATION

Illustration 7: Advance Ruling — Eligibility & Application

Facts: Tech Solutions Inc., a company incorporated in USA, proposes to enter into a transaction with an Indian company. It wants to obtain advance ruling on the taxability of the proposed transaction in India. Advise on eligibility, procedure, fee and timeline.

RULE / CONCEPT

Rule Applied — Sec. 245N, 245Q, 245R: Advance ruling can be sought by: (i) Non-resident applicant in relation to a transaction proposed to be undertaken; (ii) Resident applicant on tax liability arising from transaction with non-resident; etc. Fee: ₹10,000 or prescribed (higher). Application can be withdrawn within 30 days. Ruling pronounced within 6 months from receipt.

Step 1: Check Eligibility as Applicant

Tech Solutions Inc. is a **non-resident**

Wants ruling on proposed transaction → Eligible under Sec. 245N(b)(a) ✓

Step 2: Application Details

Application u/s 245Q to Board for Advance Rulings (BAR)

Fee: ₹10,000 or prescribed (higher)

Statement of question on which ruling is sought

Step 3: Procedure & Timeline

- ▶ BAR forwards copy to PCIT/CIT and calls for records if necessary
- ▶ BAR may allow or reject application
- ▶ Opportunity of being heard before rejection
- ▶ Ruling pronounced within **6 months** of receipt of application
- ▶ Copy sent to applicant and PCIT/CIT

✓ SOLUTION

Conclusion:

- ▶ Tech Solutions Inc. is **eligible** to seek advance ruling
- ▶ Application in prescribed form with fee (₹10,000 or higher)
- ▶ Can withdraw within 30 days from date of application
- ▶ BAR shall pronounce ruling within **6 months**
- ▶ Note: Ruling will NOT be binding on Department or Applicant
- ▶ Application rejected if: (i) question already pending; (ii) involves FMV determination; (iii) prima facie designed for tax avoidance

ILLUSTRATION

Illustration 8: Advance Ruling — Withdrawal & Appeal

Facts: Global Traders Ltd. (a resident company) filed an application for advance ruling on 01-07-2026 with a transaction value of ₹150 crore. The company wants to withdraw the application. Further, BAR pronounced a ruling on 15-12-2026 against the company. The company wants to appeal.

RULE / CONCEPT

Rules Applied: Sec. 245Q — Withdrawal within 30 days from date of application. Sec. 245W — Appeal to High Court within 60 days from communication of ruling. Extension of 30 days for sufficient cause. Sec. 245T — Ruling can be declared void ab initio if obtained by fraud.

Step 1: Withdrawal Timeline

Application filed: 01-07-2026

30 days from 01-07-2026 = **31-07-2026**

Withdrawal only possible up to this date

Step 2: Appeal Timeline (if ruling pronounced)

Ruling pronounced: 15-12-2026

Appeal to HC within 60 days = **13-02-2027**

Extension of 30 days possible for sufficient cause = **15-03-2027**

ILLUSTRATION

Illustration 9: Doctrine of Partial vs. Total Merger

Facts: AO passed assessment order u/s 143(3) for AY 2024-25. The order contained the following findings:

- ▶ **Point A:** Disallowance of ₹1,00,000 — Against the assessee
- ▶ **Point B:** Allowance of deduction u/s 80-IA of ₹5,00,000 — In favour of assessee

The assessee filed an appeal to CIT(A) only against Point A. The CIT(A) confirmed Point A. Now, PCIT wants to revise the order on Point B under Sec. 263. Also, the assessee wants to file revision u/s 264 for Point B.

RULE / CONCEPT

Rules Applied: (i) Sec. 263 — Doctrine of **partial merger** applies. PCIT can revise issues not subject matter of appeal. (ii) Sec. 264 — Doctrine of **total merger** applies. If appeal has been made to CIT(A), assessee cannot file revision u/s 264 on any issue.

Step 1: PCIT's Power u/s 263 (Partial Merger)

Point A was subject matter of appeal → PCIT **cannot** revise
Point B was NOT subject matter of appeal → PCIT **can** revise ✓

Step 2: Assessee's Power u/s 264 (Total Merger)

Appeal was filed to CIT(A) → Order has become subject matter of appeal
Doctrine of total merger applies → Assessee **cannot** file revision u/s 264 ✗
Assessee had the option to either appeal for Point A OR revise for Point B, not both

✓ SOLUTION

Conclusion:

- ▶ **PCIT can revise Point B u/s 263** — partial merger doctrine applies
- ▶ **Assessee cannot file revision u/s 264** — total merger doctrine applies
- ▶ **Key Difference:** Sec. 263 (partial) vs. Sec. 264 (total merger)
- ▶ Doctrine of partial merger also applies to Sec. 147 and Sec. 154

ILLUSTRATION

Illustration 10: Miscellaneous Application (Rectification by ITAT)

Facts: The ITAT passed an order on 15-06-2026 in appeal filed by Mr. Rao. The order contained an apparent arithmetical error in computation of deduction u/s 80C. Mr. Rao wants to file a Miscellaneous Application before ITAT for rectification of mistake. Advise.

RULE / CONCEPT

Rule Applied — Sec. 254(2): Tribunal may, at any time within 6 months from end of month in which order was passed, with view to rectify any mistake apparent from record, amend any order passed by it. Assessee's application must be accompanied by fee of ₹50. If amendment has effect of enhancing assessment, opportunity of being heard must be given.

Step 1: Determine Time Limit

ITAT order passed: 15-06-2026
6 months from end of month = 6 months from 30-06-2026 → **31-12-2026**

Step 2: Fee for Filing

Fee: **₹50**

Step 3: Nature of Mistake

Arithmetical error in computing deduction → clearly a "mistake apparent from record" ✓

✓ SOLUTION

Conclusion:

- ▶ Miscellaneous Application before ITAT is **maintainable**
- ▶ File on or before **31-12-2026**
- ▶ Fee: **₹50**
- ▶ No opportunity of being heard required if error is not prejudicial to assessee (if enhancing assessment, opportunity must be given)
- ▶ Mistake may be brought to notice of Tribunal by assessee or AO

ILLUSTRATION

Illustration 11: Dispute Resolution Committee (DRC)

Facts: Ms. Anjali, a resident individual, received a draft assessment order from AO proposing a variation of ₹8 lakh in her returned income of ₹45 lakh. She wants to opt for Dispute Resolution Committee (DRC). Advise on eligibility and procedure.

RULE / CONCEPT

Rule Applied — Sec. 245MA: DRC for dispute resolution where: (i) aggregate sum of variations proposed does not exceed ₹10 lakhs; (ii) total income as per return does not exceed ₹50 lakhs. AO must give effect within 1 month from end of month of receipt of DRC order. DRC has power to reduce/waive penalty and grant immunity from prosecution.

Step 1: Check Eligibility Conditions

Variation proposed = ₹8 lakh ≤ ₹10 lakh ✓

Total income as per return = ₹45 lakh ≤ ₹50 lakh ✓

Ms. Anjali is eligible to opt for DRC ✓

Step 2: Check Specified Conditions

Not a person under detention under COFEPOSA ✓

Not convicted under IPC, UAPA, NDPS, etc. ✓

Prosecution not initiated by income-tax authority ✓

Not notified u/s 3 of Special Court Act, 1992 ✓

Step 3: Procedure

- ▶ Assessee opts for DRC in respect of dispute arising from variation in specified order
- ▶ DRC resolves dispute and issues order
- ▶ AO modifies order of assessment in conformity with DRC directions within 1 month from end of month of receipt
- ▶ DRC may reduce/waive penalty imposable or grant immunity from prosecution

✓ SOLUTION

Conclusion:

- ▶ Ms. Anjali is **eligible** to opt for DRC
- ▶ AO must give effect within **1 month** from end of month of receipt of DRC order
- ▶ DRC may reduce or waive penalty imposable and grant immunity from prosecution
- ▶ e-Dispute Resolution Scheme, 2022 notified for faceless proceedings

ILLUSTRATION

Illustration 12: Special Provision — Sec. 158A (Avoiding Repetitive Appeals)

Facts: Mr. Bhattacharjee has an identical question of law arising in his case for AY 2025-26 (pending before AO) and AY 2023-24 (pending before jurisdictional High Court). He wants to file a declaration u/s 158A in Form 8. Advise on the procedure and consequences.

RULE / CONCEPT

Rule Applied — Sec. 158A: Assessee may file declaration in Form 8 that question of law arising in relevant case for one AY is identical with question of law arising in other case pending before High Court or Supreme Court. If AO or appellate authority agrees to apply final decision in other case, assessee shall not raise such question in relevant case.

Step 1: Verify Conditions

Identical question of law in AY 2025-26 (relevant case) ✓

Pending before AO ✓

Identical question of law in AY 2023-24 (other case) ✓

Pending before High Court ✓

Declaration in Form 8 → Valid ✓

Step 2: AO's Action

- ▶ AO may admit claim if satisfied that question is identical
- ▶ AO may reject claim if not satisfied
- ▶ Such order shall be final and not questioned in appeal or revision
- ▶ If admitted: AO may dispose of relevant case without awaiting final decision in other case

ILLUSTRATION

Illustration 13: Appeal to Supreme Court — Article 136

Facts: In an appeal before the High Court, the HC refused to certify the case as fit for appeal to Supreme Court, even though the issue involved a substantial question of law on interpretation of Sec. 68. The assessee wants to pursue the matter before the Supreme Court.

RULE / CONCEPT

Rule Applied — Sec. 261 read with Article 136: Appeal to Supreme Court only if HC certifies that case is fit for appeal to SC. If HC refuses to certify, aggrieved party may make application to Supreme Court under Article 136 (Special Leave Petition). Board directs appeal by Department only if tax effect exceeds ₹5 crore.

Step 1: Check Requirement for SC Appeal

HC refused to certify → Direct appeal u/s 261 not possible

Alternative: File Special Leave Petition (SLP) under Article 136 of Constitution ✓

Step 2: Determine SC's Power

- ▶ Supreme Court can grant special leave to appeal from any judgment/order of any court/tribunal
- ▶ If judgment of HC is varied/reversed by SC, Tribunal must pass order to dispose case in conformity with SC judgment
- ▶ Costs borne as decided by SC

✓ SOLUTION

Conclusion:

- ▶ Assessee can file **Special Leave Petition (SLP)** under Article 136
- ▶ Direct appeal u/s 261 not possible since HC refused to certify
- ▶ SC has wide discretion under Article 136 to grant special leave
- ▶ If leave granted, SC will hear appeal on merits

ILLUSTRATION

Illustration 14: Stay Application before ITAT

Facts: M/s PQR Ltd. received a demand notice of ₹80 lakh from AO after assessment order. The company filed appeal before CIT(A) which was dismissed. The company now wants to file appeal before ITAT and also seeks stay of demand. The Tribunal has not yet heard the appeal. Advise on stay provisions.

RULE / CONCEPT

Rule Applied: Tribunal may pass order of stay in any proceedings for period not exceeding 180 days, provided assessee deposits not less than 20% of amount of tax/interest/fee/penalty or furnishes security of equal amount. Extension only if delay not attributable to assessee. Aggregate stay shall not exceed 365 days. Stay petition fee: ₹500.

Step 1: Determine Deposit Requirement

Total demand: ₹80 lakh

20% of ₹80 lakh = **₹16 lakh**

Company must deposit ₹16 lakh OR furnish security of equal amount

Step 2: Determine Stay Period

- ▶ Original stay: up to **180 days** from date of order
- ▶ Extension possible if delay not attributable to assessee
- ▶ Aggregate maximum stay: **365 days**
- ▶ After 365 days, stay stands vacated even if delay not attributable to assessee [except in exceptional cases as per PCIT v. Comverse Network Systems India (P) Ltd. (SC)]

Step 3: Fees

Stay petition fee: **₹500**

✓ SOLUTION

Conclusion:

- ▶ Company must deposit **₹16 lakh (20%)** or furnish bank guarantee
- ▶ Tribunal may grant stay up to **180 days**

★ Quick Revision Summary

★ QUICK REVISION

Key Time Limits — Module 3

PARTICULARS	TIME LIMIT
Appeal to JCIT(A) / CIT(A)	30 days from service of notice
Appeal to ITAT	2 months from end of month of communication
Appeal to High Court	120 days from receipt of ITAT order
Appeal to Supreme Court	As per SC Rules / SLP under Article 136
Cross Objection (ITAT)	30 days from receipt of notice
Rectification by ITAT (MA)	6 months from end of month of order
Rectification by AO u/s 154	4 years from end of FY of order
Application u/s 154 (by assessee)	6 months from end of month of application
Revision u/s 263 (order)	2 years from end of FY of order
Revision u/s 264 (application)	1 year from communication / knowledge
Revision u/s 264 (order - own motion)	1 year from date of original order
Revision u/s 264 (order - on application)	1 year from end of FY of application
Advance Ruling — Pronouncement	6 months from receipt of application
Advance Ruling — Appeal to HC	60 days (+ 30 days extension)
Advance Ruling — Withdrawal	30 days from application
Dispute Resolution Committee — AO Effect	1 month from end of month of receipt
Sec. 158A — Application	Any time
Sec. 158AB — Application by PCIT	120 days from JCIT(A)/CIT(A)/ITAT order

★ QUICK REVISION

Fee Structure

APPEAL / APPLICATION	FEE
CIT(A) / JCIT(A) — Income ≤ ₹1 lakh	₹250
CIT(A) / JCIT(A) — Income ₹1-2 lakh	₹500
CIT(A) / JCIT(A) — Income > ₹2 lakh	₹1,000
ITAT — Income ≤ ₹1 lakh	₹500
ITAT — Income ₹1-2 lakh	₹1,500
ITAT — Income > ₹2 lakh	1% (Max ₹10,000)
ITAT — Stay petition	₹500
ITAT — Cross objection	Nil
ITAT — Miscellaneous Application	₹50
Revision u/s 264 — Application	₹500
Advance Ruling Application	₹10,000 or prescribed (higher)

★ QUICK REVISION

Departmental Appeal Thresholds (Board Instructions)

- ▶ ITAT: Tax effect not to exceed ₹60,00,000 (subject to exceptions)
- ▶ High Court: Tax effect exceeds ₹2,00,00,000 (subject to exceptions)
- ▶ Supreme Court: Tax effect exceeds ₹5,00,00,000 (subject to exceptions)

★ QUICK REVISION

Section-wise Quick Reference — Module 3

- ▶ 246 — Appeal to JCIT(A)
- ▶ 246A — Appeal to CIT(A)
- ▶ 250 — Procedure at CIT(A)
- ▶ 155 — Other amendments
- ▶ 158A — Avoiding repetitive appeals
- ▶ 158AB — Identical question of law

 Multiple Choice Questions

1. Any mistake which is apparent from the record in any order passed by the Assessing Officer can be rectified under section _____

- ▶ a. 154 b. 147 c. 143 d. 254

[Answer: a]

2. In case of an application made by the assessee u/s 154, the income-tax authority shall rectify the order/refuse the rectification within _____ from the end of the month in which the application is received.

- ▶ a. 4 years b. 2 years c. 1 year d. 6 months

[Answer: d]

3. An appeal to the Commissioner of Income-tax (Appeals) shall be filed in Form No. _____

- ▶ a. 35 b. 36 c. 34C d. 35B

[Answer: a]

4. The Joint Commissioner of Income-tax (Appeals) is the _____ appellate authority

- ▶ a. First b. Second c. Third d. Fourth

[Answer: a]

5. Provisions relating to advance ruling are provided in sections _____

- ▶ a. 80C to 80U b. 245A to 245L c. 237 to 245 d. 245N to 245V

[Answer: d]

6. Assessing Officer or the assessee may file a memorandum of cross objection with the Tribunal in Form _____ and within _____ days of receipt of notice.

- ▶ a. Form 36A; 15 days b. Form 36A; 45 days
- ▶ c. Form 36A; 30 days d. Form 36; 60 days

[Answer: c]

7. Where revision u/s 264 has been initiated by the assessee, the application must be made within _____ from the date on which the order in question was communicated to the assessee.

- ▶ a. 1 year b. 4 years c. 2 years d. 30 days

[Answer: a]

8. Time limit for passing revision order u/s 263 is:

- ▶ a. 1 year from end of FY of order
- ▶ b. 2 years from end of FY of order
- ▶ c. 4 years from end of FY of order
- ▶ d. 6 months from end of FY of order

[Answer: b]

9. Maximum aggregate period of stay that can be granted by ITAT is:

- ▶ a. 180 days b. 365 days c. 1 year d. 2 years

[Answer: b]

10. Advance ruling pronounced by Board for Advance Rulings:

- ▶ a. Is binding on Department



Comprehensive Problems

Problem 1 (Appeal — Fee & Timeline): Mr. Rakesh has been assessed at an income of ₹4,80,000 by AO u/s 143(3) on 15-10-2026. He received the notice of demand on 20-10-2026. He wants to file appeal before CIT(A). Advise on:

- ▶ (i) Time limit for filing appeal
- ▶ (ii) Fee payable
- ▶ (iii) Documents to be attached

[Hint: (i) 19-11-2026 (30 days); (ii) ₹1,000 (assessed income > ₹2 lakh); (iii) Form 35, order copy, statement of facts, grounds, notice of demand, challan]

Problem 2 (Appeal — ITAT): PQR Ltd. is aggrieved by CIT(A) order passed on 05-08-2026. The company received it on 12-08-2026. Assessed income was ₹2,50,00,000. Compute the fee payable and determine the time limit for filing appeal to ITAT.

[Hint: Time limit: 31-10-2026 (2 months from end of Aug 2026). Fee: 1% of ₹2.5 crore = ₹2,50,000, capped at ₹10,000]

Problem 3 (Rectification u/s 154): Ms. Deepa filed her return for AY 2024-25. AO passed assessment order on 20-03-2025. She noticed on 10-10-2026 that AO had not given credit for TDS of ₹35,000. She wants to file an application u/s 154. Determine:

- ▶ (i) Is the application within time limit?
- ▶ (ii) By when must AO pass the order?
- ▶ (iii) Is any fee payable?

[Hint: (i) Yes, 4 years from end of FY 2024-25 = 31-03-2029; (ii) 6 months from end of month of application = 30-04-2027; (iii) No fee]

Problem 4 (Revision u/s 263): PCIT noticed that AO passed assessment order on 15-09-2025 allowing deduction u/s 80-IB without verifying eligibility. PCIT believes the order is erroneous and prejudicial to revenue. Advise on:

- ▶ (i) Can PCIT revise the order u/s 263?
- ▶ (ii) What is the time limit?
- ▶ (iii) What is the procedure?

[Hint: (i) Yes — deemed erroneous as per Explanation; (ii) 2 years from end of FY 2025-26 = 31-03-2028; (iii) Call for records, make inquiry, provide opportunity of being heard, pass order]

Problem 5 (Revision u/s 264): Mr. Kunal received an intimation u/s 143(1) on 05-05-2026 disallowing deduction u/s 80D of ₹25,000. He wants to file revision u/s 264. Compute:

- ▶ (i) Time limit for filing application
- ▶ (ii) Fee payable
- ▶ (iii) Time limit for passing order

[Hint: (i) 04-05-2027 (1 year from communication); (ii) ₹500; (iii) 1 year from end of FY of application]

Problem 6 (Advance Ruling): XYZ Ltd. (a resident company) proposes to enter into a transaction of ₹120 crore with a non-resident entity. It wants to seek advance ruling. Compute:

- ▶ (i) Eligibility as applicant
- ▶ (ii) Fee payable
- ▶ (iii) Time limit for pronouncement
- ▶ (iv) Time limit for appeal to HC (if aggrieved)

[Hint: (i) Yes — resident with transaction ≥ ₹100 crore; (ii) ₹10,000 or prescribed (higher); (iii) 6 months; (iv) 60 days + 30 days extension]

Problem 7 (Appeal to High Court): ABC Ltd. lost an appeal before ITAT on 25-07-2026 and received the order on 30-07-2026. Tax effect is ₹4 crore. The ITAT order ignored a Supreme Court precedent directly on point. Advise on filing appeal to High Court.

[Hint: (i) Substantial question of law exists (ignoring SC precedent); (ii) Time limit: 27-11-2026 (120 days); (iii) Tax effect > ₹2 crore → Both parties can appeal]

Case Study

ILLUSTRATION

Case Study: Comprehensive Grievance Redressal Scenario

Facts: Mr. Arun, an individual (age 45), filed his return of income for AY 2025-26 on 30-07-2025 declaring total income of ₹18,00,000. AO completed scrutiny assessment u/s 143(3) on 20-12-2025 with the following findings:

- Disallowance of HRA exemption of ₹1,20,000 (Point A) — Against assessee
- Allowance of deduction u/s 80G of ₹5,00,000 (Point B) — In favour of assessee, but AO did not verify the eligibility of the trust

Aggrieved by Point A, Mr. Arun filed an appeal before CIT(A) on 15-01-2026. The CIT(A) dismissed the appeal on 30-06-2026. Mr. Arun received the order on 05-07-2026.

Concurrently, PCIT issued notice u/s 263 on 15-08-2026 to revise the assessment order for Point B on the ground that AO allowed deduction without inquiry.

RULE / CONCEPT

Rules Applied: (i) Sec. 246A — Appeal to CIT(A). (ii) Sec. 251 — Powers of CIT(A). (iii) Sec. 253 — Appeal to ITAT. (iv) Sec. 263 — Revision of prejudicial order. (v) Doctrine of partial merger.

Issue 1: Validity of PCIT's Revision u/s 263 for Point B

Point A was subject matter of appeal → Partial merger applies

Point B was NOT subject matter of appeal → PCIT CAN revise ✓

Acknowledgment: AO allowed deduction without inquiry → Deemed erroneous under Explanation to Sec. 263

Issue 2: Time Limit for Revision u/s 263

Order passed: 20-12-2025 (FY 2025-26)

2 years from end of FY 2025-26 = **31-03-2028**

Notice on 15-08-2026 → **Within time limit** ✓

Issue 3: Mr. Arun's Further Remedies

Appeal against CIT(A) order → ITAT

Time limit: 2 months from end of July 2026 = **30-09-2026**

Fee: 1% of assessed income (₹18 lakh) = ₹18,000 → capped at **₹10,000**

✓ SOLUTION

Comprehensive Analysis:

ISSUE	ANALYSIS	CONCLUSION
PCIT's power u/s 263 for Point B	Point B not subject matter of appeal → partial merger applies	PCIT CAN revise
Time limit for u/s 263	2 years from end of FY 2025-26	Valid — by 31-03-2028
Mr. Arun's appeal to ITAT	2 months from end of month of CIT(A) order	By 30-09-2026
ITAT appeal fee	1% of ₹18 lakh = ₹18,000 capped at ₹10,000	₹10,000
Mr. Arun's revision u/s 264 for Point A	Doctrine of total merger — appeal filed	NOT maintainable

References

- <https://www.incometaxindia.gov.in/>
- <https://www.incometax.gov.in/>
- <https://www.indiabudget.gov.in/>
- The Institute of Cost Accountants of India — Study Material

★ QUICK REVISION

Module 3 — Complete Coverage Checklist

- ✓ Appeal Hierarchy
- ✓ Sec. 158A — Repetitive Appeals

CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

04 MODULE

Penalties and Prosecutions

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 4

Penalties and Prosecutions

Comprehensive coverage of Penalties (Chapter XXI), Penalty for Under-reporting and Misreporting of Income [Sec. 270A], Immunity from Penalty [Sec. 270AA], Power to Reduce or Waive Penalty [Sec. 273A], Immunity from Prosecution [Sec. 273AA/273AB], and Prosecution provisions [Sec. 275A to 280] as per the official CMA Final syllabus.

Module Structure

Section A: Direct Tax Laws — Penalties & Prosecutions

4.1

PENALTIES (CHAPTER XXI)

4.2

SEC. 270A

4.3

SEC. 273A

4.4

PROSECUTIONS

30+

PENALTY SECTIONS

15+

PROSECUTION SECTIONS

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4.1 Penalties — Chapter XXI

Penalty is imposed on an assessee for violating the different provisions of the Act. The provisions of penalty are tabulated below:

4.1.1 Penalties — Sec. 221, 140A(3), 158BFA

SECTION	NATURE OF DEFAULT	MINIMUM PENALTY	MAXIMUM PENALTY
221(1)	Failure in making payment of tax, interest or any demand within prescribed time limit	Amount decided by AO	Tax or interest or both in arrears
140A(3)	Failure to pay whole or any part of income tax and/or interest as per sec. 140A(1)	Penalty under sec. 221(1) applicable — amount decided by AO up to tax in arrears	
158BFA	Determination of undisclosed income for the block period (Search cases)	50% of the tax payable on such undisclosed income	

Penalty When Tax in Default [Sec. 221]

When an assessee is in default or is deemed to be in default in making payment of tax, he shall, in addition to amount of arrears and amount of interest payable u/s 220(2), be liable, by way of penalty, to pay such amount as AO may direct, and in case of continuing default, such further amount or amounts as AO may from time to time direct, so however that **total amount of penalty does not exceed amount of tax in arrears**.

△ IMPORTANT

Notes:

- ▶ (a) Assessee shall be given reasonable opportunity of being heard.
- ▶ (b) Where assessee proves to satisfaction of AO that default was for good and sufficient reasons, no penalty shall be levied.
- ▶ (c) Assessee shall not cease to be liable to any penalty merely by reason of fact that before levy of such penalty he has paid the tax.
- ▶ (d) Where as result of any final order amount of tax, with respect to default in payment of which penalty was levied, has been wholly reduced, penalty levied shall be cancelled and amount of penalty paid shall be refunded.

Penalty for Under-Reporting of Income [Sec. 270A] — Overview

An assessee who has **under-reported** his income shall be liable to pay penalty @ **50% of tax payable on under-reported income**. Where under-reported income is in consequence of any **misreporting** thereof, penalty @ **200% of tax payable on under-reported income**.

▽ TAXPOINT

Taxpoint: The provisions of sec. 270A were introduced by Finance Act, 2016 w.e.f. 1-4-2017 (AY 2017-18) to replace the earlier penalty provisions of sec. 271(1)(c).

Penalty Relating to Books of Account & International Transactions

SECTION	NATURE OF DEFAULT	PENALTY
271A	Failure to comply with sec. 44AA i.e. to keep or maintain books of account, documents, etc.	₹25,000
271AA(1)	Failure to keep and maintain information and documents for international transactions or specified domestic transaction OR fails to report such transaction OR maintains or furnishes incorrect information/document	2% of value of each international transaction or specified domestic transaction
271AA(2)	Fails to furnish information and document as required u/s 92D(4)	₹5,00,000
271AAC	Where income determined includes any income referred to in sec. 68, 69, 69A, 69B, 69C or 69D for any previous year (Unexplained cash credits, investments, etc.)	10% of tax payable u/s 115BBE No penalty shall be levied if such income has been included by assessee in return furnished u/s 139 and tax thereon (as per sec. 115BBE) has been paid on or before end of relevant previous year.
271AAD	If during any proceeding under this Act, it is found that in books of account maintained by any person there is: (a) a false entry ; or (b) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability	A sum equal to aggregate amount of such false or omitted entry . Further, similar penalty may also be levied on any other person who causes the assessee in any manner to make a false entry or omits any entry.
271AAE	A person, being any fund or trust or institution or hospital or any university referred to in sec. 10(23C)(iv)/(v)/(vi)/(via) or any trust or institution referred to in sec. 11 has violated provisions of 21st proviso to sec. 10(23C) or sec. 13(1)(c) [i.e., unreasonable benefits to related persons like trustee or specified person]	First time violation: 100% of aggregate amount of income applied, directly or indirectly, for benefit of such related person. Second and subsequent violation: 200% of aggregate amount of income applied, directly or indirectly, for benefit of such related person.

△ IMPORTANT

"False entry" includes use or intention to use:

- ▶ Forged or falsified documents such as false invoice or, in general, a false piece of documentary evidence; or
- ▶ Invoice in respect of supply or receipt of goods or services or both issued by person or any other person without actual supply or receipt of such goods or services or both; or
- ▶ Invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

□ CASE LAW

Key Principle: Penalty u/s 271AAD is levied on the person who makes a false entry or omits an entry. Additionally, the person who causes the assessee to make such false entry can also be penalized. This provision was introduced by Finance Act, 2020 to curb fake invoice rackets and bogus purchases.

Penalty Relating to Audit & TDS/TCS

SECTION	NATURE OF DEFAULT	PENALTY
271B	Failure to comply with sec. 44AB i.e. to get accounts audited or to furnish such audit report.	½% of total sales or turnover or gross receipts Maximum: ₹1,50,000
271BA	Failure to furnish report from an accountant as per sec. 92E	₹1,00,000
271C	Failure to deduct part or whole of tax under Chapter XVII-B (i.e., TDS)	Amount of tax failed to deduct
271C	Failure to pay or ensure payment of tax as per sec. 115-O(2) or proviso to sec. 194B or first proviso to sec. 194R(1) or proviso to sec. 194S(1) or sec. 194BA(2)	Amount of tax failed to pay or ensure payment thereof
271CA	Failure to collect tax at source	Amount of tax failed to collect
271D	Taking or accepting any loan or deposit or specified sum in contravention of provisions of sec. 269SS	Amount of loan or deposit or specified sum so taken/accepted. However, if assessee proves reasonable cause for failure, penalty shall not be levied.
271DA	Receives any sum in contravention of sec. 269ST (≥ ₹2 lakh in cash)	Amount equal to such receipt
271DB	Failure to provide facility for electronic mode of payment prescribed u/s 269SU	₹5,000 per day
271E	Repayment of any loan or deposit or specified advance in contravention of provisions of sec. 269T	Amount of loan or deposit or specified advance so repaid. However, if assessee proves reasonable cause for failure, penalty shall not be levied.

△ IMPORTANT

Notes:

- Penalty u/s 271C, 271CA, 271D, 271DA, 271DB and 271E shall be levied by Assessing Officer subject to approval from Joint Commissioner.
- Where the TDS/TCS amount in respect of the quarter has been paid to Central Government on or before time prescribed for filing respective quarterly return, no penalty shall be levied.

📍 TAXPOINT

Sec. 273B — Penalty Not to be Imposed in Certain Cases: Penalty referred to in sec. 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271FA, 271FAA, 271FAB, 271FB, 271G, 271GA, 271GB, 271GC, 271H, 271-I, 271J, 272A(1)(c), 272A(1)(d), 272A(2), 272AA, 272B, 272BB or 272BBB, shall not be imposed on person or assessee, as the case may be, for any failure referred to in said provisions if he proves that there was **reasonable cause** for said failure.

Penalty Relating to Statements, Reports & Information

SECTION	NATURE OF DEFAULT	PENALTY
271FA	Failure to furnish a statement of financial transaction or reportable account as required u/s 285BA(1) within prescribed time limit	₹500 for every day during which failure continues
Proviso to 271FA	Failure to furnish statement of financial transaction or reportable account within period specified in notice u/s 285BA(5)	₹1,000 for every day during which failure continues, beginning from day immediately following day on which time specified in notice expires
271FAA(1)	Where a person required to furnish statement u/s 285BA(1): (a) provides inaccurate information in statement or fails to furnish correct information within period specified u/s 285BA(6); or (b) fails to comply with due diligence requirement prescribed u/s 285BA(7)	Prescribed income-tax authority u/s 285BA(1) may direct that such person shall pay, by way of penalty, ₹50,000
271FAA(2)	Where prescribed reporting financial institution u/s 285BA, who is required to furnish statement (reporting financial institution) provides inaccurate information in statement and inaccuracy is due to false or inaccurate information furnished by accountholder(s) of relevant reportable account(s)	Prescribed income-tax authority shall direct that reporting financial institution shall, in addition to aforesaid penalty, if any, pay ₹5,000 for every inaccurate reportable account. Reporting financial institution shall be entitled to recover sum so paid from such accountholder(s).
271FAB	Fails to furnish information or document as required u/s 9A(5) within prescribed time limit	₹5,00,000
271G	Failure to furnish information or documents as required u/s 92D(3)	2% of value of international transaction or specified domestic transaction
271GA	Failure to furnish information or documents as required u/s 285A	2% of value of transaction, if such transaction had effect of directly or indirectly transferring right of management or control in relation to Indian concern; In other case: ₹5,00,000
271GB(1)	Failure by any reporting entity to furnish report referred to in sec. 286(2) in respect of reporting accounting year	Failure does not exceed one month: ₹5,000 per day Failure continues beyond one month: ₹15,000 per day Failure continues after order of penalty served: ₹50,000 per day from date of service of such order
271GB(2)	Failure by reporting entity to produce information and documents within period specified u/s 286(6)	₹5,000 per day; failure continues after order of penalty served: ₹50,000 per day from date of service of such order
271GB(4)	Reporting entity provides inaccurate information in report referred to in sec. 286(2)	₹5,00,000
271GC	Fails to furnish statement u/s 285 within prescribed date	Where delay does not exceed 3 months: ₹1,000 per day In other case: ₹1,00,000
271H	Failure to furnish TDS/TCS Return or furnishing inaccurate details in these returns	Minimum: ₹10,000 Maximum: ₹1,00,000 No penalty if person proves that after paying TDS/TCS along with fee u/s 234E and interest, he had delivered statement before expiry of 1 month from time prescribed for delivering such statement.
271-I	Fails to furnish information, or furnishes inaccurate information as required u/s 195(6)	₹1,00,000
271J	Furnishing incorrect information in reports or certificates by an accountant or merchant banker or registered valuer	₹10,000 for each report Penalty leviable by AO or JCIT(A) or CIT(A) who in course of any proceedings finds such report has incorrect information.
271K	Where: (a) research association, university, college or other institution or company referred to in sec. 35(1)(ii)/(iii)/(iia) fails to deliver statement within time prescribed u/s 35(1A)(i), or furnish certificate prescribed u/s 35(1A)(ii); or (b) institution or fund fails to deliver statement u/s 80G(5)(viii) or furnish certificate u/s 80G(5)(ix)	Minimum: ₹10,000 Maximum: ₹1,00,000

Penalty for Failure to Comply with Notices, Summons, etc.

SECTION	NATURE OF DEFAULT	PENALTY
272A(1)(a)	Failure to answer any question (related to assessment) of an income-tax authority	₹10,000 for each default
272A(1)(b)	Refuse to sign any statement made by assessee in course of income tax proceedings	₹10,000 for each default
272A(1)(c)	Failure to comply with summons u/s 131(1) to attend office or to give evidence or to produce books of account or other documents at certain place & time	₹10,000 for each default
272A(1)(d)	Fails to comply with notice u/s 142(1) or 143(2) or fails to comply with direction issued u/s 142(2A)	₹10,000 for each default
272A(2)	Failure to comply with notice u/s 94(6), 133, 206, 206C or 285B; failure to give notice of discontinuance u/s 176(3); failure to allow inspection of register u/s 134; failure to furnish return u/s 139(4A) or (4C); failure to deliver declaration u/s 197A; failure to furnish certificate u/s 203 or 206C; failure to deduct and pay tax u/s 226(2); failure to furnish statement u/s 192(2C); failure to deliver copy of declaration u/s 206C(1A); failure to deliver quarterly return u/s 206A(1); failure to deliver statement u/s 200(2A) or 206C(3A)	₹500 for every day during which failure continues. However, amount of penalty for failures in relation to declaration mentioned in sec. 197A, certificate required by sec. 203 and returns or statement u/s 200 or 206 and 206C shall not exceed amount of tax deductible or collectible.
272AA	Failure to comply with provisions of sec. 133B	Maximum up to ₹1,000
272B	Failure to comply with provisions of sec. 139A (PAN)	₹10,000
272BB(1A)	Failure to quote Tax deduction or collection number	₹10,000
272BBB	Failure to comply with provisions of sec. 206CA	₹10,000

Procedure for Imposing Penalty [Sec. 274] & Prior Approval

Sec. 274(1): No order imposing a penalty under this Chapter shall be made unless assessee has been heard, or has been given a reasonable opportunity of being heard.

Sec. 274(2): In following cases, penalty can be imposed only with prior approval of Joint Commissioner:

WHERE PENALTY IMPOSED BY	APPROVAL REQUIRED IF PENALTY EXCEEDS
Income-tax Officer	₹10,000
Assistant Commissioner / Deputy Commissioner	₹20,000

TAXPOINT

Faceless Penalty Scheme [Sec. 274(2A)]: Central Government may make a scheme for purposes of imposing penalty so as to impart greater efficiency, transparency and accountability by: (a) eliminating interface between income-tax authority and assessee; (b) optimising utilisation of resources; (c) introducing mechanism for imposing penalty with dynamic jurisdiction. Similar scheme may be made for prosecution [Sec. 279].

Bar of Limitation for Imposing Penalties [Sec. 275]

No order imposing penalty shall be passed after expiry of **6 months** from end of the quarter in which:

- ▶ (a) proceedings, in course of which action for imposition of penalty has been initiated, are completed, if relevant assessment or other order is not subject matter of appeal u/s 246 or 246A or 253;
- ▶ (b) order of revision u/s 263 or 264 is passed, if relevant assessment or other order is subject matter of revision under said sections;
- ▶ (c) order of appeal u/s 246 or 246A is received by jurisdictional PCIT/CIT, if relevant assessment or other order is subject matter of appeal under said sections and no further appeal has been filed u/s 253;
- ▶ (d) order of appeal u/s 253 is received by jurisdictional PCIT/CIT, if relevant assessment or other order is subject matter of appeal under said section;
- ▶ (e) notice for imposition of penalty is issued, in any other case.

4.2 Penalty for Under-Reporting and Misreporting of Income [Sec. 270A]

The **Assessing Officer**; or **Joint Commissioner (Appeals)** or **Commissioner (Appeals)**; or **Principal Commissioner or Commissioner** may, during course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on under-reported income.

TAXPOINT

Taxpoint:

- ▶ Penalty proceedings must be initiated before completion of assessment or appeal order or revision order, as the case may be.
- ▶ Penalty order is different from assessment order. Aggrieved with penalty order passed by AO, assessee is required to file separate appeal to CIT(A) or separate revision petition u/s 264 or separate rectification petition u/s 154.
- ▶ Tribunal cannot impose penalty.
- ▶ Penalty shall be imposed by respective income-tax authority on addition made by them.
- ▶ In **CIT v. Shadiram Balmukund**, Apex Court held that AO can levy penalty on additions made by him and not on additions made by CIT(A). Similarly, CIT(A) can levy penalty on additions made by him and not on additions made by AO.

Quantum of Penalty [Sec. 270A(7) & (8)]

50%

UNDER-REPORTING

200%

MISREPORTING

Sec. 270A

SECTION

AY 2017-18

EFFECTIVE FROM

NATURE OF DEFAULT	QUANTUM OF PENALTY
Under-reported income [Sec. 270A(7)]	50% of amount of tax payable on under-reported income
Under-reported income is in consequence of any misreporting thereof [Sec. 270A(8)]	200% of amount of tax payable on under-reported income

Cases of Under-Reporting of Income [Sec. 270A(2)]

A person shall be considered to have **under-reported** his income, if:

- 1 Income assessed is greater than income determined in return processed u/s 143(1)(a);
- 2 Income assessed is greater than maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for first time u/s 148;
- 3 Income reassessed is greater than income assessed or reassessed immediately before such reassessment;
- 4 Amount of deemed total income assessed or reassessed u/s 115JB or 115JC is greater than deemed total income determined in return processed u/s 143(1)(a);
- 5 Amount of deemed total income assessed u/s 115JB or 115JC is greater than maximum amount not chargeable to tax, where no return of income has been filed or where return has been furnished for first time u/s 148;
- 6 Amount of deemed total income reassessed u/s 115JB or 115JC is greater than deemed total income assessed or reassessed immediately before such reassessment;
- 7 Income assessed or reassessed has effect of reducing loss or converting such loss into income.

Computation of Amount of Under-Reported Income [Sec. 270A(3)]

SITUATION	AMOUNT OF UNDER-REPORTED INCOME
Income assessed for the first time — Return furnished	Assessed Income – Income determined u/s 143(1)(a)
Income assessed for the first time — No return furnished or return furnished first time u/s 148	In case of company, firm or local authority: Assessed Income Other persons: Assessed Income – Basis Exemption Limit
Income already assessed earlier	Income reassessed or recomputed – Income assessed, reassessed or recomputed in a preceding order [Preceding order means order immediately preceding order during course of which penalty has been initiated]
Assessment reduces loss / converts loss into income	The income or loss assessed or reassessed – Loss claimed

Under-Reported Income — Source Linked to Earlier Year [Sec. 270A(4)]

Where: (i) source of any receipt, deposit or investment in any AY; (ii) is claimed to be an amount added to income or deducted while computing loss in assessment of such person; (iii) in any year prior to AY in which such receipt, deposit or investment appears (preceding year); (iv) and no penalty was levied for such preceding year, then, under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

TAXPOINT

Order of Deeming: Such amount shall be deemed to be amount of income under-reported for preceding year in following order:

- ▶ (a) Preceding year immediately before year in which receipt, deposit or investment appears, being first preceding year; and
- ▶ (b) Where amount added or deducted in first preceding year is not sufficient to cover receipt, deposit or investment, year immediately preceding first preceding year and so on.

CASE LAW

Anantharam Veerasinghaiah & Co. v. CIT (SC): Assessee can explain that investment or expenditure is made out of additions made during earlier years. If penalty was not levied in earlier year because time limit expired, sec. 270A(4) comes into play — under-reported income shall include such amount.

Cases Not Considered as Under-Reported Income [Sec. 270A(6)]

The under-reported income shall **NOT include** following:

- 1 **Proper Explanation:** Amount of income in respect of which assessee offers explanation and AO or CIT(A) or CIT or PCIT is satisfied that explanation is bona fide and assessee has disclosed all material facts to substantiate explanation offered.
- 2 **Estimate by Authority:** Amount of under-reported income determined on basis of estimate, if accounts are correct and complete to satisfaction of AO/CIT(A)/CIT/PCIT, but method employed is such that income cannot properly be deducted therefrom.
- 3 **Estimate by Assessee:** Amount of under-reported income determined on basis of estimate, if assessee has, on his own, estimated a lower amount of addition or disallowance on same issue, has included such amount in computation of his income and has disclosed all facts material to addition or disallowance.
- 4 **Arm's Length Price:** Amount of under-reported income represented by any addition made in conformity with arm's length price determined by TPO, where assessee had maintained information and documents as prescribed u/s 92D, declared international transaction under Chapter X, and disclosed all material facts relating to transaction.
- 5 **Undisclosed income in search operation:** Amount of undisclosed income computed under block assessment.

Cases of Misreporting of Income [Sec. 270A(9)]

The cases of **misreporting of income** shall be following:

- 1 (a) Misrepresentation or suppression of facts;
- 2 (b) Failure to record investments in books of account;
- 3 (c) Claim of expenditure not substantiated by any evidence;
- 4 (d) Recording of any false entry in books of account;
- 5 (e) Failure to record any receipt in books of account having a bearing on total income; and
- 6 (f) Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which provisions of Chapter X apply.

Other Points — Sec. 270A

No double penalty [Sec. 270A(11)] No addition or disallowance of an amount shall form basis for imposition of penalty, if such addition or disallowance has formed basis of imposition of penalty in case of person for same or any other assessment year.

Written order [Sec. 270A(12)] Penalty shall be imposed by an order in writing by AO, CIT(A), CIT or PCIT, as the case may be.

Immunity from Imposition of Penalty, etc. [Sec. 270AA]

An assessee may make an application to AO to grant immunity from imposition of penalty u/s 270A and initiation of proceedings.

4.3 Power to Reduce or Waive Penalty, etc., in Certain Cases

Power u/s 273A(1)

PCIT or CIT may, in his discretion, whether on his own motion or otherwise, reduce or waive amount of penalty imposed or imposable on a person u/s 270A for concealment of income (not other penalty) if he is satisfied that such person:

- ▶ (a) Has, prior to detection by AO, of concealment of particulars of income or of inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars;
- ▶ (b) Has co-operated in any enquiry relating to assessment of his income; and
- ▶ (c) Has either paid or made satisfactory arrangements for payment of any tax or interest payable in consequence of an order passed under this Act in respect of relevant assessment year.

TAXPOINT

Deemed Full and True Disclosure: A person shall be deemed to have made full and true disclosure of his income or of particulars relating thereto in any case where excess of income assessed over income returned is of such a nature as not to attract provisions of sec. 270A.

△ IMPORTANT

Previous Approval Required: Where amount of income in respect of which penalty is imposed or imposable for relevant AY, or where such disclosure relates to more than one AY, aggregate amount of such income for those years, exceeds a sum of ₹5,00,000, no order reducing or waiving penalty shall be made by PCIT or CIT except with previous approval of PCCIT or CCIT or PDG or DG, as the case may be.

Once in Lifetime: Where an order of waiver u/s 273A(1) has been made in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after making of such order. That means such waiver can be done **once in life of assessee**.

Power u/s 273A(4)

PCIT or CIT may, on an application (not suo motu) made in this behalf by an assessee, and after recording his reasons for so doing, reduce or waive amount of any penalty payable by assessee under this Act, or stay or compound any proceeding for recovery of any such amount, if he is satisfied that:

- ▶ (i) To do otherwise would cause **genuine hardship** to assessee, having regard to circumstances of case; and
- ▶ (ii) Assessee has co-operated in any inquiry relating to assessment or any proceeding for recovery of any amount due from him.

△ IMPORTANT

Previous Approval Required: Where amount of any penalty payable under this Act or, where such application relates to more than one penalty, aggregate amount of such penalties exceeds ₹1,00,000, no order reducing or waiving amount or compounding any proceeding for its recovery shall be made by PCIT or CIT except with previous approval of PCCIT or CCIT or PDG or DG, as the case may be.

Time Limit: Order, either accepting or rejecting application in full or in part, shall be passed within period of **12 months** from end of month in which application is received by PCIT or CIT. No order rejecting application, either in full or in part, shall be passed unless assessee has been given opportunity of being heard.

Taxpoint — Sec. 273A

- ▶ An assessee can claim relief u/s 273A(1) or 273A(4) after claiming relief u/s 273A(4). However, if assessee already claimed relief u/s 273A(1), then no relief u/s 273A(4) or 273A(1) can be granted.
- ▶ Every order made under this section shall be **final** and shall not be called into question by any court or any other authority.
- ▶ "Genuine hardship" referred to in provisions of section 273A(4) should exist at time at which application under section 273A(4) is made by assessee before Commissioner and should so exist even at time of passing of order under section 273A(4) by Commissioner. [Circular No. 784, dated 22nd November, 1999]

Power of PCIT or CIT to Grant Immunity from Penalty [Sec. 273AA]

- ¹ A person may make an application to PCIT or CIT for granting immunity from penalty, if: (a) he has made an application for settlement u/s 245C and proceedings for settlement have abated u/s 245HA; and (b) penalty proceedings have been initiated under this Act.
- ² Application to PCIT or CIT shall **not be made after imposition of penalty** after abatement.
- ³ PCIT or CIT may, subject to such conditions as he may think fit to impose, grant to person immunity from imposition of any penalty under this Act, if he is satisfied that person has, after abatement, co-operated with income-tax authority in proceedings before him and has made a full and true disclosure of his income and manner in which such income has been derived.
- ⁴ Order, either accepting or rejecting application in full or in part, shall be passed within period of **12 months** from end of month in which application is received by PCIT or CIT. Further, no order rejecting application, either in full or in part, shall be passed unless assessee has been given opportunity of being heard.
- ⁵ Immunity granted to a person shall **stand withdrawn**, if such person fails to comply with any condition subject to which immunity was granted and thereupon provisions of this Act shall apply as if such immunity had not been granted.
- ⁶ Immunity granted to a person may, at any time, be withdrawn by PCIT or CIT, if he is satisfied that such person had, in course of any proceedings, after abatement, concealed any particulars material to assessment from income-tax authority or had given false evidence, and thereupon such person shall become liable to imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Penalty Not to be Imposed in Certain Cases [Sec. 273B]

Penalty referred to in **sec. 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271FA, 271FAA, 271FAB, 271FB, 271G, 271GA, 271GB, 271GC, 271H, 271-I, 271J, 272A(1)(c), 272A(1)(d), 272A(2), 272AA, 272B, 272BB or 272BBB**, shall not be imposable on person or assessee, as the case may be, for any failure referred to in said provisions if he proves that there was **reasonable cause** for said failure.

Procedure for Imposing Penalty [Sec. 274] & Bar of Limitation [Sec. 275]

Opportunity of Being Heard [Sec. 274(1)]	No order imposing penalty under this Chapter shall be made unless assessee has been heard, or has been given a reasonable opportunity of being heard.
Prior Approval [Sec. 274(2)]	No order imposing penalty shall be made: (a) by Income-tax Officer, where penalty exceeds ₹10,000; (b) by Assistant Commissioner or Deputy Commissioner, where penalty exceeds ₹20,000, except with prior approval of Joint Commissioner.
Copy to AO	An income-tax authority on making order under this Chapter imposing penalty (unless he is himself AO) shall send copy of such order to AO.
Faceless Penalty Scheme	Central Government may make scheme for purposes of imposing penalty so as to impart greater efficiency, transparency and accountability by: (a) eliminating interface; (b) optimising utilisation of resources; (c) introducing mechanism with dynamic jurisdiction. Similar scheme may also be made for prosecution [Sec. 279].
Bar of Limitation [Sec. 275]	No order imposing penalty shall be passed after expiry of 6 months from end of quarter in which: (a) proceedings completed, if relevant order not subject matter of appeal; (b) order of revision u/s 263 or 264 passed; (c) order of appeal u/s 246 or 246A received; (d) order of appeal u/s 253 received; (e) notice for imposition of penalty issued (any other case).
Revision of Penalty Order	Order imposing/enhancing/reducing/cancelling penalty or dropping proceedings may be revised on basis of assessment as revised by giving effect to order passed u/s 246/246A/253/260A/261/263/264. Time limit: 6 months from end of quarter in which order is received or revision order is passed.

≡ CASE LAW

Key Principle: Section 273B provides a general escape route for technical and procedural defaults, not for substantive violations involving concealment or misreporting. The burden of proving "reasonable cause" lies on the assessee. Reasonable cause may include: illness, death of a family member, natural calamity, ignorance of law (in certain cases), etc.

4.4 Prosecutions

The Department is empowered to put on prosecution proceedings for offences committed by taxpayers. Prosecution details are tabulated below:

SECTION	NATURE OF OFFENCE	MINIMUM RI	MAXIMUM RI
275A	Contravention of any order referred to in second proviso to sec. 132(1) or (3)	Any period up to 2 years (and fine also)	
275B	Failure to comply with provision of sec. 132(1)(iib)	Any period up to 2 years (and fine also)	
276	Removal, concealment, transfer or delivery of property or any interest therein to prevent tax recovery.	Any period up to 2 years	
276A	Failure to comply with provision of sec. 178(1)/(3) by liquidator of a company.	Any period up to 2 years [No fresh prosecution under this section on or after 01-04-2023]	
276B(a)	Failure to pay to credit of Central Government, tax deducted at source by him under Chapter XVIIIB*	3 months (with fine)	7 years (with fine)
276B(b)	Failure to pay or ensure payment of tax as per sec. 115-O(2) or proviso to sec. 194B or first proviso to sec. 194R(1) or proviso to sec. 194S(1) or sec. 194BA(2)	3 months (with fine)	7 years (with fine)
276BB	Failure to pay to credit of Central Government tax collected at source u/s 206C**	3 months (with fine)	7 years (with fine)

△ IMPORTANT

Notes:

- ▶ * No prosecution shall be initiated, if amount of TDS in respect of quarter has been paid to Central Government on or before time prescribed for filing respective quarterly return.
- ▶ ** No prosecution shall be initiated, if amount of TCS in respect of quarter has been paid to Central Government on or before time prescribed for filing respective quarterly return.

Key Observations — Sec. 276B & 276BB

- ▶ Prosecution under sec. 276B and 276BB carries rigorous imprisonment ranging from 3 months to 7 years along with fine.
- ▶ Second and subsequent offences under these sections attract higher punishment as per sec. 278A.
- ▶ The offence is non-cognizable and compoundable (subject to conditions).
- ▶ Prosecution can be launched only with prior sanction of the competent authority.

SECTION	NATURE OF OFFENCE	MINIMUM RI	MAXIMUM RI
276C(1)	Attempt to evade tax, penalty or interest chargeable/imposable, or under-reports income	Case I: If amount sought to be evaded exceeds ₹25,00,000 → 6 months to 7 years (with fine) Case II: If amount does not exceed ₹25,00,000 → 3 months to 2 years (with fine)	
276C(2)	Attempt to evade payment of any tax, penalty or interest.	3 months (with fine)	3 years (with fine)
276CC	Wilful failure to file return of income in time u/s 139(1) or in response to notice u/s 142(1) or u/s 148 provided tax payable by such person (other than company), on total income determined on regular assessment (as reduced by advance tax, self-assessment tax, TDS and TCS), exceeds ₹10,000 or return is furnished within assessment year or an updated return is furnished by him u/s 139(8A)	Case I: If amount of tax sought to be evaded exceeds ₹25,00,000 → 6 months to 7 years (with fine) Case II: If amount of tax sought to be evaded does not exceed ₹25,00,000 → 3 months to 2 years (with fine)	
276CCC	Wilfully fails to furnish in due time return of total income which he is required to furnish by notice given u/s 158BC(1)(a)	3 months	3 years (with fine)
276D	Wilful failure to produce books of account and documents as required u/s 142(1) or wilful failure to comply with direction u/s 142(2A) to get accounts audited	Any period up to 1 year (and with fine)	
277	Makes false statement in any verification or delivers a false account or statement under this Act or rules thereunder	Case I: If amount of tax sought to be evaded exceeds ₹25,00,000 → 6 months to 7 years (with fine) Case II: If amount does not exceed ₹25,00,000 → 3 months to 2 years (with fine)	
277A	Where any person (first person) wilfully and with intent to enable any other person (second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes any entry or statement which is false and which first person either knows to be false or does not believe to be true, in any books of account or other document being useful in any proceedings against first person or second person. For establishing charge, it shall not be necessary to prove that second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act.	3 months (with fine)	2 years (with fine)
278	Abetment or inducement in any manner to another person to make false statement or declaration relating to any income or any fringe benefits chargeable to tax.	Case I: Where amount of tax, penalty or interest which would have been evaded due to such false representation exceeds ₹25,00,000 → 6 months to 7 years (with fine) Case II: In any other case → 3 months to 2 years (with fine)	
278A	Punishment for second and subsequent offences u/s 276B, 276BB, 276C(1), 276CC, 277 or 278	6 months for every offence (with fine)	7 years for every offence (with fine)



Note: No court inferior to that of a Presidency Magistrate of the first class shall try any offence under this Act [Sec. 292].

SECTION	NATURE OF OFFENCE	PUNISHMENT
278B	Where an offence under this Act has been committed by a company — (a) the company itself; and (b) every person who, at time offence was committed, was in charge of, and was responsible to company for conduct of business of company, shall be deemed to be guilty of offence. Note: Company includes firm, AOP/BOI.	Liable to be proceeded against and punished accordingly. Where punishment for offence is imprisonment and fine, then such company shall be punished with fine only .
278C	Where an offence under this Act has been committed by an HUF, the Karta thereof shall be deemed to be guilty of the offence	Liable to be proceeded against and punished accordingly.
280	Disclosure of any information by public servants in contravention of sec. 138(2)	Up to 6 months (with fine) [With previous sanction of Central Government]

Notes on Prosecution

- ▶ (a) No court inferior to that of a Presidency Magistrate of the first class shall try any offence under this Act [Sec. 292].
- ▶ (b) Punishment shall **not be imposed** u/s 276A, 276B and 276BB if assessee proves that there was reasonable cause for failure [Sec. 278AA].
- ▶ (c) Prosecution proceeding shall not be instituted u/s 275A, 275B, 276, 276A, 276B, 276BB, 276C, 276CC, 276D, 277, 277A and 278 without previous sanction of PCIT or CIT or JCIT(A) or CIT(A) or appropriate authority [Sec. 279].
- ▶ (d) A person shall not be proceeded against for an offence u/s 276C or 277 in relation to assessment for an AY in respect of which penalty imposed or imposable on him u/s 270A has been reduced or waived u/s 273A [Sec. 279(1A)].

Power of Commissioner to Grant Immunity from Prosecution [Sec. 273AB]

- ¹ A person may make an application to PCIT or CIT for granting immunity from prosecution, if he has made an application for settlement u/s 245C and proceedings for settlement have abated u/s 245HA.
- ² Application to PCIT or CIT shall **not be made after institution of prosecution proceedings** after abatement.
- ³ PCIT or CIT may, subject to such conditions as he may think fit to impose, grant to person immunity from prosecution for any offence under this Act, if he is satisfied that person has, after abatement, co-operated with income-tax authority in proceedings before him and has made a full and true disclosure of his income and manner in which such income has been derived.
- ⁴ Immunity granted to a person shall **stand withdrawn**, if such person fails to comply with any condition subject to which immunity was granted and thereupon provisions of this Act shall apply as if such immunity had not been granted.
- ⁵ Immunity granted to a person may, at any time, be withdrawn by PCIT or CIT, if he is satisfied that such person had, in course of any proceedings, after abatement, concealed any particulars material to assessment from income-tax authority or had given false evidence, and thereupon such person may be tried for offence with respect to which immunity was granted or for any other offence of which he appears to have been guilty in connection with proceedings.

≡ CASE LAW

Compounding of Offences [Sec. 279(2)]: Any offence under this Chapter may, either before or after institution of proceedings, be compounded by — (a) the Board or any other income-tax authority specified by it; (b) the PCCIT/CCIT/PCIT/CIT with the approval of the Board. The applicant must pay the compounding fee as prescribed. No offence shall be compounded if the prosecution proceedings have been instituted under the erstwhile provisions and the offence is punishable with imprisonment.

📍 TAXPOINT

Key Takeaway — Chapter XXII Offences: Prosecution is the most severe consequence of non-compliance. It involves criminal liability with imprisonment. The prosecution proceedings are launched only in serious cases involving wilful default, fraud, or habitual non-compliance. The Department has issued guidelines for compounding of offences, and the taxpayer can seek immunity u/s 273AB (where settlement application has abated) or seek compounding under sec. 279(2).

Solved Illustrations — Step by Step

ILLUSTRATION

Illustration 1: Penalty u/s 270A — Under-Reporting (Simple Case)

Facts: The return of income of Mr. A for AY 2026-27 was processed u/s 143(1)(a) at an income of ₹16,00,000. During scrutiny assessment u/s 143(3), the AO assessed income at ₹20,00,000. Compute penalty u/s 270A.

RULE / CONCEPT

Rule Applied — Sec. 270A(2)(a) & (7): Under-reporting when income assessed > income determined u/s 143(1)(a). Penalty = 50% of tax payable on under-reported income. Tax payable on under-reported income = Tax on (assessed income) – Tax on (income determined u/s 143(1)(a)).

Step 1: Compute Under-Reported Income

Assessed Income = ₹20,00,000

Income determined u/s 143(1)(a) = ₹16,00,000

Under-reported income = ₹20,00,000 – ₹16,00,000 = ₹4,00,000

Step 2: Compute Tax on Under-Reported Income

Tax on (Assessed income + under-reported income) = Tax on ₹20,00,000

Applying slab rates (Individual): Tax on ₹20,00,000 = ₹2,08,000 (before cess)

Tax on (Income u/s 143(1)(a)) = Tax on ₹16,00,000 = ₹1,24,800 (before cess)

Tax on under-reported income = ₹2,08,000 – ₹1,24,800 = ₹83,200

Step 3: Compute Penalty

Penalty @ 50% of tax on under-reported income = 50% × ₹83,200 = ₹41,600

Add: HEC 4% on penalty? No, HEC is part of tax. Penalty computed on tax including cess amount.

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Assessed Income	20,00,000
Less: Income determined u/s 143(1)(a)	(16,00,000)
Under-Reported Income	4,00,000
Tax on ₹20,00,000 (slab)	2,08,000
Less: Tax on ₹16,00,000 (slab)	(1,24,800)
Tax on Under-Reported Income	83,200
Penalty @ 50%	41,600
Penalty u/s 270A	41,600

ILLUSTRATION

Illustration 2: Penalty u/s 270A — Under-Reporting (Loss Case)

Facts: The return of income of Mr. B for AY 2026-27 was processed u/s 143(1)(a) with a loss of ₹19,00,000. During scrutiny assessment, the AO assessed income at a loss of ₹3,00,000 (i.e., loss reduced by ₹16,00,000). Compute penalty u/s 270A.

RULE / CONCEPT

Rule Applied — Sec. 270A(3)(i)(b) & (10)(ii): Where income assessed has effect of reducing loss, under-reported income = income or loss assessed or reassessed – Loss claimed. Where total income determined u/s 143(1)(a) is a loss, tax payable = Tax calculated on under-reported income as if it were total income.

Step 1: Compute Under-Reported Income

Loss assessed = ₹3,00,000

Loss claimed / determined u/s 143(1)(a) = ₹19,00,000

Under-reported income = ₹3,00,000 – ₹19,00,000 = ₹16,00,000

Step 2: Compute Tax on Under-Reported Income

Since income determined u/s 143(1)(a) is a loss, tax on under-reported income = Tax on ₹16,00,000 as if it were total income

ILLUSTRATION

Illustration 3: Penalty u/s 270A — Company with Book Profit

Facts: X Ltd. has furnished following details:

PARTICULARS	TOTAL INCOME (₹)	TAX ON TOTAL INCOME (₹)	BOOK PROFIT (₹)	TAX ON BOOK PROFIT (₹)
Return of income	80,00,000	24,96,000	2,00,00,000	33,38,400
Assessed income	1,20,00,000	40,06,080	2,10,00,000	35,05,320

RULE / CONCEPT

Rule Applied — Sec. 270A(3)(i) & (10)(iii): Where under-reported income arises out of determination of deemed total income u/s 115JB, the amount of total under-reported income = $(A - B) + (C - D)$, where A = Total income assessed as per general provisions; B = Total income that would have been chargeable had total income assessed as per general provisions been reduced by amount of under-reported income; C = Total income assessed u/s 115JB; D = Total income that would have been chargeable had total income assessed u/s 115JB been reduced by amount of under-reported income.

Step 1: Compute Under-Reported Income

$$A - B = ₹1,20,00,000 - ₹80,00,000 = ₹40,00,000$$

$$C - D = ₹2,10,00,000 - ₹2,00,00,000 = ₹10,00,000$$

$$\text{Total Under-Reported Income} = ₹40,00,000 + ₹10,00,000 = ₹50,00,000$$

Step 2: Compute Tax on Under-Reported Income

$$\text{Tax on A} = P = ₹40,06,080$$

$$\text{Tax on B} = Q = ₹24,96,000$$

$$\text{Tax on C} = R = ₹35,05,320$$

$$\text{Tax on D} = S = ₹33,38,400$$

$$\text{Tax on Under-Reported Income} = (P - Q) + (R - S) = (₹40,06,080 - ₹24,96,000) + (₹35,05,320 - ₹33,38,400) = ₹15,10,080 + ₹1,66,920 = ₹16,77,000$$

Step 3: Compute Penalty

$$\text{Minimum Penalty (50\%)} = 50\% \times ₹16,77,000 = ₹8,38,500$$

$$\text{Maximum Penalty (200\%)} = 200\% \times ₹16,77,000 = ₹33,54,000$$

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Under-reported income $[(A - B) + (C - D)]$	50,00,000
Tax on under-reported income $[(P - Q) + (R - S)]$	16,77,000
Penalty @ 50% (Minimum)	8,38,500
Penalty @ 200% (Maximum)	33,54,000

ILLUSTRATION

Illustration 4: Penalty u/s 270A — Same Issue u/s 115JB and General Provisions

Facts: In above example, out of addition of ₹10 lakh made in book profit and ₹40 lakh made in total income (under general provisions), ₹3,00,000 was made on same ground. Compute penalty u/s 270A.

RULE / CONCEPT

Rule Applied: Where amount of under-reported income on any issue is considered both u/s 115JB and under general provisions, such amount shall **NOT be reduced** from total income assessed while determining amount under item D.

Step 1: Compute Under-Reported Income

$$A - B = ₹1,20,00,000 - ₹80,00,000 = ₹40,00,000$$

$$C - D = ₹2,10,00,000 - ₹2,03,00,000 = ₹7,00,000 \text{ (Note: Book profit adjusted for same issue — ₹3,00,000 added back to book profit)}$$

$$\text{Total Under-Reported Income} = ₹40,00,000 + ₹7,00,000 = ₹47,00,000$$

Step 2: Compute Tax on Under-Reported Income

$$\text{Tax on A} = P = ₹40,06,080$$

$$\text{Tax on B} = Q = ₹24,96,000$$

ILLUSTRATION

Illustration 5: Penalty u/s 270A — Misreporting of Income

Facts: During scrutiny assessment of Mr. Sunil for AY 2026-27, the AO found that Mr. Sunil had claimed a deduction of ₹3,00,000 as business expenditure which was not substantiated by any evidence. The AO disallowed the claim and assessed income at ₹8,00,000 as against return income of ₹5,00,000. Also, Mr. Sunil had failed to record an investment in shares worth ₹2,00,000 in his books of account. Compute penalty u/s 270A.

RULE / CONCEPT

Rule Applied — Sec. 270A(9): Misreporting of income includes: (a) misrepresentation or suppression of facts; (b) failure to record investments in books of account; (c) claim of expenditure not substantiated by any evidence; (d) recording false entry; (e) failure to record receipts; (f) failure to report international transaction. Penalty @ 200% of tax payable on under-reported income.

Step 1: Determine Nature of Default

Claim of unsubstantiated expenditure → Misreporting u/s 270A(9)(c) ✓

Failure to record investments in books → Misreporting u/s 270A(9)(b) ✓

Hence, penalty @ 200% applicable

Step 2: Compute Under-Reported Income

Assessed Income = ₹8,00,000

Returned Income = ₹5,00,000

Under-reported income = ₹3,00,000

Note: The unrecorded investment of ₹2,00,000 is not separately added since it is not an income; it is only a ground for misreporting.

Step 3: Compute Tax on Under-Reported Income

Tax on ₹8,00,000 = ₹75,000 (slab, before cess)

Tax on ₹5,00,000 = ₹12,500 (slab, before cess)

Tax on under-reported income = ₹75,000 – ₹12,500 = ₹62,500

Step 4: Compute Penalty

Penalty @ 200% = $200\% \times ₹62,500 = ₹1,25,000$

✓ SOLUTION

PARTICULARS	AMOUNT (₹)
Under-reported income	3,00,000
Tax on under-reported income	62,500
Penalty @ 200% (Misreporting)	1,25,000

ILLUSTRATION

Illustration 6: Sec. 270A(4) — Source Linked to Earlier Year

Facts: During assessment of Mr. P for AY 2026-27, an investment of ₹8,00,000 was found unexplained. Mr. P claimed that the source of investment was from additions made in earlier years (AY 2022-23: ₹2,00,000; AY 2023-24: ₹1,00,000; AY 2024-25: ₹3,00,000). No penalty was levied in those earlier years. Analyze the applicability of sec. 270A(4).

RULE / CONCEPT

Rule Applied — Sec. 270A(4): Where source of any receipt/deposit/investment is claimed to be an amount added to income or deducted while computing loss in any year prior to AY in which such receipt/deposit/investment appears, and no penalty was levied for such preceding year, then under-reported income shall include such amount as is sufficient to cover such receipt/deposit/investment.

Step 1: Determine Total Earlier Year Additions

AY 2022-23: ₹2,00,000

AY 2023-24: ₹1,00,000

AY 2024-25: ₹3,00,000

Total = ₹6,00,000

Step 2: Compare with Investment Amount

Investment = ₹8,00,000

ILLUSTRATION

Illustration 7: Immunity from Penalty u/s 270AA

Facts: During scrutiny assessment of Mr. Rajesh for AY 2026-27, the AO made a disallowance of ₹4,00,000 and raised a demand of ₹1,50,000 (tax + interest). Mr. Rajesh paid the entire demand on 15-03-2027. He wants to apply for immunity from penalty u/s 270AA. Advise.

RULE / CONCEPT

Rule Applied — Sec. 270AA: Application for immunity within 1 month from end of month in which assessment order is received. Conditions: (a) tax and interest paid within time specified in notice of demand; (b) no appeal filed against order. Not applicable where penalty proceedings initiated due to misreporting of income.

Step 1: Check Eligibility Conditions

- ✓ Tax and interest paid within time specified in notice of demand
- ✓ No appeal filed against order (assumed)

Need to check: Is the default under-reporting or misreporting?

Step 2: Determine Nature of Default

The disallowance of ₹4,00,000 was a case of under-reporting (not misreporting) → Immunity available ✓

Step 3: Timeline for Application

Assessment order received (assume): 28-02-2027

Application within 1 month from end of month = **31-03-2027**

Application in **Form 68**

Step 4: AO's Action

AO shall pass order within 3 months from end of month in which application received

Assuming application on 20-03-2027: AO order by **30-06-2027**

✓ SOLUTION

Conclusion:

- ▶ Mr. Rajesh is **eligible** to apply for immunity u/s 270AA
- ▶ File application in **Form 68** by **31-03-2027**
- ▶ AO shall pass order within **3 months** from end of month of application
- ▶ Once immunity granted, no appeal to JCIT(A)/CIT(A) or revision u/s 264 admissible against assessment order
- ▶ Immunity NOT available if penalty initiated due to misreporting of income

ILLUSTRATION

Illustration 8: Waiver of Penalty u/s 273A(1)

Facts: Mr. Naresh had concealed income of ₹3,00,000 in AY 2024-25. Before detection by AO, he voluntarily disclosed this income and paid tax of ₹90,000 on 15-01-2026. He cooperated in enquiry and paid interest. He wants to apply for waiver of penalty u/s 273A(1). Advise.

RULE / CONCEPT

Rule Applied — Sec. 273A(1): PCIT/CIT may reduce or waive penalty u/s 270A (concealment of income) if: (a) before detection by AO, assessee voluntarily and in good faith made full and true disclosure; (b) co-operated in enquiry; (c) paid or made satisfactory arrangements for payment of tax/interest. Previous approval of PCCIT/CCIT required if income exceeds ₹5,00,000. Waiver can be granted only once in lifetime of assessee.

Step 1: Check Conditions for Waiver

- ✓ Voluntary and good faith disclosure before detection
- ✓ Full and true disclosure of particulars
- ✓ Co-operated in enquiry
- ✓ Tax and interest paid

Step 2: Check Threshold for Previous Approval

Income in respect of which penalty imposed/imposable = ₹3,00,000 ≤ ₹5,00,000

Previous approval of PCCIT/CCIT not required ✓

Step 3: Order & Finality

ILLUSTRATION

Illustration 9: Waiver u/s 273A(4) — Genuine Hardship

Facts: Mr. Suresh, a small trader, has defaulted in payment of TDS of ₹2,00,000 under Chapter XVII-B for FY 2024-25. Penalty u/s 271C of ₹2,00,000 has been imposed. Due to severe financial hardship (business losses, medical expenses of spouse), he is unable to pay the penalty. He wants to apply for waiver u/s 273A(4). Advise.

RULE / CONCEPT

Rule Applied — Sec. 273A(4): PCIT/CIT may, on application by assessee, and after recording reasons, reduce or waive penalty payable, or stay or compound any proceeding for recovery, if satisfied that: (i) doing otherwise would cause **genuine hardship** to assessee; and (ii) assessee has co-operated in any inquiry relating to assessment or recovery. Previous approval of PCCIT/CCIT required if penalty exceeds ₹1,00,000. Order within 12 months from end of month of application. Genuine hardship must exist at time of application AND at time of passing order [Circular No. 784].

Step 1: Check Conditions for Waiver

Genuine hardship: Business losses and medical expenses → Yes ✓

Co-operated in enquiry: Yes (assumed) ✓

Step 2: Check Threshold for Previous Approval

Penalty amount = ₹2,00,000 > ₹1,00,000 → Previous approval of PCCIT/CCIT required ✓

Step 3: Order Timeline

Order within **12 months** from end of month of application

Opportunity of being heard required before rejecting application

✓ SOLUTION

Conclusion:

- ▶ Mr. Suresh is **eligible** for waiver u/s 273A(4)
- ▶ Previous approval of PCCIT/CCIT required (penalty > ₹1 lakh)
- ▶ Genuine hardship must exist at time of application and at time of order
- ▶ Order within **12 months** from end of month of application
- ▶ Opportunity of being heard required before rejection
- ▶ Order is final and cannot be questioned in any court
- ▶ Cannot claim relief u/s 273A(1) after claiming relief u/s 273A(4)

ILLUSTRATION

Illustration 10: Prosecution u/s 276CC — Wilful Failure to File Return

Facts: Mr. Mohan, a businessman, failed to file his return of income for AY 2026-27 despite having taxable income of ₹12,00,000. The due date for filing was 31-07-2026. He did not file the return even after notice u/s 142(1). The tax sought to be evaded is ₹2,40,000. AO initiated prosecution proceedings. Advise.

RULE / CONCEPT

Rule Applied — Sec. 276CC: Wilful failure to file return in time u/s 139(1) or in response to notice u/s 142(1) or 148, provided tax payable (as reduced by advance tax, TDS, TCS) exceeds ₹10,000. Punishment: If tax sought to be evaded exceeds ₹25 lakh — 6 months to 7 years (with fine); if ≤ ₹25 lakh — 3 months to 2 years (with fine).

Step 1: Check Applicability of Sec. 276CC

Tax payable (after TDS/advance tax) = ₹2,40,000 > ₹10,000 ✓

Wilful failure to file return despite notice ✓

Prosecution valid ✓

Step 2: Determine Quantum of Punishment

Tax sought to be evaded = ₹2,40,000 ≤ ₹25,00,000

Punishment: Rigorous imprisonment from **3 months to 2 years** + fine

Step 3: Consideration of Prior Sanction

Prosecution u/s 276CC requires prior sanction of PCIT/CIT or JCIT(A)/CIT(A) u/s 279

✓ SOLUTION

Conclusion:

ILLUSTRATION

Illustration 11: Prosecution u/s 276B — Failure to Deposit TDS

Facts: XYZ Ltd. deducted TDS of ₹8,00,000 on payments to contractors during FY 2025-26. The company failed to deposit this TDS with the Government. The AO initiated prosecution u/s 276B. Advise on quantum of punishment and possible defense.

RULE / CONCEPT

Rule Applied — Sec. 276B: Failure to pay to credit of Central Government tax deducted at source. Punishment: RI from 3 months to 7 years + fine. **Exception:** No prosecution if TDS amount in respect of quarter has been paid to Central Government on or before time prescribed for filing respective quarterly return. **Reasonable cause [Sec. 278AA]:** No punishment if assessee proves reasonable cause.

Step 1: Determine Quantum of Punishment

Punishment: RI from **3 months to 7 years** + fine

Step 2: Check for Possible Defense

- ▶ If TDS was paid before filing quarterly return → No prosecution ✓
- ▶ If reasonable cause proved u/s 278AA → No punishment ✓
- ▶ Reasonable cause may include: financial difficulty, bank strike, etc.

Step 3: Second and Subsequent Offence

If this is a second/subsequent offence u/s 276B, punishment as per sec. 278A: RI **6 months to 7 years** + fine.

✓ SOLUTION

Conclusion:

- ▶ Prosecution u/s 276B is **valid** (subject to no defense available)
- ▶ Quantum for first offence: RI from 3 months to 7 years + fine
- ▶ Quantum for second offence: RI from 6 months to 7 years + fine
- ▶ Prior sanction of PCIT/CIT required u/s 279
- ▶ Defense available u/s 278AA if reasonable cause for failure proved
- ▶ No prosecution if TDS paid before quarterly return filing due date

ILLUSTRATION

Illustration 12: Compounding of Offences u/s 279(2)

Facts: Mr. Kamal was being prosecuted u/s 276CC for wilful failure to file return of income. The tax sought to be evaded was ₹18,00,000. Before the trial commenced, he filed an application for compounding of offence. Advise.

RULE / CONCEPT

Rule Applied — Sec. 279(2): Any offence under Chapter XXII may, either before or after institution of proceedings, be compounded by: (a) Board or any other income-tax authority specified by it; (b) PCCIT/CCIT/PCIT/CIT with approval of Board. Compounding fee as prescribed. No offence shall be compounded if it is punishable with imprisonment and the offender has been convicted under the erstwhile provisions.

Step 1: Check Eligibility for Compounding

Offence is under Chapter XXII → Compoundable ✓
 Application before trial → Within time ✓
 Tax sought to be evaded = ₹18 lakh → Within limits of compounding ✓

Step 2: Determine Compounding Authority

Apply to PCIT/CIT with approval of Board
 Compounding fee as prescribed by Board

Step 3: Consider Restrictions

- ▶ No compounding if person has been convicted under erstwhile provisions
- ▶ Compounding only after making an application in prescribed form
- ▶ Payment of compounding fee is mandatory

✓ SOLUTION

★ Quick Revision Summary

★ QUICK REVISION

Key Penalties & Quantum — Module 4

SECTION	NATURE OF DEFAULT	PENALTY
270A	Under-reporting of income	50% of tax on under-reported income
270A	Misreporting of income	200% of tax on under-reported income
221(1)	Default in payment of tax	Up to amount of tax in arrears
271A	Failure to maintain books u/s 44AA	₹25,000
271AA(1)	Failure to keep/report international transaction	2% of value of each transaction
271AA(2)	Failure to furnish info u/s 92D(4)	₹5,00,000
271AAC	Unexplained income u/s 68-69D	10% of tax u/s 115BBE
271AAD	False entry/omission in books	Sum equal to false/omitted entry
271AAE	Unreasonable benefit to related person	100% (first); 200% (subsequent)
271B	Failure to get accounts audited u/s 44AB	0.5% of turnover (max ₹1,50,000)
271BA	Failure to furnish report u/s 92E	₹1,00,000
271C	Failure to deduct TDS	Amount of tax failed to deduct
271CA	Failure to collect TCS	Amount of tax failed to collect
271D	Contravention of sec. 269SS	Amount of loan/deposit taken
271DA	Contravention of sec. 269ST	Amount of such receipt
271E	Contravention of sec. 269T	Amount of loan/deposit repaid
271FAA	Inaccurate info in SFT	₹50,000 / ₹5,000 per account
271G	Failure to furnish info u/s 92D(3)	2% of value of transaction
271GA	Failure to furnish info u/s 285A	2% of value / ₹5,00,000
271GB	Failure to furnish CbCR report	₹5,000 to ₹50,000 per day
271H	Failure to file TDS/TCS return	₹10,000 to ₹1,00,000
271-I	Failure to furnish info u/s 195(6)	₹1,00,000
271J	Incorrect info in reports by CA/merchant banker/valuer	₹10,000 per report
272A	Failure to comply with notices	₹10,000 per default / ₹500 per day
272B	Failure to comply with PAN provisions	₹10,000

★ QUICK REVISION

Key Prosecutions & Quantum — Module 4

SECTION	NATURE OF OFFENCE	IMPRISONMENT
275A	Contravention of order u/s 132(1)/(3)	Up to 2 years
275B	Failure to comply with sec. 132(1)(iib)	Up to 2 years
276	Removal/concealment of property	Up to 2 years
276A	Failure by liquidator u/s 178	Up to 2 years
276B	Failure to deposit TDS	3 months to 7 years + fine
276BB	Failure to deposit TCS	3 months to 7 years + fine
276C(1)	Attempt to evade tax/under-report income	3 months to 7 years (based on amount)
276C(2)	Attempt to evade payment of tax	3 months to 3 years
276CC	Wilful failure to file return	3 months to 7 years (based on amount)
276CCC	Failure to file block return u/s 158BC	3 months to 3 years
276D	Failure to produce books/comply with 142(2A)	Up to 1 year
277	False statement/verification	3 months to 7 years (based on amount)
277A	False entry to enable another person to	3 months to 2 years

Multiple Choice Questions

1. Prosecution can be launched and the taxpayer can be punished if he commits wilful failure to produce before the tax authorities the accounts and documents as demanded u/s _____.

- ▶ A. 154 B. 147 C. 143(1) D. 142(1)

[Answer: D]

2. If a person fails to comply with the provisions relating to PAN (i.e. obtaining PAN, quoting PAN, etc.), then penalty can be levied under section _____

- ▶ A. 270A B. 272 C. 272A D. 272B

[Answer: D]

3. If during any proceeding, it is found that in the books of account maintained by any person there is a false entry or an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, penalty u/s 271AAD of ₹ is levied.

- ▶ A. A sum equal to the aggregate amount of such false or omitted entry.
- ▶ B. ₹5,000 (subject to maximum of ₹1,00,000)
- ▶ C. 2% of the amount of such entry
- ▶ D. None of the above

[Answer: A]

4. If the amount of income in respect of which the penalty is imposed or imposable for the relevant year(s) exceeds ₹ _____, then no order reducing or waiving the penalty under section 273A(1) shall be made by the Principal Commissioner or Commissioner, except with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be.

- ▶ A. 1,00,000 B. 2,00,000 C. 5,00,000 D. 10,00,000

[Answer: C]

5. Principal Commissioner or Commissioner of Income-tax is empowered to grant relief from penalty to taxpayers in genuine cases. Such power is granted under section 273A and section _____.

- ▶ A. 273B B. 273AA C. 273 D. 274

[Answer: B]

6. Penalty for under-reporting of income u/s 270A is:

- ▶ A. 30% of tax on under-reported income
- ▶ B. 50% of tax on under-reported income
- ▶ C. 100% of tax on under-reported income
- ▶ D. 200% of tax on under-reported income

[Answer: B]

7. Penalty for misreporting of income u/s 270A is:

- ▶ A. 50% of tax on under-reported income
- ▶ B. 100% of tax on under-reported income
- ▶ C. 200% of tax on under-reported income
- ▶ D. 300% of tax on under-reported income

[Answer: C]

8. Immunity from imposition of penalty u/s 270A can be applied in Form No. _____ within _____ from end of month in which order is received.

- ▶ A. Form 68; 1 month B. Form 68; 2 months



Comprehensive Problems

Problem 1 (Sec. 270A — Individual): The return of income of Mr. A for AY 2026-27 was processed u/s 143(1)(a) at an income of ₹8,00,000. During scrutiny assessment, the AO assessed income at ₹12,00,000. Compute penalty u/s 270A assuming it is a case of under-reporting.

[Hint: Under-reported income = ₹4,00,000; Tax on ₹12L – Tax on ₹8L = ₹33,800; Penalty @ 50% = ₹16,900]

Problem 2 (Sec. 270A — Loss Case): The return of income of Ms. B for AY 2026-27 was processed u/s 143(1)(a) with a loss of ₹10,00,000. During scrutiny assessment, the AO assessed income at a loss of ₹2,00,000 (i.e., loss reduced by ₹8,00,000). Compute penalty u/s 270A.

[Hint: Under-reported income = ₹8,00,000; Tax on ₹8,00,000 = ₹75,000; Penalty @ 50% = ₹37,500]

Problem 3 (Sec. 270A — Misreporting): During scrutiny assessment of Mr. C, it was found that he had claimed an expenditure of ₹2,00,000 without any supporting evidence and also failed to record an investment of ₹1,00,000 in his books of account. The assessed income was ₹7,00,000 against returned income of ₹4,00,000. Compute penalty u/s 270A.

[Hint: Under-reported income = ₹3,00,000; Tax on ₹7L – Tax on ₹4L = ₹56,250; Penalty @ 200% = ₹1,12,500]

Problem 4 (Sec. 271AAD — False Entry): During assessment of M/s ABC Ltd., the AO found a false invoice of ₹5,00,000 recorded in the books of account and an omission of an entry of ₹2,00,000 related to receipt of income. Compute penalty u/s 271AAD.

[Hint: False entry ₹5,00,000 + Omitted entry ₹2,00,000 = ₹7,00,000; Penalty = ₹7,00,000]

Problem 5 (Sec. 271B — Audit Failure): M/s PQR Ltd. failed to get its accounts audited u/s 44AB for FY 2025-26. The turnover of the company was ₹2,50,00,000. Compute penalty u/s 271B.

[Hint: Penalty = 0.5% of ₹2,50,00,000 = ₹1,25,000. But maximum penalty is ₹1,50,000. So penalty = ₹1,25,000]

Problem 6 (Sec. 271D/271DA/271E): Mr. Ramesh during FY 2025-26: (a) accepted a cash loan of ₹75,000; (b) received ₹3,00,000 cash from a customer; (c) repaid a cash loan of ₹2,50,000. Compute total penalty.

[Hint: (a) ₹75,000 u/s 271D; (b) ₹3,00,000 u/s 271DA; (c) ₹2,50,000 u/s 271E; Total = ₹6,25,000]

Problem 7 (Prosecution — Sec. 276B): XYZ Ltd. deducted TDS of ₹12,00,000 during FY 2025-26 but deposited it 6 months late. Determine the quantum of punishment under prosecution u/s 276B.

[Hint: RI from 3 months to 7 years + fine (first offence). If second offence: 6 months to 7 years.]

Problem 8 (Sec. 270A — Company with MAT): The book profits of a company were computed as ₹2,50,00,000 and total income under general provisions was ₹1,00,00,000. The AO enhanced book profit to ₹2,80,00,000 and total income to ₹1,40,00,000. Tax on total income as per return was ₹25,00,000 and as assessed ₹35,00,000. Tax on book profit as per return was ₹37,50,000 and as assessed ₹42,00,000. Compute penalty u/s 270A.

[Hint: Under-reported income = (₹1,40L – ₹1,00L) + (₹2,80L – ₹2,50L) = ₹70L; Tax on under-reported income = (₹35L – ₹25L) + (₹42L – ₹37.5L) = ₹14.5L; Penalty @ 50% = ₹7.25L]

Problem 9 (Immunity u/s 270AA): Mr. Vinod was assessed at an income of ₹15,00,000 (returned income ₹12,00,000). The AO raised a demand of ₹60,000. Mr. Vinod paid the demand within the specified time and wants to file for immunity u/s 270AA on 25-04-2027. The assessment order was received on 30-03-2027. Advise.

[Hint: Application deadline = 30-04-2027 (1 month from end of month of receipt). Mr. Vinod is within time. AO must pass order within 3 months from end of month of application.]

Problem 10 (Sec. 273A): Mrs. Anita concealed income of ₹6,00,000 and penalty u/s 270A was imposed. She voluntarily disclosed the income before detection and paid tax and interest. She wants to file for waiver u/s 273A(1). Determine the applicability and approval requirement.

[Hint: Since income > ₹5,00,000, previous approval of PCCIT/CCIT required. Waiver can be granted only once in her lifetime.]

Case Study

ILLUSTRATION

Case Study: Comprehensive Penalty & Prosecution Scenario

Facts: M/s ABC Traders Pvt. Ltd. has the following details for AY 2026-27:

- Returned income: ₹25,00,000
- Assessed income u/s 143(3): ₹38,00,000
- Addition of ₹8,00,000 on account of unsubstantiated business expenditure
- Addition of ₹5,00,000 on account of unexplained cash credits u/s 68
- The company also failed to get its accounts audited u/s 44AB though turnover was ₹1.2 crore
- TDS of ₹4,00,000 was deducted but deposited 3 months late
- Company accepted a loan of ₹30,000 in cash from a director

RULE / CONCEPT

Rules Applied: (i) Sec. 270A — Penalty for under-reporting/misreporting. (ii) Sec. 271AAC — Penalty for unexplained cash credits. (iii) Sec. 271B — Penalty for failure to get accounts audited. (iv) Sec. 276B — Prosecution for failure to deposit TDS. (v) Sec. 271D — Penalty for accepting cash loan u/s 269SS.

Issue 1: Penalty u/s 270A for Under-Reporting & Misreporting

Unsubstantiated expenditure of ₹8,00,000 → Misreporting u/s 270A(9)(c) → 200% penalty

Unexplained cash credits of ₹5,00,000 → Assessed u/s 68 → Under-reporting (not necessarily misreporting)

Total under-reported income = ₹13,00,000

Tax on ₹38,00,000 – Tax on ₹25,00,000 = Tax on under-reported income

Issue 2: Penalty u/s 271AAC for Unexplained Cash Credits

Unexplained cash credits = ₹5,00,000

Tax u/s 115BBE @ 60% = ₹3,00,000

Penalty u/s 271AAC @ 10% of tax = ₹30,000

Issue 3: Penalty u/s 271B for Audit Failure

Turnover = ₹1,20,00,000

Penalty = 0.5% of ₹1.2 crore = ₹60,000 (max ₹1,50,000)

Penalty = ₹60,000

Issue 4: Prosecution u/s 276B

TDS of ₹4,00,000 deposited 3 months late

Prosecution valid if not paid before quarterly return due date

Quantum: RI 3 months to 7 years + fine (first offence)

Issue 5: Penalty u/s 271D

Cash loan accepted = ₹30,000 ($\geq$ ₹20,000) → Contravention of sec. 269SS

Penalty = ₹30,000

✓ SOLUTION

Comprehensive Analysis:

ISSUE	SECTION	PENALTY/PROSECUTION
Unsubstantiated expenditure	270A(9)(c)	200% of tax on portion
Unexplained cash credits	271AAC	10% of tax u/s 115BBE = ₹30,000
Failure to get audit	271B	₹60,000
Late deposit of TDS	276B	RI 3 months to 7 years + fine
Cash loan accepted	271D	₹30,000

References

CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

05 MODULE

Business Restructuring

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 5

Business Restructuring

Comprehensive coverage of Amalgamation, Demerger, Slump Sale, Conversion of Sole Proprietary Business to Company, Conversion of Firm into Company, and Conversion of Private Limited Company / Unlisted Public Company into LLP as per the official CMA Final syllabus.

 Module Structure

Section A: Direct Tax Laws — Business Restructuring

5.1

AMALGAMATION

5.2

DEMERGER

5.3

SLUMP SALE

5.4

PROP. → COMPANY

5.5

FIRM → COMPANY

5.6

COMPANY → LLP

6

RESTRUCTURING MODES

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PAGES COVERAGE

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5.1 Amalgamation

Restructuring is a term used for the act of reorganizing the legal, ownership, operational, or other structures of a company for the purpose of making it more profitable, or better organized for its present needs. Companies are resorting to acquisitions as a means to consolidate and grow rapidly in an ever-changing business environment.

Definition [Sec. 2(1B)]

Amalgamation (in relation to companies) means:

- ▶ the merger of one or more companies with another company; or
- ▶ the merger of two or more companies to form one company;

in such a manner that:

- 1 all assets and liabilities of the amalgamating company immediately before the amalgamation become the assets and liabilities of the amalgamated company;
- 2 shareholders (both equity or preference) holding not less than **75% in value of the shares** in the amalgamating company (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company.

TAXPOINT

Taxpoint: Number of shares allotted to shareholders of amalgamating company is not relevant. Where C Ltd. merges with Z Ltd., and Z Ltd. holds 20% shares in C Ltd., condition satisfied if shareholders holding not less than $\frac{3}{4}$ th of remaining 80% (i.e., 60%) become shareholders of Z Ltd. [Circular 5P, dated 9-10-67].

IMPORTANT

Exceptions: Following mergers shall NOT be treated as amalgamation:

- ▶ Merger as a result of acquisition of property of one company by another company pursuant to purchase of such property; or
- ▶ Merger as a result of distribution of such property to other company after winding up of first-mentioned company.

5.1.1 Effect on Shareholder of Amalgamating Company

Transfer of Shares [Sec. 47(vii)]	Any transfer by shareholder, in scheme of amalgamation, of share(s) held in amalgamating company is NOT treated as transfer and hence not liable to capital gain tax, if: (i) transfer is made in consideration of allotment to him of any share(s) in amalgamated company; and (ii) amalgamated company is an Indian company .
Cost of Shares [Sec. 49(2)]	Cost of shares in amalgamating company deemed to be cost of shares in amalgamated company.
Nature of Asset [Sec. 2(42A)]	Period of holding calculated from date when shares in amalgamating company were acquired.

CONDITION	TREATMENT	TAX IMPACT
Amalgamated co. is Indian + Shareholder gets only shares	Not treated as transfer	No Capital Gain
Amalgamated co. NOT Indian	Treated as transfer	Capital Gain applicable
Amalgamation NOT as per sec. 2(1B)	Treated as transfer	Capital Gain applicable
Shareholder gets cash or other asset	Treated as transfer	Capital Gain applicable

Effect on Amalgamating Company

As per **sec. 47(vi)**, any transfer, in scheme of amalgamation, of a capital asset by amalgamating company to amalgamated company is **NOT treated as transfer** (hence not liable to capital gain) provided amalgamated company is an **Indian company**.

SITUATION	TAX TREATMENT
Amalgamation as per sec. 2(1B) + Amalgamated co. Indian	NOT treated as transfer → No capital gain
Amalgamated company NOT Indian	Treated as transfer → Capital Gain applicable
Amalgamation NOT as per sec. 2(1B)	Treated as transfer → Capital gain applicable

Sec. 47(via): Transfer of shares held in Indian company by amalgamating foreign company to amalgamated foreign company NOT treated as transfer if: (a) at least **25%** of shareholders of amalgamating foreign company continue to remain shareholders of amalgamated foreign company; and (b) such transfer does not attract tax on capital gains in country in which amalgamating company is incorporated.

Sec. 47(viab): Transfer of shares of foreign company (which derives value substantially from Indian company shares) by amalgamating foreign company to amalgamated foreign company NOT treated as transfer if same conditions as above are satisfied.

Effect on Amalgamated Company

Value of Non-Depreciable Capital Assets [Sec. 49(1)]	Cost of acquisition to amalgamated (Indian) company = cost for which previous owner (amalgamating company) acquired it + cost of any improvement.
Value of Depreciable Asset [Exp. 2 to Sec. 43(6)]	Actual cost of block of assets in hands of amalgamated company = WDV of block of assets as in hands of amalgamating company for immediately preceding PY, reduced by depreciation actually allowed.
Allocation of Depreciation	Aggregate deduction for depreciation shall not exceed deduction calculated at prescribed rates as if amalgamation had not taken place. Apportioned between both companies in ratio of number of days for which assets used by them.
Value of Asset Transferred as Stock-in-Trade [Sec. 43C(1)]	Where asset becomes property of amalgamated company under scheme and is sold as stock-in-trade, cost of acquisition shall be cost of acquisition to amalgamating company + cost of improvement + expenditure incurred wholly and exclusively in connection with transfer.

CONDITION	COST & HOLDING PERIOD
Amalgamation as per sec. 2(1B) + Amalgamated co. Indian	Cost = Old cost; Holding Period = From old
Amalgamated co. NOT Indian / Amalgamation NOT per 2(1B)	Cost = New cost; Holding Period = From new

Carry Forward & Set-off of Losses [Sec. 72A]

Applicable to: (i) Amalgamation of company owning industrial undertaking / ship / hotel with another company; (ii) Amalgamation of banking company with specified bank; (iii) Amalgamation of public sector companies; (iv) Amalgamation of erstwhile public sector company with one or more companies (strategic disinvestment).

Conditions — Amalgamating Company	(i) Engaged in business in which accumulated loss occurred or depreciation remains unabsorbed for 3 or more years ; (ii) Held continuously as on date of amalgamation at least ¾th of book value of fixed assets held by it 2 years prior to amalgamation.
Conditions — Amalgamated Company	(i) Holds continuously for minimum period of 5 years from date of amalgamation at least ¾th of book value of fixed assets of amalgamating company acquired in scheme; (ii) Continues business of amalgamating company for 5 years ; (iii) Fulfills prescribed conditions (Rule 9C — production level 50% of installed capacity by 4 years, maintain for 5 years).
Treatment	Accumulated business loss & unabsorbed depreciation deemed to be loss/allowance of amalgamated company. Non-speculative business loss carried forward for remaining life of loss (max 8 AYs).
Non-Compliance	Set off of loss or depreciation in any PY deemed to be income of amalgamated company for year in which conditions not complied.

Deduction of Expenses [Sec. 35DD]

Applicable to: Indian company. **Conditions:** Expenditure incurred wholly & exclusively for amalgamation or demerger; no deduction claimed under any other section. **Quantum:** **1/5th of expenses** for period of 5 years commencing from year in which amalgamation/demerger takes place.

5.2 Demerger

Definition [Sec. 2(19AA)]

Demerger (in relation to companies) means transfer, pursuant to a scheme of arrangement u/s 230 to 232 of Companies Act, 2013, by a demerged company of its one or more undertakings to any resulting company in such a manner that:

1

All assets and liabilities transferred: All assets and liabilities of undertaking, being transferred by demerged company, immediately before demerger, become assets and liabilities of resulting company.

2

Transfer at Book Value: Assets and liabilities transferred at book-value (without considering revaluation) immediately before demerger. Revaluation ignored. *Exception:* Not applicable where resulting company records value in compliance with Ind AS.

3

Consideration in shares: Resulting company issues shares to shareholders of demerged company on proportionate basis except where resulting company itself is shareholder of demerged company.

4

Common share-holders: Shareholders holding not less than **75% in value of shares** in demerged company (other than shares already held by resulting company or its subsidiary) become shareholders of resulting company.

5

Going concern: Transfer of undertaking on a going concern basis.

6

Other condition: Demerger in accordance with conditions notified u/s 72A(5).

TAXPOINT

Taxpoint:

▶

Undertaking includes: (i) any part of undertaking; (ii) unit or division; (iii) business activity taken as a whole; (iv) but NOT individual assets/liabilities not constituting a business activity.

▶

Liabilities include: (a) liabilities arising out of activities of undertaking; (b) specific loans raised and utilised solely for undertaking; (c) general borrowings — proportionate to value of assets transferred to total value of assets.

Σ FORMULA

General Borrowings × [Book value of assets transferred / Total book value of assets of demerged company]

Special Cases — Deemed Demerger

▶

Splitting up or reconstruction of any authority or body constituted under Central/State/Provincial Act, or local authority or public sector company into separate authorities or bodies — deemed demerger if conditions fulfilled.

▶

Reconstruction or splitting up of company which ceased to be public sector company as result of transfer of shares by Central Government into separate companies — deemed demerger if made to give effect to condition attached to transfer.

Key Definitions

Demerged company [Sec. 2(19AAA)]	Company whose undertaking is transferred, pursuant to demerger, to a resulting company.
Resulting company [Sec. 2(41A)]	One or more companies (including wholly owned subsidiary) to which undertaking of demerged company is transferred and which issues shares to shareholders of demerged company, and includes any authority/body/local authority/public sector company/company established as result of demerger.

Effect on Shareholder of Demerged Company

As per **sec. 47(vid)**, any transfer or issue of shares by resulting company, in scheme of demerger to shareholders of demerged company shall **NOT be treated as transfer** if made in consideration of demerger of undertaking.

Existing shareholder will hold: (a) Shares in resulting company; and (b) Shares in demerged company. Cost determined as under:

Cost of Shares in Resulting Company [Sec. 49(2C)]	Cost of acquisition of shares in resulting company = Cost of acquisition of shares held by assessee in demerged company × (Net book value of assets transferred in demerger / Net worth of demerged company immediately before demerger)
Cost of Shares in Demerged Company [Sec. 49(2D)]	Cost of original shares deemed to have been reduced by amount so arrived at u/s 49(2C).

Σ FORMULA

Cost of shares in Resulting Co. = Cost of original shares × [NBV of assets transferred / Net worth of demerged company]

💡 TAXPOINT

Net Worth = Paid-up share capital + General reserves (as per books of demerged company immediately before demerger).

Effect on Demerged Company

- ▶ **Sec. 47(vib):** Transfer of capital asset by demerged company to resulting company NOT treated as transfer provided resulting company is an Indian company.
- ▶ **Sec. 47(vic):** Transfer of shares held in Indian company by demerged foreign company to resulting foreign company NOT treated as transfer if: (a) shareholders holding not less than ¾th in value continue to remain shareholders of resulting foreign company; and (b) transfer does not attract tax on capital gains in country of incorporation.
- ▶ **Sec. 47(vicc):** Transfer of shares of foreign company (deriving value substantially from Indian company shares) by demerged foreign company to resulting foreign company NOT treated as transfer if same conditions as above satisfied.
- ▶ **WDV of Depreciable Asset [Exp. 2A to Sec. 43(6)]:** WDV of block of demerged company for immediately preceding PY reduced by WDV of assets transferred to resulting company.

Effect on Resulting Company

- ▶ **Actual Cost of Assets [Exp. 7A to Sec. 43(1)]:** Actual cost of transferred capital asset to resulting company same as it would have been if demerged company continued to hold it. Such actual cost shall NOT exceed WDV of such asset in hands of demerged company.
- ▶ **WDV of Depreciable Asset [Exp. 2B to Sec. 43(6)]:** WDV of block of assets in case of resulting company = WDV of transferred assets of demerged company immediately before demerger.
- ▶ **Allocation of Depreciation:** Aggregate deduction shall not exceed deduction as if demerger had not taken place. Apportioned in ratio of number of days assets used.

Set-off & Carry Forward of Losses in Demerger [Sec. 72A]

SITUATION	TREATMENT
Loss / unabsorbed depreciation directly relatable to undertaking transferred	Carried forward and set off in hands of Resulting Company
Loss not directly relatable	Apportioned between demerged and resulting company in proportion of assets retained / transferred

Comparison — Amalgamation vs. Demerger

BASIS	AMALGAMATION	DEMERGER
Definition	Sec. 2(1B)	Sec. 2(19AA)
Merger of	Two or more companies into one	One or more undertakings of demerged company into resulting company
Shareholding threshold	75% in value	75% in value
Valuation	Not specified	At book value (no revaluation)
Going concern	Not specifically required	Required
Carry forward of losses	Subject to Sec. 72A conditions	Directly relatable — Resulting Co.; Not — Apportioned

5.3 Slump Sale

Definition [Sec. 2(42C)]

Slump Sale means transfer, by any means, of undertaking(s) for a lump sum consideration without assigning values to individual assets of such undertaking(s).

Undertaking includes any part of undertaking or a unit or division of undertaking or business activity taken as whole but does NOT include individual assets or liabilities or any combination thereof not constituting a business activity.

Computation of Capital Gain

Sale Consideration	Fair market value of capital assets as on date of transfer shall be deemed to be full value of consideration. FMV = Higher of: (i) FMV 1 — FMV of capital assets transferred (on date of slump sale); (ii) FMV 2 — FMV of consideration received or accruing as result of transfer.
Cost of Acquisition / Improvement	Net worth of the undertaking
Nature of Gain	If undertaking owned and held for not more than 36 months → Short-term capital gain; otherwise → Long-term capital gain. <i>Note: Where undertaking held for more than 36 months, treated as long-term capital asset, even if few assets newly acquired.</i>

Σ FORMULA

Net Worth = Aggregate value of total assets of undertaking – Value of liabilities of such undertaking as appearing in books of account

△ IMPORTANT

Notes on Net Worth:

- ▶ **1. Effect of Revaluation:** Change in value of assets on account of revaluation shall be **ignored**.
- ▶ **2. Aggregate value of total assets in case of:**
 - ▶ Capital asset being goodwill not acquired by purchase — **Nil**
 - ▶ Depreciable assets — **WDV of block of assets**
 - ▶ Capital assets where whole of expenditure allowed u/s 35AD — **Nil**
 - ▶ Other assets — **Book value**
- ▶ **3. Treatment of Stock:** No profit under head PGBP even if stock transferred along with other assets.
- ▶ **4. Carry-forward of losses:** Benefit of unabsorbed losses and depreciation available to **transferor company** and NOT to transferee company.

Report of an Accountant

Assessee required to upload one month prior to due date of filing return of income, a report of chartered accountant in **Form 3CEA** indicating computation of net worth of undertaking or division and certifying that net worth has been correctly arrived at in accordance with provisions of this section.

≡ CASE LAW

Key Case Law — CIT v. Equinox Solution Pvt. Ltd (2017)(SC): If an undertaking is sold as a running business with all assets and liabilities for a slump price, no part of consideration can be attributed to depreciable assets and assessed as short-term capital gain u/s 50(2).

Computation of WDV of Block of Assets in Case of Slump Sale

PARTICULARS	AMOUNT
W.D.V of block at beginning of previous year	***
Add: Purchase during the previous year	***
	MNO
Less: Sale consideration for assets sold (to maximum of MNO)	(****)
	PQR
Less: WDV (Note) of asset sold under slump sale	(ABC)
<i>[Value of deduction at this stage i.e., ABC cannot exceed PQR]</i>	XYZ
Less: Depreciation (as a % on XYZ)	(***)
WDV of block at end of year	****

Note — WDV of Asset Sold under Slump Sale

PARTICULARS	AMOUNT
Original cost of asset sold under slump sale	***
Less: Depreciation (actual) allowed on such asset in any PY commencing before 1987-88	(***)
Less: Depreciation (notional) that would have been allowable from PY 1987-88 onwards as if asset is only asset in relevant block	(***)
WDV of asset sold under slump sale	***

Key Principles — Slump Sale

★ QUICK REVISION

Points to Remember:

- ▶ ✓ **Lump sum consideration:** No value assigned to individual assets/liabilities.
- ▶ ✓ **Whole undertaking:** Includes part, unit, division or business activity.
- ▶ ✓ **Net Worth:** Aggregate asset value – Liabilities (ignore revaluation).
- ▶ ✓ **Goodwill (self-generated):** Value = Nil.
- ▶ ✓ **Depreciable assets:** WDV as per Income-tax Act.
- ▶ ✓ **Sec. 35AD assets:** Value = Nil.
- ▶ ✓ **Long-term:** If undertaking held for more than 36 months.
- ▶ ✓ **Short-term:** If undertaking held for up to 36 months.
- ▶ ✓ **Form 3CEA:** Report of Chartered Accountant required.
- ▶ ✓ **No carry forward:** Losses remain with transferor.

Mode of Computation — Capital Gain

Sale Consideration	Higher of actual consideration and FMV of capital assets transferred
Less: Expenses on transfer	Brokerage/commission etc.
= Net Sale Consideration	—
Less: Cost of Acquisition (Net Worth)	—
Less: Cost of Improvement	—
= Capital Gain	LTCG (if holding > 36 months) or STCG

5.4 Conversion of Sole Proprietary Business to Company

Transaction Not Regarded as Transfer [Sec. 47(xiv)]

Where a sole proprietary concern is succeeded by a company in business carried on by it, as a result of which sole proprietary concern sells or otherwise transfers any capital asset to company, the transaction is NOT regarded as transfer provided following conditions are satisfied:

- 1 All assets and liabilities of sole proprietary concern relating to business immediately before succession become assets and liabilities of company;
- 2 Proprietor holds not less than **50% of total voting power** in company and his shareholding continues to remain as such for period of **5 years** from date of succession; and
- 3 Sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in company.

TAXPOINT

Taxpoint:

- ▶ Transfer must have taken place as result of succession of proprietorship concern to a company.
- ▶ All assets and liabilities related to business must have been transferred.
- ▶ Whole consideration shall be paid by allotment of shares in company.
- ▶ Proprietor must hold at least 50% of total voting power of company.
- ▶ Lock-in period for above share is **5 years** from date of succession.
- ▶ Exemption available for capital gain on transfer of capital asset and **NOT on transfer of stock in trade**. If stock transferred at profit, taxable as business income.

Cost of Acquisition — Non-Depreciable Assets [Sec. 49(1)]

Where a capital asset became property of company under transfer referred to in sec. 47(xiv), cost of acquisition of asset to company shall be deemed to be cost for which previous owner (erstwhile concern) of property acquired it, as increased by cost of any improvement of assets incurred or borne by previous owner or assessee.

Allocation of Depreciation in Year of Conversion

Deduction for depreciation shall be apportioned between sole proprietary concern and company in ratio of number of days for which assets were used by them.

Carry Forward & Set-off of Losses on Conversion [Sec. 72A(6)]

Condition: Where a proprietary concern is succeeded by a company fulfilling conditions u/s 47(xiv).

Tax Treatment: Accumulated loss (non-speculative) and unabsorbed depreciation of predecessor concern shall be deemed to be loss or allowance for depreciation of successor company and provisions relating to set off and carry forward (for remaining life of loss) and allowance for depreciation shall apply accordingly.

Taxpoint: Non-speculative business loss can be carried forward by successor company for remaining life of loss.

Withdrawal of Exemption [Sec. 47A(3)]

△ IMPORTANT

On violation of conditions, exemption earlier allowed shall be withdrawn and amount of profits or gains arising from transfer of such capital asset not charged earlier shall be deemed to be profits and gains chargeable to tax of successor company for previous year in which requirements of sec. 47(xiv) are violated.

- ▶ **Withdrawal of exemption:** Benefits availed shall be deemed to be capital gain.
- ▶ **Year of taxability:** Year in which conditions are violated.
- ▶ **Who is liable:** Successor company.

Summary Table

PARTICULARS	SOLE PROPRIETOR	COMPANY
Assets & Liabilities	All transferred	All received
Consideration	Only shares	Issues shares
Shareholding	Must hold $\geq 50\%$	Proprietor holds $\geq 50\%$
Lock-in	5 years	5 years
Capital Gain	Exempt u/s 47(xiv)	N/A
Cost of Asset	Old cost carried forward	Old cost (Sec. 49(1))
Loss Carry Forward	Available to company	Available (Sec. 72A(6))

5.5 Conversion of Firm into Company

Transaction Not Regarded as Transfer [Sec. 47(xiii)]

Any transfer of a capital asset, by a firm to a company as a result of succession of firm by a company in business carried on by firm, shall NOT be regarded as transfer provided following conditions are satisfied:

- 1 All assets and liabilities of firm relating to business immediately before succession become assets and liabilities of company.
- 2 All partners of firm immediately before succession become shareholders of company in same proportion in which their capital accounts stood in books of firm on date of succession.
- 3 Partners of firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in company; and
- 4 Aggregate of shareholding in company of partners of firm is not less than **50% of total voting power** in company and their shareholding continues to be as such for period of **5 years** from date of succession.

TAXPOINT

Taxpoint:

- ▶ Transfer must have taken place as result of succession of firm to a company.
- ▶ All assets and liabilities related to business must have been transferred.
- ▶ All partners become shareholders of company in their capital ratio (as on date of succession).
- ▶ Whole consideration shall be paid by allotment of shares in company.
- ▶ Partners (altogether) must hold at least 50% of total voting power of company.
- ▶ Lock-in period for above share is **5 years** from date of succession.

Cost of Acquisition — Non-Depreciable Assets [Sec. 49(1)]

Where a capital asset became property of company under transfer referred to in sec. 47(xiii), cost of acquisition of asset to company shall be deemed to be cost for which previous owner (erstwhile firm) of property acquired it, as increased by cost of any improvement of assets incurred or borne by previous owner or assessee.

Withdrawal of Exemption [Sec. 47A(3)]

△ IMPORTANT

On violation of conditions, exemption earlier allowed shall be withdrawn and amount of profits or gains arising from transfer of such capital asset not charged earlier shall be deemed to be profits and gains chargeable to tax of successor company for previous year in which requirements of sec. 47(xiii) are violated.

- ▶ **Withdrawal of exemption:** Benefits availed shall be deemed to be capital gain.
- ▶ **Year of taxability:** Year in which conditions are violated.
- ▶ **Who is liable:** Successor company.

Carry Forward & Set-off of Losses on Conversion [Sec. 72A(6)]

Condition: Where a firm is succeeded by a company fulfilling conditions u/s 47(xiii).

Tax Treatment: Accumulated loss (non-speculative) and unabsorbed depreciation of predecessor firm shall be deemed to be loss or allowance for depreciation of successor company and provisions relating to set off and carry forward (for remaining life of loss) and allowance for depreciation shall apply accordingly.

Taxpoint: Non-speculative business loss can be carried forward by successor company for remaining life of loss.

Effect of Non-Compliance of Conditions u/s 47(xiii)

If any of conditions laid down in sec. 47(xiii) are not complied with, set off of loss or allowance of depreciation made in any previous year by successor company shall be deemed to be income of company and chargeable to tax in year in which such conditions are violated.

Comparison — Sec. 47(xiii) vs. Sec. 47(xiv)

BASIS	SEC. 47(XIII) — FIRM	SEC. 47(XIV) — PROPRIETOR
Predecessor	Firm	Sole Proprietor
Shareholding threshold	Partners together hold $\geq 50\%$	Proprietor holds $\geq 50\%$
Consideration	Only shares	Only shares
Lock-in Period	5 years	5 years
Proportionality	Same as capital accounts ratio	Not applicable
Carry forward of losses	Sec. 72A(6) — Available	Sec. 72A(6) — Available
Withdrawal of exemption	Sec. 47A(3)	Sec. 47A(3)

5.6 Conversion of Private Limited Company / Unlisted Public Company into LLP

Transaction Not Regarded as Transfer [Sec. 47(xiiib)]

Any transfer of — (a) a capital asset or intangible asset by a private company or unlisted public company to a limited liability partnership (LLP); or (b) a share(s) held in company by shareholder as result of conversion of company into LLP, shall NOT be regarded as transfer, if following conditions are satisfied:

- 1 All assets and liabilities of company immediately before conversion become assets and liabilities of LLP;
- 2 All shareholders of company immediately before conversion become partners of LLP and their capital contribution and profit sharing ratio in LLP are in same proportion as their shareholding in company on date of conversion;
- 3 Shareholders of company do not receive any consideration or benefit other than by way of share in profit and capital contribution in LLP;
- 4 Aggregate of profit sharing ratio of shareholders of company in LLP shall not be less than **50%** at any time during period of **5 years** from date of conversion;
- 5 Total sales, turnover or gross receipts in business of company in any of 3 preceding PYs does not exceed **₹60 lakh**;
- 6 Total value of assets as appearing in books of account of company in any of 3 preceding PYs does not exceed **₹5 crore**; and
- 7 No amount is paid (directly or indirectly) to any partner out of balance of accumulated profit standing in accounts of company on date of conversion for period of **3 years** from date of conversion.

TAXPOINT

Note: "Private company or unlisted public company" means company as per provisions of LLP Act, 2008. "Conversion" should be in accordance with provisions of sec. 56 or 57 of LLP Act, 2008.

Withdrawal of Exemption [Sec. 47A(4)]

△ IMPORTANT

On violation of conditions, exemption earlier allowed to company or shareholder shall be withdrawn and amount of profits or gains arising from transfer of such capital asset or intangible asset or share(s) not charged earlier shall be deemed to be profits and gains chargeable to tax of successor LLP or shareholder (of predecessor company) for previous year in which requirements of sec. 47(xiiib) are violated.

- ▶ **Withdrawal of exemption:** Benefits availed shall be treated as deemed income.
- ▶ **Year of taxability:** Year in which conditions are violated.
- ▶ **Who is liable to tax:** For exemption to company — Successor LLP; For exemption to shareholder — Such shareholder.

Cost of Acquisition & Period of Holding

Cost of Acquisition of Transferred Asset in Hands of LLP

- ▶ If conditions u/s 47(xiiib) satisfied: Cost of asset in hands of company
- ▶ If conditions NOT satisfied: Value at which such asset was transferred to LLP at time of conversion

Period of Holding in Hands of LLP

Period of holding will continue. Holding period of previous owner shall be considered.

Carry Forward & Set-off of Losses on Conversion into LLP [Sec. 72A(6A)]

Condition: Where private company or unlisted public company is succeeded by LLP fulfilling conditions laid down in proviso to sec. 47(xiiib).

Tax Treatment: Accumulated loss (non-speculative) and unabsorbed depreciation of predecessor concern shall be deemed to be loss or allowance for depreciation of successor firm and provisions relating to set off and carry forward (for remaining life of loss) and allowance for depreciation shall apply accordingly.

Taxpoint: Non-speculative business loss can be carried forward by successor firm for remaining life of loss.

Capital Gain on Buy Back of Own Securities [Sec. 46A]

Buy back shall be considered as transfer for its holder and shall be treated as under: Sale consideration = **Nil**; Cost of acquisition/improvement = As usual; Taxable in year when securities purchased by company.

Taxpoint: Money received by shareholder on account of buyback of shares shall be treated as **dividend income** in hands of shareholder and taxable under head "Income from Other Sources", without considering any expenses. The assessee may have nil or negative income under head Capital Gains on buy back of shares. Such loss can be adjusted with capital gain and unabsorbed capital loss shall be carry forward u/s 74.

5.7 Other Provisions

Succession to Business Otherwise than on Death [Sec. 170]

Where a person carrying on any business or profession (predecessor) has been succeeded therein by any other person (successor) who continues to carry on that business or profession:

- 1 (a) The predecessor shall be assessed in respect of income of previous year in which succession took place up to date of succession;
- 2 (b) The successor shall be assessed in respect of income of previous year after date of succession.

TAXPOINT

Taxpoint:

- ▶ When predecessor cannot be found, assessment of income of PY in which succession took place up to date of succession and of PY preceding that year shall be made on successor.
- ▶ Where there is succession, assessment or reassessment or any other proceedings, made or initiated on predecessor during pendency of such succession, shall be deemed to have been made or initiated on successor.
- ▶ **"Pendency"** means period commencing from date of filing of application for succession of business before High Court or tribunal or date of admission of application for corporate insolvency resolution by Adjudicating Authority u/s 5(1) of IBC, 2016 and ending with date on which order is received by PCIT/CIT.
- ▶ When any sum payable under this section cannot be recovered from predecessor, AO shall record finding and sum shall thereafter be payable by and recoverable from successor, and successor shall be entitled to recover from predecessor any sum so paid.

Effect of Order of Tribunal or Court in Business Reorganisation [Sec. 170A]

Filing of Modified Return: In case of business reorganisation, where prior to date of order of High Court or tribunal or Adjudicating Authority, any return of income has been furnished by an entity to which such order applies u/s 139, successor shall furnish, within period of **6 months** from end of month in which order was issued, a modified return in form **ITR-A** and manner, as may be prescribed, in accordance with and limited to said order.

Completed Proceedings

Where assessment/reassessment proceedings for AY relevant to PY to which order applies have been completed on date of furnishing of modified return, AO shall pass order modifying total income of relevant AY determined in such assessment/reassessment, in accordance with such order and taking into account modified return so furnished.

Pending Proceedings

Where assessment/reassessment proceedings are pending on date of furnishing of modified return, AO shall pass order assessing/reassessing total income of relevant AY in accordance with order of business reorganisation and taking into account modified return so furnished.

Other Provisions

Save as otherwise provided in this section, in assessment/reassessment made in respect of AY, all other provisions of this Act shall apply and tax shall be chargeable at rate or rates as applicable to such AY.

TAXPOINT

Definitions:

- ▶ **Business reorganisation** means reorganisation of business involving amalgamation or demerger or merger of business of one or more persons.
- ▶ **Successor** means all resulting companies in a business reorganisation, whether or not company was in existence prior to such business reorganisation.

Capital Gain on Buy Back of Own Securities [Sec. 46A]

Buy back shall be considered as a transfer for its holder and shall be treated as under:

PARTICULARS	TREATMENT
Sale consideration	Nil
Cost of acquisition / Cost of improvement	As usual
Taxable	In year when such securities are purchased by company

Taxpoint: Money received by a shareholder on account of buyback of shares shall be treated as **dividend income** in hands of shareholder and taxable under head "Income from Other Sources", without considering any expenses.

Solved Illustrations — Step by Step

ILLUSTRATION

Illustration 1: Amalgamation — Cost of Acquisition of Shares

Facts: Mr. Joseph has 1,000 equity shares of X Ltd. acquired on 17/08/2007 through will of his father. His father acquired these shares on 17/07/2004 through gift from his father-in-law (Mr. Z). Mr. Z acquired such shares on 18/08/2000 for ₹20 each. FMV as on: 1/04/2001 — ₹18 each; 17/07/2004 — ₹25 each; 17/08/2007 — ₹40 each.

On 31/03/2013, X Ltd. amalgamated with Y Ltd. and amalgamated company issued 3 equity shares for every two equity shares of amalgamating company. On 2/10/2025, Mr. Joseph sold 1,000 shares of Y Ltd. to one of his friends for ₹75 each. Compute capital gain.

RULE / CONCEPT

Rules Applied: (i) Sec. 49(2) — Cost of shares in amalgamated company = Cost of shares in amalgamating company. (ii) Sec. 2(42A) — Holding period = Aggregate of periods. (iii) Sec. 49(1) — "Previous owner" means last owner who acquired asset for value.

Step 1: Determine Nature of Capital Asset

Shares acquired in 2000 (Mr. Z) → Amalgamation in 2013 → Sale in 2025. Holding period > 24 months → **Long-term capital asset**

Step 2: Determine "Previous Owner"

Mr. Joseph acquired through will → Father acquired through gift → Mr. Z acquired for value (₹20 each). Therefore, Mr. Z is the "Previous Owner".

Step 3: Compute Cost of Acquisition of Y Ltd. Shares

Cost of shares of X Ltd. (1,000 shares @ ₹20) = **₹20,000**

Shares received on amalgamation of Y Ltd. = **1,500 shares**

Cost per share of Y Ltd. = ₹20,000 ÷ 1,500 = **₹13.33**

✓ SOLUTION

Computation of Capital Gains — A.Y. 2026-27:

PARTICULARS	WORKINGS	AMOUNT (₹)
Sale consideration	1,000 × ₹75	75,000
Less: Expenses on transfer	Nil	—
Net Sale Consideration		75,000
Less: Cost of acquisition	1,000 × ₹13.33	(13,330)
Less: Cost of improvement	Nil	—
Long Term Capital Gain		61,670

ILLUSTRATION

Illustration 2: Demerger — Cost of Acquisition of Shares

Facts: Dona purchases 600 equity shares in XY (P) Ltd. on 1-04-2025 @ ₹150 each. On 31-12-2025, XY (P) Ltd. is demerged. Division Y was transferred to Y (P) Ltd. (resulting company). Balance sheet of XY (P) Ltd.:

LIABILITIES	DIVISION X (₹)	DIVISION Y (₹)	TOTAL (₹)
6,000 E. Shares	—	—	6,00,000
General Reserve	—	—	4,00,000
Loan (General)	—	—	2,00,000
Loan (Specific)	60,000	75,000	1,35,000
Creditors	25,000	40,000	65,000

ASSETS	DIVISION X (₹)	DIVISION Y (₹)	TOTAL (₹)
Land	—	2,50,000	2,50,000
Plant	1,75,000	1,00,000	2,75,000
Investment	2,50,000	—	2,50,000
Stock	1,95,000	2,30,000	4,25,000
Debtors	55,000	45,000	1,00,000
Cash and Bank	25,000	75,000	1,00,000

Y (P) Ltd. issued equity shares of ₹100 each (at par) to shareholders of XY (P) Ltd. on proportionate basis.

RULE / CONCEPT

Rules Applied: (i) Sec. 49(2C) — Cost of shares in resulting company = Cost of original shares × (NBV of assets transferred / Net worth). (ii) Sec. 49(2D) — Cost of original shares reduced by cost of shares of resulting company. (iii) Net worth = Paid-up capital + General reserve.

✓ SOLUTION

(a) Number of shares of Y (P) Ltd. received by Dona:

PARTICULARS	AMOUNT (₹)
Net asset taken over by Y (P) Ltd.	4,85,000
No. of shares issued by Y (P) Ltd. (₹4,85,000 ÷ ₹100)	4,850 shares
% of Dona's holding in XY (P) Ltd. (600/6,000)	10%
No. of shares allotted to Dona (10% × 4,850)	485 shares
Cost of shares in Y (P) Ltd.	₹43,650

Working: Cost = (600 × ₹150) × ₹4,85,000 / (₹6,00,000 + ₹4,00,000) = ₹90,000 × 4,85,000 / 10,00,000 = **₹43,650**

(b) Cost of acquisition of shares of XY (P) Ltd. (after demerger): = ₹90,000 – ₹43,650 = **₹46,350**

(c) Capital Gain — A.Y. 2026-27:

PARTICULARS	XY (P) LTD. (₹)	Y (P) LTD. (₹)
Sale Consideration	200 × ₹125 = 25,000	100 × ₹110 = 11,000
Less: Cost of acquisition	₹46,350 × 200/600 = 15,450	₹43,650 × 100/485 = 9,000
Short Term Capital Gain	9,550	2,000

Note: Holding period < 24 months (acquired 1-04-2025 and sold 31-03-2026) → Short Term Capital Gains.

ILLUSTRATION

Illustration 3: Slump Sale — Capital Gain Computation

Facts: X Ltd. sold one of its undertakings for lump sum ₹300 lacs without assigning value to individual assets. FMV of capital asset of that unit is ₹350 lacs. Book value of sundry assets and liabilities:

ITEMS	BOOK VALUE
Land	₹50 lacs (Value for Stamp duty ₹70,00,000)
Machinery	₹70 lacs (WDV as per IT Act ₹60 lacs)
Furniture	₹50 lacs (WDV as per IT Act ₹90 lacs)
Stock	₹30 lacs
Debtors	₹40 lacs
Creditors	₹50 lacs

Brokerage on transfer paid @ 5%. Compute capital gain.

RULE / CONCEPT

Rules Applied: (i) Sec. 2(42C) — Slump sale. (ii) Sec. 50B — Capital gain = FMV of consideration (higher of actual/FMV) – Net worth. (iii) Revaluation ignored. (iv) Land — Book value; Depreciable assets — WDV as per IT Act.

Step 1: Calculate Cost of Acquisition (Net Worth)

PARTICULARS	WORKINGS	AMOUNT (₹ LACS)
Land	Book value of non-depreciable asset	50
Stock	Book value of non-depreciable asset	30
Debtors	Book value of non-depreciable asset	40
Machinery	WDV as per IT Act	60
Furniture	WDV as per IT Act	90
Total Assets		270
Less: Creditors	Book Value	(50)
Net Worth (Cost of Acquisition)		220

Step 2: Compute Capital Gains

PARTICULARS	DETAILS (₹ LACS)	AMOUNT (₹ LACS)
Sale Consideration (higher of actual consideration and FMV)	Higher of ₹300L and ₹350L	350
Less: Expenses on transfer	5% of ₹300 lacs	(15)
Net Sale Consideration		335
Less: Cost of Acquisition (Net Worth)		(220)
Less: Cost of improvement	Nil	—
Long Term Capital Gain		115

✓ SOLUTION

Conclusion: Since undertaking was owned for more than 3 years, gain is Long Term Capital Gain. **LTCG = ₹115 lacs**

ILLUSTRATION

Illustration 4: Slump Sale — WDV of Block of Assets

Facts: M/s AP a wholesale enterprise, has sold one of its undertaking consisting of Machinery A (rate 30%), Machinery X (rate 15%), Building B (rate 10%) for ₹15,00,000 on 1/9/2025.

- ▶ Machinery A, originally acquired for ₹5,00,000 on 1/8/2022
- ▶ Building B acquired on 17/7/2025 for ₹4,00,000
- ▶ During the year, new machinery Z (15%) purchased for ₹5,00,000 on 7/7/2025

Compute depreciation for A.Y. 2026-27:

- ▶ Machinery (rate 30%) block [WDV as on 1/4/2025 is ₹9,00,000]
- ▶ Building (rate 10%) block [WDV as on 1/4/2025 is ₹5,00,000]

RULE / CONCEPT

Rules Applied: (i) WDV of block = Opening WDV + Purchases – Sale consideration (limited) – WDV of assets sold – Depreciation. (ii) Depreciation calculated on remaining block at prescribed rate.

Step 1: Compute WDV of Machinery A (30% block)

PARTICULARS	MACHINERY A (₹)
Original cost	5,00,000
Less: Depreciation 2022-23 (15%)	(75,000)
Less: Depreciation 2023-24 (30%)	(1,27,500)
Less: Depreciation 2024-25 (30%)	(89,250)
WDV of Machinery A on 1/4/2025	2,08,250

Step 2: Computation of Depreciation

PARTICULARS	MACHINERY (30%) (₹)	BUILDING (10%) (₹)
W.D.V. as on 1/4/2025	9,00,000	5,00,000
Add: Purchase during the year	—	4,00,000
Total	9,00,000	9,00,000
Less: Sale under slump sale (Working)	(1,71,500)	(4,00,000)
Balance	7,28,500	5,00,000
Depreciation	2,18,550	50,000

✓ SOLUTION

Working — WDV of asset sold under slump sale:

PARTICULARS	MACHINERY A (₹)	BUILDING B (₹)
Original cost of asset sold	5,00,000	4,00,000
Less: Depreciation (notional) as if only asset in block	3,28,500*	Nil
WDV of asset sold	1,71,500	4,00,000

* Depreciation: ₹1,50,000 (2022-23, half year) + ₹1,05,000 (2023-24) + ₹73,500 (2024-25) = ₹3,28,500

ILLUSTRATION

Illustration 5: Conversion of Firm into Company (Sec. 47A(3))

Facts: M/S ABC converted itself into a company as on 31/12/2025. Balance sheet of firm:

LIABILITIES	AMOUNT (₹)	ASSETS	AMOUNT (₹)
A's Capital	40,000	Machinery (WDV as per IT Act)	1,00,000
B's Capital	1,10,000	Investments (acquired 14/08/2004)	50,000
C's Capital	50,000	Stock	70,000
Creditors	1,00,000	Debtors	60,000
—	—	Bank	20,000
Total	3,00,000	Total	3,00,000

Following value agreed upon conversion: Machinery ₹1,20,000; Investments ₹2,50,000; Stock ₹90,000; Debtors ₹60,000.

The firm fulfilled all conditions of sec. 47(xiii) and partners accounts settled by way of issuing equity shares in their capital ratio. However, on 01/12/2026, all partners transferred all of their shares. Show tax treatment.

RULE / CONCEPT

Rule Applied — Sec. 47A(3): Where any of conditions laid down in sec. 47(xiii) are not complied with, gain exempted u/s 47(xiii) shall be charged to tax in hands of successor company in PY in which requirements are violated. One condition: partners of old firm cannot transfer shares of successor company till 5 years.

✓ SOLUTION

Computation of taxable income in hands of successor company for A.Y. 2027-28:

PARTICULARS	INVESTMENTS (₹)	MACHINERY (₹)
Sale consideration	2,50,000	1,20,000
Less: Cost of acquisition (book value)	(50,000)	—
Less: Cost of acquisition (being WDV)	—	(1,00,000)
Long Term Capital Gain	2,00,000	—
Short Term Capital Gain	—	20,000

Note: Profit on transfer of stock by firm to company (₹20,000 being ₹90,000 – ₹70,000) is taxable as business income of firm for A.Y. 2026-27.

Illustration 6: Depreciation on Conversion of Proprietary Concern

Facts: M/s. QQ Trading Co. a sole proprietary concern, converted into a company w.e.f. 01-09-2025. Before conversion, sole proprietary concern had a block of Plant & Machinery (15%), WDV as on 1-4-2025 = ₹3,00,000. On 1st April, new plant purchased for ₹1,20,000. After conversion, company purchased same type of plant on 1-1-2026 for ₹1,60,000. Compute depreciation allocated between concern & company.

RULE / CONCEPT

Rule Applied: Depreciation apportioned between proprietary concern and company in ratio of number of days for which assets used by them.

✓ SOLUTION

Step 1: Compute Depreciation if No Succession

PARTICULARS	PLANT & MACHINERY (₹)
W.D.V. as on 1/4/2025	3,00,000
Add: Purchase during the year	1,20,000
Less: Sale during the year	Nil
Depreciation @ 15%	63,000

Step 2: Allocation Between Concern & Company

PARTICULARS	DAYS	AMOUNT (₹)
Ex-Sole Proprietary: 1/4/2025 to 31/8/2025 (153 days)	153	$63,000 \times 153/365 = 26,408$
Successor Company: 1/9/2025 to 31/3/2026 (212 days)	212	$63,000 \times 212/365 = 36,592$
Total on assets held as on 1/4/2025		63,000

After Conversion: Depreciation on new plant purchased by successor company on 1/1/2026 = 50% of 15% on ₹1,60,000 = ₹12,000

Total Depreciation — Successor Company = ₹36,592 + ₹12,000 = ₹48,592

Depreciation — Sole Proprietary Concern = ₹26,408

ILLUSTRATION

Illustration 7: Amalgamation — Depreciation in Hands of Amalgamated Company

Facts: Smile Ltd. is a wholly-owned subsidiary of Happy Ltd. (Indian company). Smile Ltd. owns Plant-A and Plant-B (rate 40%, depreciated value ₹3,00,000 on 1-4-2025). Plant-B was purchased on 10-11-2023 (cost ₹70,000). Plant-B transferred by Smile Ltd. to Happy Ltd. on 14-12-2025 for ₹20,000. Put to use by Happy Ltd. same day. Happy Ltd. owns Plant-C on 1-4-2025 (rate 40%, depreciated value ₹60,000). Find out depreciation in hands of Smile Ltd. and Happy Ltd. for A.Y. 2026-27.

RULE / CONCEPT

Rules Applied: (i) Exp. 2 to Sec. 43(6) — Cost of block in hands of amalgamated company = WDV of block of amalgamating company.
(ii) Depreciation apportioned in ratio of days.

✓ SOLUTION

Depreciation in hands of Smile Ltd.:

PARTICULARS	AMOUNT (₹)
Depreciated value of Plant A and B on 1st April, 2025	3,00,000
Less: Plant B transferred to Happy Ltd.	(20,000)
WDV as on 31st March, 2026	2,80,000
Depreciation for block P.Y. 2025-26	1,12,000
WDV at end of year	1,38,000

Depreciation in hands of Happy Ltd.:

PARTICULARS	AMOUNT (₹)
Depreciated value of block on 1st April, 2025	60,000
Add: Actual Cost of Plant B acquired from Smile Ltd.	33,600
WDV as on 31st March, 2026	93,600
Depreciation on transferred asset [$₹33,600 \times \frac{1}{2} \times 40\%$]	6,720
Other Asset @ 40% of ₹60,000	24,000
Total Depreciation	30,720

Note — Actual Cost of Plant B in hands of Happy Ltd.:

PARTICULARS	AMOUNT (₹)
Actual Cost of Plant B in hands of Smile Ltd on Nov 10, 2023	70,000
Less: Depreciation for P.Y 2023-24 ($\frac{1}{2}$ of 40% of ₹70,000)	(14,000)
Balance on April 1, 2024	56,000
Less: Depreciation for P.Y. 2024-25	(22,400)
Balance on April 1, 2025	33,600

ILLUSTRATION

Illustration 8: Slump Sale — Comprehensive Case Study

Facts: Laxmi Ltd. transferred its Unit X to Amin Ltd. by way of slump sale on 31st December, 2025. Balance sheet of Laxmi Ltd.:

LIABILITIES	₹ IN LAKHS	ASSETS	₹ IN LAKHS
Share capital-paid up	2,000	Fixed Assets:	
Reserves and Surplus	950	Unit X	700
Liabilities:		Unit Y	900
Unit X	400	Unit Z	1,200
Unit Y	600	Other Assets:	
Unit Z	1,050	Unit X	650
—	—	Unit Y	750
—	—	Unit Z	800
Total	5,000	Total	5,000

Additional Information:

- ▶ (i) Lump sum consideration received for transfer of Unit X = ₹1,100 lakhs.
- ▶ (ii) Fixed assets of Unit X include vacant land purchased in FY 2008-09 for ₹50 lakhs; revalued at ₹100 lakhs in 2025-26.
- ▶ (iii) Other fixed assets reflected in balance sheet ₹600 lakhs (₹700 – ₹100 land) represents WDV as per books. WDV under IT Act is ₹200 lakhs.

RULE / CONCEPT

Rules Applied: (i) Sec. 2(42C) — Slump sale. (ii) Sec. 50B — Computation of capital gain. (iii) Net worth = Aggregate value of total assets – Liabilities. (iv) Revaluation ignored. (v) Depreciable assets at WDV as per IT Act. (vi) Non-depreciable assets at book value.

Step 1: Compute Net Worth of Unit X

PARTICULARS	₹ IN LAKHS
Book value of non-depreciable asset (Land — ignoring revaluation)	50
Other assets	650
Depreciable assets — as per WDV	200
Total Assets	900
Less: Liabilities of Unit X	(300)
Net Worth of Unit X	600

Step 2: Compute Capital Gain on Slump Sale

PARTICULARS	₹ IN LAKHS
Sale consideration	1,100
Less: Net Worth	(600)
Long-term Capital Gain	500

✓ SOLUTION

Conclusion: Since Unit X was operational since 2008-09 (> 36 months), gain is Long-term Capital Gain. **LTCG = ₹500 lakhs**

Important Note: No depreciation or indexation benefit is available on slump sale. Tax audit report in Form 3CEA required.

ILLUSTRATION

Illustration 9: Conversion of Company into LLP**Facts:** Balance sheet of Handoo & Handoo (P) Ltd. as on 31/08/2025:

LIABILITIES	AMOUNT (₹)	ASSETS	AMOUNT (₹)
Equity Share capital of ₹10 each	10,00,000	Land (acquired 17/05/2007)	10,00,000
Reserves	30,00,000	Building (WDV as per IT Act)	13,00,000
—	—	Machinery (WDV as per IT Act)	6,00,000
—	—	Investments (acquired 18/08/2008)	4,00,000
—	—	Current Assets (Realizable)	7,00,000
Total	40,00,000	Total	40,00,000

Additional Information:

- ▶ (a) Company converts itself into LLP (as per sec. 47(xiiib)) on date of balance sheet.
- ▶ (b) All assets and liabilities transferred to LLP. Assets transferred at market value.
- ▶ (c) Total shareholders: 4 (each holding 25%, acquired at face value on 01-04-2001).
- ▶ (d) On 28-02-2026, LLP transferred land to Mr. Animesh for ₹63,00,000.

RULE / CONCEPT

Rules Applied: (i) Sec. 47(xiiib) — Transfer of capital asset to LLP not regarded as transfer if conditions satisfied. (ii) Sec. 49 — Cost of asset in hands of LLP = Cost in hands of company. (iii) Period of holding continues.

Step 1: Capital Gain in Hands of Company — Exempt if conditions satisfied

PARTICULARS	LAND (₹)	BUILDING (₹)	MACHINERY (₹)	INVESTMENT (₹)
Full value of consideration	50,00,000	30,00,000	10,00,000	12,00,000
Less: Cost of Acquisition	(10,00,000)	(13,00,000)	(6,00,000)	(4,00,000)
Long Term Capital Gain	40,00,000	—	—	8,00,000
Short Term Capital Gain	—	17,00,000	4,00,000	—

Note: Entire capital gain is exempt in hands of company if conversion fulfills all conditions u/s 47(xiiib). If conditions violated later, capital gain taxable in hands of LLP in year of violation.

Step 2: Consideration Received by Shareholder

PARTICULARS	AMOUNT (₹)
Total worth available for 1,00,000 shares	1,09,00,000
Received by each shareholder (25%)	27,25,000
Less: Received as Dividend (₹30,00,000 × 25%)	(7,50,000)
Received against shares	19,75,000
Less: Cost of Acquisition (₹10,00,000 × 25%)	(2,50,000)
Long Term Capital Gain	17,25,000

Note: Entire capital gain is exempt in hands of shareholder if conversion fulfills all conditions u/s 47(xiiib). Dividend separately taxable.

Step 3: Capital Gain in Hands of LLP (Sale of Land)

PARTICULARS	AMOUNT (₹)
Full value of consideration	63,00,000
Less: Cost of Acquisition (carried forward from company)	(10,00,000)
Long Term Capital Gain	53,00,000

✓ SOLUTION

Conclusion: Conversion is exempt subject to conditions u/s 47(xiiib). The LLP steps into shoes of company for cost of acquisition and period of holding. Subsequent sale of land by LLP attracts LTCG of ₹53,00,000.

★ Quick Revision Summary

★ QUICK REVISION

Key Sections — Module 5

SECTION	PARTICULARS
2(1B)	Amalgamation definition
2(19AA)	Demerger definition
2(19AAA)	Demerged company
2(41A)	Resulting company
2(42C)	Slump sale definition
35DD	Amortisation of amalgamation/demerger expenses — 1/5th for 5 years
43(1) Exp. 7A	Actual cost of asset to resulting company
43(6) Exp. 2	WDV of block in amalgamated company
43(6) Exp. 2A	WDV of block in demerged company
43(6) Exp. 2B	WDV of block in resulting company
43C(1)	Cost of asset transferred as stock-in-trade
46A	Capital gain on buy back of own securities
47(vi), (via), (viab)	Amalgamation — transfer of capital asset
47(vib), (vic), (vicc), (vid)	Demerger
47(vii)	Amalgamation — transfer of shares by shareholder
47(xiii)	Conversion of Firm into Company
47(xiv)	Conversion of Proprietary Concern into Company
47(xiiib)	Conversion of Company into LLP
47A(3)/(4)	Withdrawal of exemption
49(1)/(2)/(2C)/(2D)	Cost of acquisition — various situations
50B	Slump sale — capital gain computation
72A	Carry forward of losses in amalgamation/demerger
72A(6)/(6A)	Losses on conversion of firm/proprietary/LLP
170	Succession to business
170A	Effect of court/tribunal order in business reorganisation

★ QUICK REVISION

Key Thresholds & Timelines

PARTICULARS	THRESHOLD / TIMELINE
Amalgamation — Shareholding threshold	75% in value
Demerger — Shareholding threshold	75% in value
Foreign amalgamation — Shareholders continuing	At least 25%
Foreign demerger — Shareholders continuing	At least 3/4th (75%)
Conversion Firm/Proprietor → Company — Shareholding	At least 50%
Conversion Company → LLP — Profit sharing ratio	At least 50% for 5 years
Conversion Company → LLP — Turnover limit	₹60 lakh (any of 3 years)
Conversion Company → LLP — Asset limit	₹5 crore (any of 3 years)
Conversion Company → LLP — No payment of accumulated profit	3 years
Sec. 72A — Engagement in business	3 or more years
Sec. 72A — Holding fixed assets (amalgamating)	3/4th book value for 2 years prior
Sec. 72A — Holding fixed assets (amalgamated)	3/4th book value for 5 years
Sec. 72A — Continue business	5 years
Sec. 72A — Minimum production level (Rule 9C)	50% of installed capacity by 4 years; maintain 5 years
Slump Sale — Long term holding	More than 36 months
Lock-in period — Firm/Proprietor → Company	5 years
Lock-in period — Company → LLP	5 years
Sec. 170A — Modified Return filing	6 months from end of month of order
Sec. 35DD — Amortisation	1/5th for 5 years

Key Forms — Module 5

FORM	PURPOSE
3CEA	Report of CA for Slump Sale (Net Worth computation)
62	Certificate for Sec. 72A — Production level (Rule 9C)
ITR-A	Modified Return for Business Reorganisation (Sec. 170A)

★ QUICK REVISION

Important Case Laws

- ▶ **CIT v. Equinox Solution Pvt. Ltd (2017)(SC)** — Slump sale: No part of consideration can be attributed to depreciable assets u/s 50(2).
- ▶ **Mcdowell & Company Ltd v. CIT (2017)(SC)** — Deemed income u/s 41(1) of amalgamating company should be reduced from loss to be set off u/s 72A by amalgamated company.
- ▶ **Palam Gas Service v. CIT (2017)(SC)** — Sec. 40(a)(ia) covers cases where amount is actually paid.
- ▶ **Mother Hospital (P) Ltd v. CIT (2017)(SC)** — Lessee cannot be said to be "owner" for depreciation; lessee entitled to depreciation on cost of construction incurred by him but not on cost incurred by owner.
- ▶ **KBD Sugars and Distilleries Ltd (SC)** — Resulting entity can set off and carry forward losses of dysfunctional unit of demerged entity.

Multiple Choice Questions

1. In case of amalgamation, eligible loss of amalgamating company shall be available to the amalgamated company for: a) Remaining tenure b) Such loss shall be treated as loss of the previous year in which amalgamation took place c) 5 years d) 3 years [Ans: b]
2. In the year of restructuring, depreciation shall be: a) Available to the successor company fully b) Apportioned between successor and predecessor on the basis of number of days c) Available to the predecessor company fully d) None of the above [Ans: b]
3. Under section 2(1B), the shareholders holding not less than _____ in value of shares in the amalgamating company become shareholders of the amalgamated company: a) 50% b) 51% c) 75% d) 90% [Ans: c]
4. In case of slump sale, the cost of acquisition of the undertaking is: a) Book value of assets b) Net worth of the undertaking c) Market value of assets d) WDV of assets [Ans: b]
5. The lock-in period for the shareholding of partners in case of conversion of firm into company under section 47(xiii) is: a) 3 years b) 5 years c) 7 years d) 10 years [Ans: b]
6. In case of slump sale, the nature of gain shall be long-term if undertaking is held for more than: a) 12 months b) 24 months c) 36 months d) 48 months [Ans: c]
7. Under section 47(xiv), the sole proprietor must hold at least _____ of the total voting power in the company: a) 25% b) 50% c) 75% d) 100% [Ans: b]
8. The turnover limit for company converting into LLP should not exceed _____ in any of the 3 preceding previous years: a) ₹40 lakh b) ₹50 lakh c) ₹60 lakh d) ₹100 lakh [Ans: c]
9. The report of a chartered accountant in case of slump sale is required in Form No.: a) 3CA b) 3CB c) 3CEA d) 3CEB [Ans: c]
10. Any sum paid by a company on account of buy back of its own shares is: a) Capital gain in hands of shareholder b) Dividend income in hands of shareholder c) Business income in hands of company d) Exempt in hands of shareholder [Ans: b]

Short Essay Type Questions

- 1 Define amalgamation as per sec. 2(1B). What are the exceptions?
- 2 Analyse the effect of amalgamation on the shareholder of the amalgamating company.
- 3 Discuss the tax treatment in case of slump sale.
- 4 Explain the provisions relating to carry forward and set-off of losses in case of amalgamation [Sec. 72A].
- 5 State the conditions for conversion of a firm into a company u/s 47(xiii).
- 6 Explain the provisions relating to conversion of company into LLP u/s 47(xiiib).
- 7 Discuss the provisions of sec. 50B for computation of capital gain on slump sale.
- 8 What is the treatment of unabsorbed depreciation and business loss in case of demerger?
- 9 Explain the provisions of sec. 47A for withdrawal of exemption.
- 10 Write a short note on Sec. 170A — Effect of court/tribunal order in business reorganisation.



Comprehensive Numerical Problems

Problem 1 (Amalgamation — Cost of Shares): Mr. Rahul held 500 shares in A Ltd. acquired in 2010 for ₹25 each. In 2020, A Ltd. amalgamated with B Ltd. and issued 3 shares of B Ltd. for every 2 shares of A Ltd. In 2025-26, Mr. Rahul sold 750 shares of B Ltd. at ₹80 each. Compute capital gain.

[Hint: Cost per share of B Ltd. = ₹12,500/750 = ₹16.67; Sale = ₹60,000; Cost = ₹12,500; LTCG = ₹47,500]

Problem 2 (Slump Sale): Mr. Ketan sold one of his undertakings for ₹20,00,000 (lump sum). FMV of capital assets is ₹22,00,000. Details: Land (Book value ₹5,00,000, Stamp Duty Value ₹7,00,000); Machinery (WDV as per IT Act ₹4,00,000); Building (Book value ₹3,00,000, WDV as per IT Act ₹2,00,000); Stock ₹2,00,000; Debtors ₹3,00,000; Creditors ₹1,50,000. Transfer expenses @ 2%. Compute capital gain.

[Hint: Net worth = ₹5L + ₹4L + ₹2L + ₹2L + ₹3L – ₹1.5L = ₹14.5L; Sale = ₹22L (higher); Less 2% expenses = ₹21.56L; LTCG = ₹7.06L]

Problem 3 (Slump Sale — WDV): M/s NTP sold its Unit P (all assets) as slump sale on 31-12-2025 for ₹25,00,000. Block of Plant & Machinery (rate 15%) had WDV ₹15,00,000 as on 1-4-2025. Original cost of machinery sold was ₹10,00,000 (acquired 1-8-2019). Compute depreciation for AY 2026-27.

[Hint: Notional depreciation from 2019-20 to 2024-25 = ₹5,89,572; WDV sold = ₹4,10,428; Remaining block = ₹15L – ₹4.1L = ₹10.89L; Depreciation @ 15% = ₹1,63,500]

Problem 4 (Conversion of Firm): M/s PQR a partnership firm converted into a company. Details: Machinery (WDV ₹5,00,000, agreed value ₹6,00,000), Investments (cost ₹2,00,000, acquired 2010, agreed value ₹4,00,000), Stock (₹1,50,000, agreed value ₹2,00,000), Debtors ₹1,00,000, Creditors ₹80,000. Partners' capital ratio 40:30:30. After conversion, one partner sold his shares within 3 years. Compute tax implications.

[Hint: On violation of sec. 47(xiii), capital gain exempted earlier taxed in hands of successor company. LTCG on investments = ₹2,00,000; STCG on machinery = ₹1,00,000; Profit on stock = ₹50,000 as business income]

Problem 5 (Conversion into LLP): A private company with turnover ₹50 lakh and total assets ₹4 crore converts into LLP. Company has 3 shareholders holding 40%, 30% and 30% of shares. After 2 years, profit-sharing ratio changed to 60:20:20. Analyze the tax implications.

[Hint: Violation of sec. 47(xiiib) — Profit sharing ratio not maintained at least 50% for 5 years. Earlier exemption withdrawn u/s 47A(4). Taxable in hands of LLP / shareholders in year of violation.]

Problem 6 (Demerger): A Ltd. demerged its Textile Division to B Ltd. Details: Textile Division: Fixed assets ₹50L, Current assets ₹30L, Liabilities ₹20L. Total net worth of A Ltd. = ₹1.5 crore. A shareholder held 1,000 shares in A Ltd. acquired at ₹100 each. B Ltd. issued shares in ratio 1:2 (1 share for every 2 shares). Compute cost of shares in B Ltd. and A Ltd.

[Hint: Net asset transferred = ₹50L + ₹30L – ₹20L = ₹60L; Cost in B Ltd. = ₹1,00,000 × ₹60L/₹1.5 cr = ₹40,000; Cost in A Ltd. = ₹1,00,000 – ₹40,000 = ₹60,000]

Problem 7 (Sec. 72A — Amalgamation Losses): X Ltd. amalgamated into Y Ltd. on 1-4-2025. X Ltd. had: Speculative loss ₹5L, Unabsorbed depreciation ₹20L, Capital expenditure on scientific research ₹3L, Business loss (Non-speculative) ₹1.2 crore. Y Ltd. computed profit of ₹1.5 crore before setting off eligible losses of X Ltd. Depreciation allowed = ₹20L. What is taxable income of Y Ltd. for A.Y. 2026-27?

[Hint: Total income = ₹1.5 cr – ₹20L (current dep) – ₹1.2 cr (business loss) – ₹20L (unabs dep) = Negative. Speculative loss not allowed. Loss of ₹10L c/f to next year.]

Problem 8 (Amalgamation — Foreign Company): A US company (ABC Inc.) merged into another US company (XYZ Inc.). ABC Inc. held 40% shares in Indian company (Indian Co.). Amalgamation satisfies 30% shareholders continuity. Transaction does not attract tax in USA. Analyze tax implications in India.

[Hint: Sec. 47(via) — if at least 25% shareholders continue; transaction does not attract tax in foreign country. Here 30% > 25% and no tax in USA. Transfer of shares of Indian Co. NOT regarded as transfer. No capital gain tax.]

Problem 9 (Slump Sale with WDV): M/s ABC sold its Unit A for ₹40,00,000. Details: Land ₹8,00,000 (revalued at ₹12,00,000); Plant & Machinery WDV ₹5,00,000; Furniture WDV ₹2,00,000; Stock ₹3,00,000; Debtors ₹5,00,000; Creditors ₹4,00,000. Compute capital gain.

[Hint: Net worth = ₹8L + ₹5L + ₹2L + ₹3L + ₹5L – ₹4L = ₹19L; LTCG = ₹40L – ₹19L = ₹21L]

Problem 10 (Buy Back — Sec. 46A): Mr. Sunil held 1,000 shares of XYZ Ltd. acquired in 2015 for ₹100 each. In 2025-26, XYZ Ltd. bought back these shares at ₹500 each. Analyze the tax implications.

[Hint: Sale consideration = Nil (u/s 46A); Cost of acquisition = ₹1,00,000; Capital Loss = ₹1,00,000 (adjustable against other capital gains). Buy back proceeds ₹5,00,000 taxable as dividend income in hands of Mr. Sunil under "Income from Other Sources".]

 Case Study

ILLUSTRATION

Case Study: Comprehensive Business Restructuring Scenario

Facts: Alpha Ltd. has three divisions — P (Manufacturing), Q (Trading) and R (Services). Management is considering a restructuring plan involving:

- ▶ (a) Demerger of Division P into newly incorporated Beta Ltd.
- ▶ (b) Slump sale of Division Q for ₹50 crore
- ▶ (c) Amalgamation of Division R with Gamma Ltd.

Balance sheet details for Alpha Ltd.:

PARTICULARS	DIVISION P (₹ CR)	DIVISION Q (₹ CR)	DIVISION R (₹ CR)
Assets	80	55	60
Liabilities	20	10	15
Net Worth (Book)	60	45	45

Additional Information:

- ▶ • Division P has revalued assets by ₹15 crore (not recorded in books)
- ▶ • Division Q has WDV of depreciable assets ₹20 crore (Book value ₹30 crore)
- ▶ • Losses: Unabsorbed depreciation ₹8 crore, Business loss ₹15 crore (directly relatable to each division equally)
- ▶ • Alpha Ltd. has been in existence since 2010 (15+ years)
- ▶ • Post restructuring, Alpha Ltd. continues with no business

RULE / CONCEPT

Rules Applied: (i) Sec. 2(19AA) — Demerger conditions. (ii) Sec. 72A — Loss carry forward. (iii) Sec. 50B — Slump Sale. (iv) Sec. 47(vi) & 47(vib) — Exemptions. (v) Sec. 47A — Withdrawal of exemptions.

Issue 1: Demerger of Division P into Beta Ltd.

- ▶ All assets and liabilities transferred — ✓
- ▶ At book value (revaluation ignored) — ✓
- ▶ Shares issued to Alpha Ltd. shareholders on proportionate basis — ✓
- ▶ Shareholders holding 75%+ continue — ✓
- ▶ Going concern basis — ✓

Tax Impact: Demerger qualifies u/s 2(19AA). Transfer of capital assets NOT regarded as transfer u/s 47(vib). No capital gain.

Issue 2: Slump Sale of Division Q

Sale consideration = ₹50 cr (FMV assumed higher)
Net worth = (Assets – Depreciable assets) + WDV of dep assets – Liabilities
= (₹55 cr – ₹30 cr) + ₹20 cr – ₹10 cr = ₹25 cr + ₹20 cr – ₹10 cr = **₹35 cr**
LTCG = ₹50 cr – ₹35 cr = **₹15 cr**

Issue 3: Amalgamation of Division R with Gamma Ltd.

Conditions u/s 2(1B) must be satisfied. Since Division R is not a separate company, this is not strictly amalgamation under the Act. It may be considered as transfer of undertaking (could be slump sale or demerger).
Note: For amalgamation, both entities must be companies. If Division R is hived off into a company and then amalgamated, sec. 47(vi) applies.

Issue 4: Loss Carry Forward under Sec. 72A

Unabsorbed depreciation ₹8 cr + Business loss ₹15 cr = ₹23 cr
Since directly relatable to undertakings transferred, they can be carried forward by resulting company/demergered company based on respective undertakings.
Condition u/s 72A for demerger: Loss must be directly relatable — Resulting company can carry forward.

SOLUTION

Comprehensive Analysis:

ISSUE	SECTION	TAX IMPACT
Demerger of Division P	47(vib), 72A	Exempt; Losses carried forward by Beta Ltd.
Slump Sale of Division Q	50B	LTCG = ₹15 crore
Amalgamation of Division R	47(vi), 2(1B)	Requires corporate structure; else other provisions
Unabsorbed Depreciation & Business Loss	72A	Carried forward proportionately by respective entities

References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material

✓ Module 5 — Complete Coverage Checklist

★ QUICK REVISION

- | | |
|--|--|
| ▶ ✓ Sec. 2(1B) — Amalgamation definition | ▶ ✓ Sec. 43C(1) — Asset as stock-in-trade |
| ▶ ✓ Sec. 2(19AA) — Demerger definition | ▶ ✓ Sec. 46A — Buy back of shares |
| ▶ ✓ Sec. 2(19AAA) — Demerged company | ▶ ✓ Sec. 50B — Slump Sale |
| ▶ ✓ Sec. 2(41A) — Resulting company | ▶ ✓ Sec. 72A — Losses in amalgamation/demerger |
| ▶ ✓ Sec. 2(42C) — Slump Sale | ▶ ✓ Sec. 72A(6)/(6A) — Conversion losses |
| ▶ ✓ Sec. 47(vi)/(via)/(viab) — Amalgamation | ▶ ✓ Sec. 35DD — Amortisation expenses |
| ▶ ✓ Sec. 47(vib)/(vic)/(vicc)/(vid) — Demerger | ▶ ✓ Sec. 170 — Succession to business |
| ▶ ✓ Sec. 47(vii) — Shareholder of amalgamating co. | ▶ ✓ Sec. 170A — Business reorganisation |
| ▶ ✓ Sec. 47(xiii) — Firm → Company | ▶ ✓ Rule 9C — Production level conditions |
| ▶ ✓ Sec. 47(xiv) — Proprietor → Company | ▶ ✓ Form 3CEA — Slump sale |
| ▶ ✓ Sec. 47(xiiib) — Company → LLP | ▶ ✓ Form 62 — Sec. 72A Certificate |
| ▶ ✓ Sec. 47A(3)/(4) — Withdrawal of exemption | ▶ ✓ ITR-A — Modified Return |
| ▶ ✓ Sec. 49(1)/(2)/(2C)/(2D) — Cost of acquisition | ▶ ✓ Comparison — Amalgamation vs. Demerger |
| ▶ ✓ Sec. 43(1) Exp. 7A, 43(6) Exp. 2/2A/2B | ▶ ✓ Comparison — Sec. 47(xiii) vs. 47(xiv) |

CMA Knowledge — Direct Tax Laws & International Taxation

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Module 5: Business Restructuring

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CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

06 MODULE

Different Aspects of Tax Planning

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 6

Different Aspects of Tax Planning

Comprehensive coverage of Tax Planning, Tax Evasion, Tax Avoidance, Tax Management, Objectives, Essentials, Types, Areas of Tax Planning (Form of Organisation, Locational Aspects, Nature of Business, Corporate Restructuring, Financial Management, Employees' Remuneration, Non-Residents), Organisation Tax Planning Cells, and practical illustrations as per the official CMA Final syllabus.

Module Structure

Section A: Direct Tax Laws — Different Aspects of Tax Planning

6.1 TAX PLANNING, EVASION & AVOIDANCE	6.2 TAX PLANNING	6.3 DISTINGUISH 4 CONCEPTS	6.4 OBJECTIVES
6.5 ESSENTIALS	6.6 TYPES	6.7 AREAS OF TAX PLANNING	6.8 ORGANISATION TAX PLANNING CELLS

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6.1 Tax Planning, Tax Evasion and Tax Avoidance

Tax liability can be reduced through proper tax planning. The obvious benefit of tax planning is to reduce tax liabilities, which by extension means the individual or company retaining more money for their own needs. Businesses reducing their tax liability through tax planning can provide better returns to investors and better wages to employees. It can also spend the money otherwise payable as tax to increase working capital and thereby improve performance efficiency.

Three Methods Commonly Used by Taxpayers

Tax Planning

Legitimate, within framework of law

Tax Avoidance

Legal but uses loopholes in law

Tax Evasion

Illegal, suppresses income

▢ CASE LAW

McDowell & Co. Ltd. v. CTO (1985)(SC): "Tax planning may be legitimate provided it is within the framework of the law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay tax honestly without resorting to subterfuges."

Doctrine of Form and Substance

- 1. Form of Transaction in Genuine Transactions:** When a transaction is arranged in one form known to law, it attracts tax liability; if entered in another equally lawful form, it may not. In genuine transactions, the form is considered. This rule doesn't apply where the transaction is colourable or a mere device. [*Motor and General Stores (P) Ltd. v. CIT (1967)*]
- 2. True Legal Relation is Crucial:** The taxing authority is entitled and bound to determine the true legal relation resulting from a transaction. The true legal relation alone determines taxability. [*CIT v. B.M. Kharwar (1969)(SC)*]
- 3. Substance is Relevant, Not Form:** In determining whether expenditure is revenue or capital, substance should be looked into. [*Assam Bengal Cement Co. Ltd. v. CIT (1955)(SC)*]. Where shares were held in others' names but the deceased was real owner, the substance prevailed. [*CED v. Alope Mitra (1980)*]

Tax Evasion

⚠ IMPORTANT

Tax evasion is the **illegal way** to reduce tax liability by deliberately suppressing income or sales or by increasing expenses, etc., which results in the reduction of the total income of the assessee. Dishonest taxpayers try to reduce their taxes by:

- ▶ Concealing income
- ▶ Inflation of expenses
- ▶ Submitting misleading information
- ▶ Falsification of accounts
- ▶ Willful violation of provisions of the Income-tax Act

Tax department not only imposes huge penalties but also initiates prosecution. It is illegal, both in script & moral. It leads to creation of a 'resource crunch' for developmental activities of the State.

Tax Avoidance

💡 TAXPOINT

Tax avoidance is an exercise by which the assessee **legally** takes advantage, with malafide motive, of loopholes in the Act. It is minimizing the incidence of tax by adjusting the affairs in such a manner that although it is within the four corners of the laws, it is done with the purpose to defraud the revenue. It is a practice of **dodging or bending the law without breaking it**.

Example: If A gives gift to his wife, income from asset gifted will be clubbed in hands of A. But to avoid this clubbing provision, A gives gift to B's wife and B reciprocates by giving gift to A's wife. This is not tax planning but tax avoidance.

Direct Taxes Enquiry Committee (Wanchoo Committee): "The distinction between 'evasion' and 'avoidance' is largely dependent on the difference in methods of escape resorted to. Some are instances of merely availing, strictly in accordance with law, the tax exemptions or tax privileges offered by the government. Others are maneuvers involving an element of deceit, misrepresentation of facts, falsification of accounting calculations or downright fraud. The first represents what is truly tax planning, the latter tax evasion. However, between these two extremes, there lies a vast domain for selecting a variety of methods which, though technically satisfying the requirements of law, in fact circumvent it with a view to eliminate or reduce tax burden. It is these methods which constitute 'tax avoidance'."

Judicial Views — Line of Demarcation

CASE	OBSERVATION
Helvering v. Gregory (1934)	"Anyone may so arrange his affairs that his taxes shall be as low as possible. He is not bound to choose that pattern which will best pay the Treasury."
IRC v. Duke of Westminster (1936)	"Taxpayer is entitled to so arrange his affairs that the tax under the appropriate Act is less than what otherwise it could be."
CIT v. Raman & Co. (1968)	"Avoidance of tax liability by so arranging commercial affairs that the charge of tax is distributed, is not prohibited."
McDowell & Co. Ltd. v. CTO (1985)(SC)	"Time has come for us to depart from Westminster principle... Colourable devices cannot be part of tax planning."

6.2 Tax Planning

Tax law reflects the complexity of modern life and the multitude of choices and options available to all taxpayers when legitimately seeking to structure their affairs. This necessary offer of options within tax legislation creates the opportunity for choice on the part of the taxpayer and means that determining the right amount of tax (but no more) that they seek to pay necessarily requires the exercise of judgement on occasion.

Tax planning is a systematic evaluation of finances and investments, to reduce the tax burden in a legitimate way. It involves understanding the tax implications of various cash inflows and outflows such as salary composition, property income, home loan, investments, sale or purchase of assets, gifts and interest-bearing deposits, to draw up an appropriate investment strategy that allows realization of financial goals while at the same time reducing tax liability to minimum.

It is a way to reduce tax liability by taking full advantages provided by the Act through various exemptions, deductions, rebates & relief. In other words, it is a way to reduce tax liability by applying **script & moral of law**.

Two Basic Approaches of Tax Planning

1. Reducing Taxable Income

As a rule, higher the income or profit, higher the tax liability. Gross income is total profits/income from all sources, and taxable income is gross income less adjustments allowable under various tax laws. Opting for income or expenditure heads that allow maximum set-offs from gross income reduces taxable income and by extension tax liability.

2. Deferring Payment of Taxes

Timing investments and financial transactions so that tax liability arises at the farthest possible time. While this does not reduce the amount of tax payable, it delays tax outgo, thereby effectively providing interest-free cash on hand. Valuable for small businesses facing cash flow difficulties.

TAXPOINT

Goal of Tax Planning: To arrange financial affairs so as to minimize taxes. It is planning so as to attract minimum tax liability or postponement of tax liability for the subsequent period by availing various incentives, concessions, allowance, rebates and relief provided in the Act.

CASE LAW

Key Judicial Observations on Tax Planning:

- ▶ **IRC v. Fishers Executors (1958):** "The highest in authority have always recognized that the subject is entitled so to arrange his affairs as not to attract taxes imposed by the Crown, so far as he can do so within the law."
- ▶ **Smt. C. Kamala v. CIT (1978):** "It is quite possible that when a transaction is entered into in one form known to law, the amount received under that transaction may attract liability under the Act and if it is entered into in another form which is equally lawful, it may not attract such tax liability."
- ▶ **CWT v. Arvind Narotham (1988):** "One would wish... that one could get the enthusiasm... that taxes are the price of civilization and one would like to pay that price to buy civilization."
- ▶ **Latilla v. IRC (1943):** "One result of such methods, if they succeed, is of course to increase pro tanto the load of tax on the shoulder of the body of good citizens who do not desire or do not know how to adopt these maneuvers."

6.3 Distinguish between Tax Planning, Tax Evasion, Tax Avoidance & Tax Management

POINTS	TAX PLANNING	TAX AVOIDANCE	TAX EVASION	TAX MANAGEMENT
Definition	Way to reduce tax liability by taking full advantages provided by the Act through exemptions, deductions, rebates & relief.	Exercise by which assessee legally takes advantage of loopholes in the Act.	Illegal way to reduce tax liability by deliberately suppressing income or sale or by increasing expenses.	Procedure to comply with the provisions of the law.
Feature	Practice to follow provisions of law within moral framework.	Practice of bending the law without breaking it.	Illegal, both in script & moral.	Implementation or execution part of taxation department of an organisation.
Object	Reduce tax liability by applying script & moral of law.	Reduce tax liability to minimum by applying script of law only.	Reduce tax liability by applying unfair means.	Comply with provisions of laws.
Approach	Futuristic and positive in nature. Planning made today to avail benefits in future.	Futuristic but short term in nature, as loophole will be corrected in future by amendments.	Concerned with past and applied after liability has arisen. Done with negative approach.	Continuous approach, concerned with past (rectification, revisions), present (filing of return) & future (corrective action).
Benefit	Generally arises in long run.	Generally arises in short run.	Benefits do not arise but cause penalty and prosecution.	Penalty, interest & prosecution can be avoided.
Treatment of Law	Uses benefits of the law.	Uses loopholes in the law.	Overrules the law.	Implements the law.
Practice	Tax saving.	Tax hedging.	Tax concealment.	Tax administration.
Need	Desirable	Avoidable	Objectionable	Essential.
Morality	Moral in nature.	Immoral in nature.	Illegal.	Duty.

★ QUICK REVISION

Key Takeaway: Tax planning is legitimate and desirable. Tax avoidance, while legal, is frowned upon and increasingly curbed by anti-avoidance provisions. Tax evasion is illegal and attracts penalties & prosecution. Tax management is the compliance function that ensures all legal obligations are met on time.

6.4 Objectives of Tax Planning

The basic objectives of tax planning are:

a. Reduction of Tax Liability	Tax law provides multiple choices and options to taxpayers. Through proper tax planning and awareness, a taxpayer may reduce heavy tax burden.
b. Minimisation of Litigation	Where proper tax planning is adopted in conformity with provisions of taxation laws, incidence of litigation can be minimised. Saves from hardships and inconveniences caused by unnecessary litigations.
c. Productive Investment	Reduction in cash-outflow. Proper tax planning is a measure of proper utilisation of available resources which in turn maximises cash-inflow and minimises tax burden.
d. Healthy Growth of Economy	Saving of earnings by legally sanctioned devices fosters growth. Tax planning measures generate white money having a free flow and generation without reservations for overall progress of the nation.
e. Economic Stability	Results in economic stability by way of: (i) productive investments by taxpayers; and (ii) harnessing of resources for national projects aimed at general prosperity of national economy and reaping of benefits even by those not liable to pay tax on their incomes.

6.5 Essentials of Tax Planning

 UP-TO-DATE KNOWLEDGE	 TRUE DISCLOSURE	 NO COLOURABLE DEVICE	 ALIGN WITH FUTURE GOAL
Up-to-date Knowledge	Of tax laws along with circulars, notifications, clarifications and administrative instructions issued by the CBDT.		
Disclosure of Full & True Material Information	All material facts must be fully and truly disclosed.		
Avoid Sham Transactions	Avoid make-believe transactions or colourable devices.		
Foresight of Future Development	Foresight of future development or changes and enterprise's goal. The planning should be flexible enough to adjust statutory negation.		

TAXPOINT

Taxpoint: Tax planning must be within the framework of law and should not involve colourable devices. The Apex Court has clearly stated that colourable devices cannot be part of tax planning.

6.6 Types of Tax Planning

The tax planning exercise ranges from devising a model for specific transactions as well as for systematic corporate planning. These are:

(a) Short-range and Long-range Tax Planning	Short-range planning: Refers to planning to achieve some specific or limited objective of particular fiscal year. E.g., an individual assessee whose income is likely to register unusual growth in a particular year may plan to subscribe to PPF/NSC's within prescribed limits to enjoy substantive tax relief. By investing in such a way, he is not making permanent commitment but is substantially saving in tax. Long-range planning: Involves entering into activities which may not pay-off immediately. E.g., when an assessee transfers his equity shares to his minor son, he knows that income from shares will be clubbed with his own income. But clubbing would also cease after his son attains majority.
(b) Permissive Tax Planning	Tax planning under the express provisions of tax laws. Tax laws of our country offer many exemptions and incentives.
(c) Purposive Tax Planning	Based on circumvention of the law. The permissive tax planning has express sanction of the Statute while purposive tax planning does not carry such sanction. E.g., if an assessee manages his affairs in such a way that his income is taxable in hands of another person without attracting clubbing provision, such a plan would work in favour of the tax payer because it would increase his disposable resources.

RULE / CONCEPT

Understanding the Types:

- ▶ **Short-range:** Specific objective, particular fiscal year, immediate benefit (e.g., PPF/NSC investment).
- ▶ **Long-range:** Future benefit, involves activities that may not pay-off immediately (e.g., transfer shares to minor son).
- ▶ **Permissive:** Express sanction of law — exemptions & incentives offered by statute.
- ▶ **Purposive:** Circumvention of law — not expressly sanctioned but within legal boundaries.

★ QUICK REVISION

Quick Recap:

- ▶ ✓ Tax planning is futuristic and positive in nature.
- ▶ ✓ Short-range planning targets specific fiscal year objectives.
- ▶ ✓ Long-range planning involves future benefits that may not be immediate.
- ▶ ✓ Permissive planning uses express provisions of tax laws.
- ▶ ✓ Purposive planning circumvents the law without breaking it.

6.7 Areas of Tax Planning

Some of the important areas where planning can be attempted in an organised manner are as under:

AREA	KEY FOCUS
(a) Form of organisation/ownership pattern	Company vs. Firm/LLP vs. Sole Proprietorship
(b) Locational aspects	SEZ, North-Eastern States, IFSC etc.
(c) Nature of business	Tea/Coffee/Rubber Development, Site Restoration, Specified business u/s 35AD, etc.
(d) Corporate restructuring	Amalgamation, Demerger, Slump Sale, Buy back, etc.
(e) Financial management	Capital structure, Lease vs. Buy, etc.
(f) Employees' remuneration	Salary structure, perquisites, retirement benefits
(g) Specific managerial decisions	Make or buy, etc.
(h) Non-Residents	Residential status, DTAA, special provisions u/s 115A etc.

6.7.1 Form of Organisation

PARTICULARS	COMPANY	FIRM OR LLP	SOLE PROPRIETORSHIP
Tax Rates	30% (in some cases lower) + surcharge + cess @ 4%. No rebate to shareholders.	30% + surcharge + cess @ 4%. Share of profit distributed to partner is exempt.	Slab rate.
Remuneration to Owner-Director	Allowed.	Allowed subject to Sec. 40(b).	Not an allowable expenditure.
Distribution of Income	Distributed income taxable in hands of shareholder.	Share of profit exempt from tax.	N.A.
Specific Business Expenditure	Expenditure u/s 36(1)(ix) allowable only in company assessee.	Apart from sec. 40(b), no other restriction.	Interest on loan/remuneration to proprietor not allowable.
Separate Assessee	Yes, separate from shareholders.	Yes, separate from partners.	No, not separate.
Decision Making	Requires proper meeting, long procedure → delay possible.	Partners meet frequently → no delay.	Owner only → no delay.
Risk Taking Capacity	High, once approved by governing body.	Less, as every important decision needs concurrence of all partners.	Depends on owner's ability.
Raising Additional Capital	Can raise large capital by issuing shares.	By introducing new partner or existing partners.	Personal limitation.
Loan-Fund	Perpetual succession → lenders happy.	Number of partners & joint liability → lenders more interested.	Personal limitation.
Limited Liability	Shareholder not liable beyond shares amount.	Partners have unlimited liability (subject to certain cases).	Unlimited liability.
Liability of Owner	Owners not liable for act of governing body.	Partners liable for act of another partner.	N.A.
Size of Business	No limitation for public company.	Maximum 20 partners — not suitable for large scale.	Not suitable for large scale.

6.7.2 Locational Aspects

There are certain locations which are given special tax treatment. Some of these are as under:

- ▶ Unit located in Special Economic Zone (SEZ) is eligible for exemption u/s 10AA for several number of years.
- ▶ In respect of certain undertakings in North-Eastern States is eligible for deduction u/s 80-IE.
- ▶ In respect of unit located in SEZ deduction is available u/s 80-LA.

TAXPOINT

Taxpoint: Location-specific incentives are a key tool for tax planning. Businesses can choose to set up units in areas offering tax holidays or deductions to significantly reduce their tax liability.

6.7.3 Nature of Business

There are certain businesses which are granted special tax treatment. Some of them are as follows:

SECTION	NATURE OF BUSINESS
Sec. 33AB	Tea Development Account, Coffee Development Account and Rubber Development Account
Sec. 33ABA	Site Restoration Fund
Sec. 35AD	Specified business eligible for deduction of Capital Expenditure
Sec. 36(1)(viii)	Special reserve created by a financial corporation
Sec. 42 & 44BB	Business for prospecting for mineral oil
Sec. 44AD	Presumptive taxation for eligible business
Sec. 44AE	Business of plying, hiring or leasing goods carriages
Sec. 44B	Shipping business in case of non-residents
Sec. 44BBA	Business of operation of aircraft
Sec. 44BBB	Certain turnkey power projects
Sec. 44D	Royalty income of foreign companies
Sec. 44DA	Royalty income of non-residents
Sec. 80-LA	Offshore Banking Units and International Financial Service Centre
Sec. 80JJA	Business of collecting and processing of bio-degradable waste
Sec. 115A, 115AB, 115AC, 115AD, 115B, 115BBA, 115BAC, 115BB, 115BA, 115D	Special tax rates for certain incomes

RULE / CONCEPT

Key Point: Sec. 10AA exemption is available only to units that commenced manufacture/provision of services on or before 31-03-2021.

6.7.4 Tax Planning relating to Corporate Restructuring

Corporate Restructuring is a process of redesigning one or more aspects of a corporate for achieving certain objectives. The objectives of restructuring may be achieving economies of scale or surviving in an adverse economic climate or restructuring of debt or for any other objectives. Such restructuring can be done through various tools. Some of them are as follow:

- ▶ Amalgamation
- ▶ Demerger
- ▶ Slump sale of business
- ▶ Buy back of shares
- ▶ Capital Reduction
- ▶ Conversion of debentures into shares
- ▶ Redemption of preference shares
- ▶ Conversion into company
- ▶ Conversion of Indian branch of foreign company into subsidiary Indian company
- ▶ Conversion of company into LLP, etc.

TAXPOINT

Taxpoint: Proper tax planning in corporate restructuring can significantly reduce the cost of restructuring. Each mode of restructuring has specific tax implications in the hands of all concerned persons (company, shareholders, etc.).

6.7.5 Tax Planning relating to Financial Management Decisions

Fund can be obtained from various sources thus their procurement is always considered as a complex problem by a business organisation. Fund procured from different sources have different characteristics in terms of risk, cost and control. Some of the sources for funds for a business enterprise are:

- ▶ **Equity:** Best from risk point of view — no repayment except under liquidation. Dividends are an appropriation of profit, not allowed as expense.
- ▶ **Debentures:** Comparatively cheaper than shares because of tax advantage — interest paid is tax deductible.

Relevant Sections

SECTION	PARTICULARS
Sec. 35D	Amortisation of preliminary expenses
Sec. 36(1)(iii)	Interest on borrowed capital
Sec. 43(1)	Actual cost of assets
Sec. 37	General Deductions
Sec. 32	Depreciation

Capital Structure — Optimal Mix

The optimum capital structure is a mix of equity capital and debt funds. Following should be considered:

- ▶ Interest on debt fund is allowed as deduction — increases rate of return on owner's equity.
- ▶ Dividend on equity fund is not allowed as deduction — appropriation of profit.
- ▶ Cost of raising owner's fund is capital expenditure — not allowed (except amortisation u/s 35D if conditions satisfied).
- ▶ Cost of raising debt fund is revenue expenditure.

Lease or Buy Decision

Lease Rental	Claimed as deduction as revenue expenditure. Depreciation on leased asset not allowed.
Depreciation	On depreciable assets can be claimed u/s 32.
Interest on Loan	For period after asset is first put to use → revenue expenditure. For period before → capitalized.
Capital Gain	On transfer of capital asset. For depreciable asset, merged in respective block.

6.7.6 Tax Planning relating to Employees' Remuneration

The following aspects should be considered:

Salary Structure	Salary should not be a consolidated one. It should be divided into basic pay and several allowances as some allowances may be fully or partially exempt from tax.
Commutated Pension	There should be an option to the employee for commuted pension up to maximum limit permissible in the Act as it is exempt from tax to certain specific limit.
Leave Encashment	Provision for encashment of leave on retirement — exempt up to prescribed limit.
Provident Fund	Employer's contribution should be at least up to 12% of salary — exempt from tax. Upper cap should be kept in mind.
Perquisites vs. Fixed Allowances	Perquisites are preferable to fixed allowances as lower valuation of many perquisites helps reduce tax liability.
Commission	Commission payable should be based on turnover and must form part of salary. This helps reduce incidence of tax in respect of House Rent Allowance, etc.
Deduction to Employer	Component of salary should be available as deduction while computing business income of employer.

 TAXPOINT

Note: These are illustrative aspects. The specific tax treatment depends on the latest provisions of the Income-tax Act and the regime opted by the employee.

6.7.7 Tax Planning relating to Non-Residents

Some of the important aspects which should be considered:

- ▶ Meaning of non-resident as per sec. 6
- ▶ Scope of income of non-resident — Sec. 5
- ▶ Income deemed to accrue or arise in India — Sec. 9
- ▶ Various exemptions available u/s 10
- ▶ Presumptive income in case of certain business — Sec. 44B, 44BBA, etc.
- ▶ Deduction in respect of head office expenditure — Sec. 44C
- ▶ Special tax treatment of income covered u/s 115A, 115AB, etc.
- ▶ Method of computation of capital gain in certain cases of non-resident — Sec. 48
- ▶ Special provisions relating to non-resident Indians — Sec. 115C to Sec. 115-I
- ▶ Provision of Double Tax Avoidance Agreement (DTAA)
- ▶ Applicability of GAAR

 CASE LAW

Key Case Law — CIT v. Kulandagan Chettiar (2004)(SC): In case of any conflict between the provisions of the DTAA and the Income-tax Act, the provisions of the DTAA would prevail over the Act in view of sec. 90(2). If any matter or income is not covered by the agreement, the Income-tax Act shall be applicable.

6.8 Organisation Tax Planning Cells

Various organisations have separate tax planning departments to plan their transactions with a view to attracting the least incidence of tax. Organisation of such a cell can be justified on the following grounds:

a. Complexity and Volume of Work	Where volume of tax work to be handled is large and highly complex, it is required to appoint a special tax expert along with required staff.
b. Separate Documentation	Documentation is indispensable. An assessee has to keep reliable, complete and updated documentation for all relevant tax files so that documentary evidence can be made available at short notice. Company has to maintain proper account books, records, vouchers, bills, correspondence and agreements. For new industrial undertaking, better to keep separate accounts.
c. Data Collection	Staff concerned with taxation has to collect and keep collecting data relating to latest circulars, case laws, rules and provisions, and other government notifications to keep abreast of current developments.
d. Integration	Tax planner should be consulted by all departments of the company to know impact of taxation on their decisions. Necessary to integrate and properly link all departments with tax planning department.
e. Constant Monitoring	Persons connected with tax management should ensure compliance of all pre-requisites, like procedures, rules etc. Constant monitoring so that all tax obligations are discharged and penal consequences avoided.
f. Developing Tax Effective Alternatives	Tax laws provide various options for entering into a transaction. A tax planner could guide management in taking important decisions by considering varieties of alternatives and choices.
g. Take Advantage of Various Allowances and Deductions	An expert tax manager has to keep track of provisions relating to various allowances, deductions, exemptions, and rebates so as to initiate tax planning measures.

★ QUICK REVISION

Why a Tax Planning Cell is Essential:

- ▶ ✓ Handles complex and voluminous tax work
- ▶ ✓ Maintains proper documentation and records
- ▶ ✓ Keeps track of latest circulars, case laws, and notifications
- ▶ ✓ Integrates all departments with tax planning
- ▶ ✓ Ensures constant monitoring and compliance
- ▶ ✓ Develops tax-effective alternatives for management decisions
- ▶ ✓ Takes advantage of various allowances and deductions

💡 TAXPOINT

Taxpoint: A well-organised tax planning cell is not just a cost centre but a profit centre — it saves tax, reduces litigation, and ensures compliance, thereby contributing to the overall financial health of the organisation.



Solved Illustrations — Step by Step

Illustration 1: Employees' Remuneration — Salary Structure Planning

Facts: Naresh, who is neither a director nor has a substantial interest in any company, is offered employment by Freewheel Ltd., Mumbai with the following two alternatives:

PARTICULARS	OPTION I (₹)	OPTION II (₹)
Basic pay	17,66,000	17,66,000
Bonus	90,000	90,000
Education allowance for 2 children	30,200	—
Education facility for 2 children in school maintained by employer	—	30,200
Sweeper allowance	10,000	—
Sweeper facility	—	10,000
Entertainment allowance	6,000	—
Club facility	—	6,000
Transport allowance for personal use	1,800 pm	—
Free car (1200 cc) facility for office to home and vice versa	—	12,000
Medical allowance	18,000	—
Medical bills reimbursement facility	—	18,000
Allowance for gas, electricity and water supply	4,500	—
Free gas, electricity and water supply	—	4,500
Holiday home allowance	8,000	—
Holiday home facility	—	8,000
Lunch allowance	18,000	—
Free lunch (₹70 × 200 days + ₹80 × 50 days)	—	18,000
Diwali gift allowance	7,500	—
Gift on Diwali	—	7,500
Rent-free unfurnished home — lease rent	2,40,000	2,40,000

Assume both employer and employee contribute 10% of salary towards unrecognized provident fund. Interest-free loan of ₹20,000 for purchasing household items. He has opted for old tax regime.

RULE / CONCEPT

Rule Applied: In salary structuring, perquisites are generally preferable to fixed allowances because many perquisites have lower valuation or are exempt up to a limit. Education facility, sweeper facility, club facility, medical facility, etc., are either exempt or valued at lower rates compared to their cash allowances.

✓ SOLUTION

Computation of Taxable Salary of Naresh — Both Options:

PARTICULARS	OPTION 1 (₹)	OPTION 2 (₹)
Basic salary	17,66,000	17,66,000
Bonus	90,000	90,000
Allowances (net of exemptions)	27,800 + 21,600 + 8,000 + 18,000 + 10,000 + 6,000 + 18,000 + 4,500 + 7,500 = 1,21,400	—
Perquisites u/s 17(2)	Rent-free accommodation: 1,85,600	Rent-free accommodation: 1,85,600
Car facility	—	Exempted
Education facility	—	30,200 – 24,000 = 6,200
Interest-free loan	Exempt up to ₹20,000	Exempt up to ₹20,000
Sweeper facility	—	10,000
Club facility	—	6,000
Holiday home facility	—	8,000
Medical facility	—	18,000
Gift	—	2,500
Gas, electricity & water facility	—	4,500
Free lunch facility	—	5,500
Gross Taxable Salary	21,75,140	21,02,300
Less: Standard Deduction u/s 16(ia)	(50,000)	(50,000)
Taxable Salary	21,25,140	20,52,300

Conclusion: Option 2 is better as it results in lower taxable salary (₹20,52,300 vs ₹21,25,140). The perquisites are valued lower than the equivalent cash allowances.

ILLUSTRATION

Illustration 2: Sec. 35AD — Specified Business — Capital Expenditure Deduction

Facts: Star Gas Ltd. commenced operations of the business of laying and operating a cross-country natural gas pipeline network for distribution on 1st April, 2025. The company incurred capital expenditure of ₹1,490 lakh (including cost of financial instrument ₹2 lakh) during January to March 2025 exclusively for the above business and capitalized the same in its books as on 1st April, 2025. Further, during FY 2025-26, it has incurred capital expenditure of ₹6,600 lakh (including cost of land ₹1,100 lakh) exclusively for the above business. Compute deduction u/s 35AD for A.Y. 2026-27, assuming all conditions specified in sec. 35AD are fulfilled.

RULE / CONCEPT

Rule Applied: Sec. 35AD — Deduction for capital expenditure in specified business. Capital expenditure incurred prior to commencement of business and capitalized is also eligible. Cost of land is not eligible for deduction. Cost of financial instrument is not eligible.

✓ SOLUTION

Computation of Deduction u/s 35AD — A.Y. 2026-27:

PARTICULARS	₹ IN LAKH
Capital expenditure incurred during the year (excluding cost of land) [₹6,600 – ₹1,100]	5,500
Capital expenditure incurred prior to commencement & capitalized (excluding cost of Financial Instrument) [₹1,490 – ₹2]	1,488
Total Deduction u/s 35AD	6,988

Note: Cost of land (₹1,100 lakh) and cost of financial instrument (₹2 lakh) are not eligible for deduction u/s 35AD.

ILLUSTRATION

Illustration 3: Financial Management — Interest & Depreciation Treatment

Facts: Lucent Ltd. purchased machinery on 1st April, 2025 for ₹10 crores by availing loan facility from bank. The machine was put to use in effective production on 1st February, 2026. The interest on loan works out to 12% per annum. Advise Lucent Ltd. on treatment of interest payment and depreciation allowable for PY 2025-26. Assume this is the only machine in its block.

RULE / CONCEPT

Rules Applied: (i) Interest paid for period before asset is first put to use is capitalized. (ii) Interest for period after put to use is allowed as revenue expenditure u/s 36(1)(iii). (iii) Depreciation for full year if asset put to use for less than 180 days — half rate.

✓ SOLUTION

Computation of Depreciation — A.Y. 2026-27:

PARTICULARS	₹ IN CRORE
Block: Plant & Machinery (Rate 15%)	
W.D.V. as on 1/4/2025	Nil
Add: Purchase	10
Add: Interest on loan up to Jan. 2026 (₹10 cr × 12% × 10/12)	1
Total	11
Depreciation [₹11 cr × 15% × ½]	0.825

Treatment:

- ▶ Interest up to January 2026 (₹1 crore) is capitalized — added to cost of machinery.
- ▶ Interest from February 2026 onwards is allowed as deduction u/s 36(1)(iii).
- ▶ Depreciation is allowed at half rate (7.5%) because asset put to use for less than 180 days.

ILLUSTRATION

Illustration 4: House Property — Clubbing & Self-Occupied

Facts: Mr. A owned two residential houses for his own residential purpose. House 1: GAV ₹4,00,000; Municipal tax ₹2,000; Interest on loan ₹20,000. House 2: GAV ₹5,00,000; Municipal tax ₹10,000; Interest on loan ₹25,000. On 1/4/2025, Mr. A gifted ₹25,00,000 to his wife. She acquired a house property for her own residential purpose with gross municipal value ₹2,50,000; paid corporation tax ₹2,000. Compute income from house property of Mr. & Mrs. A. (Mrs. A does not own any other property.) Old tax regime.

RULE / CONCEPT

Rules Applied: (i) Sec. 23(2) — Self-occupied property NAV = Nil; interest deduction up to ₹2,00,000. (ii) Sec. 64(1)(iv) — Income from asset transferred to spouse without adequate consideration is clubbed in hands of transferor. (iii) For self-occupied property, NAV = Nil, so income is NIL (interest deduction creates loss).

✓ SOLUTION

Computation of Income from House Property of Mr. A — A.Y. 2026-27:

PARTICULARS	AMOUNT (₹)
Self-occupied house properties — Net Annual Value	Nil
Less: Deduction u/s 24(b) — Interest on loan [₹25,000 + ₹20,000]	(45,000)
Add: Income of Mrs. A clubbed u/s 64(1)(iv)	Nil
Income from House Property	(45,000)

Computation of Income from House Property of Mrs. A — A.Y. 2026-27:

PARTICULARS	AMOUNT (₹)
Self-occupied house — Net Annual Value	Nil
Less: Deduction u/s 24(b) — Interest on loan	Nil
Less: Income clubbed u/s 64(1)(iv) with Mr. A	Nil
Income from House Property	Nil

Note: Since the house property is self-occupied, NAV is Nil. The interest deduction of ₹45,000 results in a loss which can be set off against other income.

ILLUSTRATION

Illustration 5: Lease or Buy Decision — Present Value Analysis

Facts: Sure Success Ltd. wants to acquire an asset costing ₹1,00,000. Two options: (1) Buy by taking loan repayable in 5 instalments of ₹20,000 each with 14% interest p.a. (2) Lease for annual lease rental of ₹30,000 for 5 years. Lessor charges 1% processing fee in first year. IRR = 10%. P/V factors: Yr 1: .909, Yr 2: .826, Yr 3: .751, Yr 4: .683, Yr 5: .621. Depreciation rate 15%, tax rate 33.22%. Payments at end of year. Suggest which alternative is better.

RULE / CONCEPT

Rules Applied: (i) Cost of ownership = Instalment + Interest – Tax benefit (on interest + depreciation). (ii) Cost of lease = Lease rental – Tax benefit (on lease rental). (iii) Compare present values.

✓ SOLUTION

Cost of Ownership:

YEAR	INSTALMENT (₹)	INTEREST (₹)	DEPRECIATION (₹)	TAX BENEFIT (₹)	NET OUTFLOW (₹)	P/V FACTOR	NET (₹)
1	20,000	14,000	15,000	9,634	24,366	.909	22,151
2	20,000	11,200	12,750	7,956	23,244	.826	19,210
3	20,000	8,400	10,838	6,391	22,009	.751	16,536
4	20,000	5,600	9,212	4,921	20,679	.683	14,124
5	20,000	2,800	7,830	3,531	19,269	.621	11,965
Total							83,985

Cost of Lease:

YEAR	LEASE (₹)	TAX BENEFIT (₹)	NET OUTFLOW (₹)	P/V FACTOR	NET (₹)
0	1,000	332	668	1	668
1	30,000	9,966	20,034	.909	18,211
2	30,000	9,966	20,034	.826	16,557
3	30,000	9,966	20,034	.751	15,052
4	30,000	9,966	20,034	.683	13,683
5	30,000	9,966	20,034	.621	12,440
Total					76,611

Conclusion: Since net present value in case of lease (₹76,611) is less than cost of ownership (₹83,985), **lease is beneficial.**

ILLUSTRATION

Illustration 6: Classification of Actions — Tax Planning, Tax Management, Tax Evasion

Facts: Specify whether the following acts can be considered as an act of (i) Tax management; or (ii) Tax planning; or (iii) Tax evasion:

SL.	ACT	CLASSIFICATION	REASON
a.	X has paid premium of ₹72,000 for Life Insurance Policy so as to reduce Total Income.	Tax Planning	Using legitimate deduction u/s 80C available under the law.
b.	X installed AC costing ₹60,000 at residence but shows it as fitted in factory to claim depreciation.	Tax Evasion	False claim, misrepresentation of facts — illegal.
c.	Y Ltd. maintains registers of tax deductions affected by it to enable timely compliance.	Tax Management	Compliance-related activity, ensuring timely deduction and deposit.
d.	Z Ltd. issues credit note for ₹36,000 for brokerage payable to A (son of MD) to reduce Z Ltd. income and increase A's income.	Tax Evasion	Diverting income to reduce tax liability through unfair means.
e.	A is working partner in ABC Firm. Entitled to salary of ₹7,500 pm. Treats this as salary instead of business income.	Tax Evasion	Misclassification of income to reduce tax liability.
f.	A uses motor car for personal purposes but charges as business expenditure.	Tax Evasion	Personal expenditure claimed as business expenditure — illegal.
g.	X always pays advance tax on time.	Tax Management	Timely compliance with statutory obligation.
h.	Y sold his residential house and purchased another residential house to claim exemption u/s 54.	Tax Planning	Availing legitimate exemption under the Act.
i.	X had FD interest of ₹15,000 but did not disclose in Income Tax Return.	Tax Evasion	Concealment of income — illegal.
j.	Y had Saving deposit interest of ₹5,000, disclosed under other sources and claimed deduction u/s 80TTA.	Tax Planning	Disclosing income and claiming legitimate deduction.

RULE / CONCEPT

Key Distinction:

- ▶ **Tax Planning:** Using legitimate exemptions, deductions, and reliefs provided by law.
- ▶ **Tax Management:** Ensuring timely compliance — filing returns, paying advance tax, deducting TDS, maintaining records.
- ▶ **Tax Evasion:** Illegal — concealment of income, false claims, misrepresentation of facts.

ILLUSTRATION

Solved Case: Capital Structure — Optimum Mix (Option Selection)

Facts: A business entity requires ₹50 lakhs for expansion. Three options:

PARTICULARS	OPTION 1 (₹)	OPTION 2 (₹)	OPTION 3 (₹)
Equity Share of ₹10 each	40,00,000	30,00,000	30,00,000
12% Debentures	10,00,000	10,00,000	20,00,000
18% Loan from Bank	—	10,00,000	—

Expected rate of return is 15% (before tax). Tax Rate is 31.2%.

✓ SOLUTION

Computation of Profit After Tax — Options:

PARTICULARS	OPTION 1 (₹)	OPTION 2 (₹)	OPTION 3 (₹)
EBIT	7,50,000	7,50,000	7,50,000
Less: Debenture Interest	(1,20,000)	(1,20,000)	(2,40,000)
Less: Interest on Loan	—	(1,80,000)	—
Net Profit before Tax	6,30,000	4,50,000	5,10,000
Less: Tax @ 31.2%	(1,96,560)	(1,40,400)	(1,59,120)
Profit After Tax	4,33,440	3,09,600	3,50,880
Return on Capital	10.84%	10.32%	11.70%

Conclusion: Option 3 is better as return on capital is maximum (11.70%). The optimum mix of debt and equity maximises return to owners due to tax deductibility of interest.

★ Quick Revision Summary

★ QUICK REVISION

Key Concepts — Module 6

CONCEPT	KEY POINTS
Tax Planning	Legitimate way to reduce tax liability by taking full advantage of exemptions, deductions, rebates & relief. Uses benefits of law. Futuristic and positive.
Tax Avoidance	Legally takes advantage of loopholes in the Act. Bending law without breaking it. Immoral but legal. Futuristic but short-term.
Tax Evasion	Illegal way to reduce tax liability by suppressing income or inflating expenses. Overrules law. Attracts penalty & prosecution.
Tax Management	Procedure to comply with provisions of law. Continuous approach — past, present & future. Penalty, interest & prosecution can be avoided.
Objectives of Tax Planning	Reduction of tax liability, minimisation of litigation, productive investment, healthy growth of economy, economic stability.
Essentials of Tax Planning	Up-to-date knowledge, true disclosure, no colourable device, align with future goal.
Types of Tax Planning	Short-range & long-range; Permissive; Purposive.

★ QUICK REVISION

Areas of Tax Planning — Quick Reference

AREA	KEY SECTIONS / POINTS
Form of Organisation	Company vs. Firm/LLP vs. Sole Proprietorship — tax rates, remuneration, liability, etc.
Locational Aspects	SEZ (Sec. 10AA), North-Eastern States (Sec. 80-IE), IFSC (Sec. 80-LA).
Nature of Business	Sec. 33AB, 33ABA, 35AD, 36(1)(viii), 44AD, 44AE, 44B, 44BBA, 44BBB, 44D, 44DA, 80JJA, 115A etc.
Corporate Restructuring	Amalgamation, Demerger, Slump Sale, Buy back, Conversion, etc.
Financial Management	Capital structure (debt vs. equity), Lease vs. Buy, Sec. 35D, 36(1)(iii), 43(1), 37, 32.
Employees' Remuneration	Salary structure, perquisites vs. allowances, PF, gratuity, pension, leave encashment.
Non-Residents	Sec. 5, 6, 9, 10, 44B, 44BBA, 44C, 44DA, 48, 115A to 115-I, DTAA, GAAR.

★ QUICK REVISION

Key Case Laws — Module 6

- ▶ **McDowell & Co. Ltd. v. CTO (1985)(SC)** — Colourable devices cannot be part of tax planning.
- ▶ **CIT v. B.M. Kharwar (1969)(SC)** — True legal relation determines taxability.
- ▶ **Assam Bengal Cement Co. Ltd. v. CIT (1955)(SC)** — Substance, not form, determines revenue vs. capital expenditure.
- ▶ **Motor and General Stores (P) Ltd. v. CIT (1967)** — Form of transaction considered in genuine transactions.
- ▶ **CIT v. Raman & Co. (1968)** — Avoidance of tax liability by arranging affairs is not prohibited.
- ▶ **IRC v. Duke of Westminster (1936)** — Taxpayer entitled to arrange affairs to reduce tax.
- ▶ **Helvering v. Gregory (1934)** — Anyone may arrange affairs to make taxes as low as possible.
- ▶ **CIT v. Kulandagan Chettiar (2004)(SC)** — DTAA prevails over Income-tax Act if more beneficial.

★ QUICK REVISION

Key Takeaways for Exam

- ▶ ✓ Tax planning = legitimate; Tax avoidance = legal but immoral; Tax evasion = illegal.
- ▶ ✓ Tax management = compliance function (TDS, advance tax, return filing).
- ▶ ✓ Form of organisation affects tax liability — company vs. firm vs. proprietorship.
- ▶ ✓ Location-based incentives (SEZ, North-East, IFSC) are key planning tools.
- ▶ ✓ Capital structure decision (debt vs. equity) has significant tax implications.
- ▶ ✓ Lease vs. Buy decision must consider tax benefits (depreciation vs. lease rental deduction).
- ▶ ✓ Salary structuring — perquisites generally better than cash allowances.
- ▶ ✓ Non-resident taxation — DTAA, Sec. 115A, presumptive taxation, GAAR.
- ▶ ✓ Organisation tax planning cell ensures compliance, documentation, and tax efficiency.

Multiple Choice Questions

1. Countries that employ explicit policies designed to attract international trade oriented activities by minimization of taxes and reduction or elimination of other restrictions on business operations is described as: A) Tax Havens B) Tax Planning C) Tax Evasion D) Tax Management [Ans: A]
2. A is using a motor car for his personal purposes, but charges as business expenditure. This is the case of: A) Tax Avoidance B) Tax Planning C) Tax Evasion D) Tax Management [Ans: C]
3. The distinction between tax evasion and tax avoidance was highlighted by: A) Wanchoo Committee B) Kelkar Committee C) Rangarajan Committee D) Shome Committee [Ans: A]
4. Which of the following is not an objective of tax planning? A) Reduction of tax liability B) Minimisation of litigation C) Tax evasion D) Economic stability [Ans: C]
5. Which section provides exemption for units located in Special Economic Zone? A) Sec. 80-IA B) Sec. 10AA C) Sec. 80-IE D) Sec. 80-LA [Ans: B]
6. In case of conflict between DTAA and Income-tax Act, which prevails? A) Income-tax Act B) DTAA C) Both D) Neither [Ans: B]
7. Tax planning is: A) Futuristic & negative B) Futuristic & positive C) Past & negative D) Present & neutral [Ans: B]
8. Which of the following is an essential of tax planning? A) Colourable device B) True disclosure C) Tax evasion D) Concealment of income [Ans: B]
9. Sec. 35AD provides for deduction of: A) Revenue expenditure B) Capital expenditure C) Both D) Neither [Ans: B]
10. The Committee that distinguished between tax evasion and tax avoidance is: A) Wanchoo Committee B) Narasimham Committee C) Malhotra Committee D) Chelliah Committee [Ans: A]

Short Essay Type Questions

- 1 State the difference between tax planning, tax evasion and tax avoidance.
- 2 What are the objectives of tax planning?
- 3 Describe the various types of tax planning.
- 4 Explain the essentials of tax planning.
- 5 Discuss the areas of tax planning in respect of form of organisation.
- 6 Explain the concept of organisation tax planning cells.
- 7 Write a note on tax planning for non-residents.
- 8 State the key judicial observations on tax planning and tax avoidance.
- 9 Explain the doctrine of form and substance in the context of tax planning.
- 10 What are the key considerations in tax planning relating to employees' remuneration?



Comprehensive Numerical Problems

Problem 1 (Make or Buy Decision): XYZ Ltd. needs a component in an assembly operation. It is contemplating the proposal to either make or buy.

- **Make:** Buy a second-hand machine for ₹8 lakh (used for 5 years). Manufacturing costs: ₹12L, ₹14L, ₹16L, ₹20L, ₹25L. Depreciation rate 15%. Machine sold for ₹1L at end of 5th year. Capital loss is of no use.
- **Buy:** Component cost: ₹18L, ₹20L, ₹22L, ₹28L, ₹34L respectively.
- Discount rate 14%, tax rate 32.445%.

[Hint: Make option is better]

Problem 2 (Capital Structure — Expansion): Virat Ltd. is a widely held company considering major expansion. Three alternatives:

PARTICULARS	ALT-1 (₹)	ALT-2 (₹)	ALT-3 (₹)
Share capital	50,00,000	20,00,000	10,00,000
14% Debentures	—	20,00,000	15,00,000
18% Loan from Bank	—	10,00,000	25,00,000

EBIT = ₹15,00,000. Tax Rate = 31.2%. Dividend rate = 22%.

[Hint: (i) PAT Alt-1 = ₹10,32,000; (ii) PAT Alt-2 = ₹7,15,520; (iii) PAT Alt-3 = ₹5,77,920; (iv) Alternative 3 is better]

Problem 3 (Salary Structuring): A company offers two salary structures to Mr. Ramesh:

- **Option A:** Basic ₹10,00,000; HRA ₹2,00,000; Transport allowance ₹1,800 pm; Medical allowance ₹15,000; Lunch allowance ₹12,000.
- **Option B:** Basic ₹10,00,000; HRA ₹2,00,000; Free car facility ₹18,000; Free medical facility ₹15,000; Free lunch ₹12,000.

Both options include rent-free unfurnished accommodation (lease rent ₹2,40,000). Compute taxable salary under both options and advise which is better. (Old tax regime)

[Hint: Option B is better as perquisites are valued lower than cash allowances]

Problem 4 (Sec. 35AD — Specified Business): ABC Ltd. commenced operations of a specified business on 1st April, 2025. It incurred capital expenditure of ₹2,000 lakh (including cost of land ₹500 lakh) during FY 2025-26 exclusively for the business. Compute deduction u/s 35AD for A.Y. 2026-27.

[Hint: Deduction = ₹2,000L – ₹500L = ₹1,500 lakh]

Problem 5 (Interest Capitalisation): PQR Ltd. purchased machinery for ₹5 crores on 1st April, 2025 by taking a loan @ 12% p.a. The machine was put to use on 1st January, 2026. Compute the amount of interest to be capitalized and the depreciation allowable for A.Y. 2026-27.

[Hint: Interest capitalized = ₹5 cr × 12% × 9/12 = ₹45 lakh; Depreciation = (₹5 cr + ₹45L) × 15% × ½ = ₹40.875 lakh]

Problem 6 (Lease or Buy): A company needs an asset costing ₹50,00,000. Option 1: Buy with loan repayable in 5 instalments of ₹10,00,000 each with 14% interest. Option 2: Lease at ₹15,00,000 annual rental for 5 years. Processing fee 1% in first year. Depreciation 15%, tax rate 33.22%, IRR 10%. P/V factors: Yr 1 .909, Yr 2 .826, Yr 3 .751, Yr 4 .683, Yr 5 .621. Advise which option is better.

[Hint: Compare present values of net outflows — Lease may be better depending on calculations]

Problem 7 (House Property — Clubbing): Mr. X gifted ₹15,00,000 to his wife on 1/4/2025. She invested this in a house property. GAV = ₹3,00,000; Municipal tax = ₹5,000; Interest on loan = ₹30,000. Mrs. X has no other income. Compute income from house property of Mr. X and Mrs. X. (Old tax regime)

[Hint: Income from house property is clubbed in hands of Mr. X u/s 64(1)(iv). NAV = ₹3,00,000 – ₹5,000 = ₹2,95,000; Less: Standard deduction 30% = ₹88,500; Less: Interest = ₹30,000; Income = ₹1,76,500 clubbed in Mr. X's income]

Problem 8 (Classification — Planning/Management/Evasion): Classify the following:

- (a) Investing in PPF to claim deduction u/s 80C
- (b) Not disclosing interest income in ITR
- (c) Filing TDS returns on time
- (d) Inflating business expenses to reduce profit
- (e) Claiming depreciation as per IT Act

[Hint: (a) Tax Planning; (b) Tax Evasion; (c) Tax Management; (d) Tax Evasion; (e) Tax Planning]

References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material

✓ Module 6 — Complete Coverage Checklist

★ QUICK REVISION

- | | |
|---|---|
| ▶ ✓ 6.1 Tax Planning, Tax Evasion and Tax Avoidance | ▶ ✓ 6.6 Types of Tax Planning — Short-range, Long-range, Permissive, Purposive |
| ▶ ✓ Doctrine of Form and Substance | ▶ ✓ 6.7 Areas of Tax Planning |
| ▶ ✓ Formation of Tax Laws (Article 265) | ▶ ✓ 6.7.1 Form of Organisation — Company vs. Firm vs. Proprietorship |
| ▶ ✓ Tax Evasion — Meaning & Consequences | ▶ ✓ 6.7.2 Locational Aspects — SEZ, North-East, IFSC |
| ▶ ✓ Tax Avoidance — Meaning & Wanchoo Committee | ▶ ✓ 6.7.3 Nature of Business — Sec. 33AB, 35AD, 44AD, etc. |
| ▶ ✓ Judicial Views — Helvering, Duke of Westminster, McDowell, etc. | ▶ ✓ 6.7.4 Corporate Restructuring |
| ▶ ✓ 6.2 Tax Planning — Meaning & Approaches | ▶ ✓ 6.7.5 Financial Management — Capital Structure, Lease vs. Buy |
| ▶ ✓ Two Approaches — Reducing Taxable Income, Deferring Taxes | ▶ ✓ 6.7.6 Employees' Remuneration |
| ▶ ✓ 6.3 Distinguish between Tax Planning, Evasion, Avoidance & Management | ▶ ✓ 6.7.7 Non-Residents — Sec. 115A, DTAA, GAAR |
| ▶ ✓ 6.4 Objectives of Tax Planning | ▶ ✓ 6.8 Organisation Tax Planning Cells |
| ▶ ✓ 6.5 Essentials of Tax Planning | ▶ ✓ Solved Illustrations — Salary, Sec. 35AD, Interest, House Property, Lease/Buy, Classification |

CMA Knowledge — Direct Tax Laws & International Taxation

Master Revision Handbook | December 2026 Edition

Module 6: Different Aspects of Tax Planning

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CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

07

MODULE

CBDT and Other Authorities

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 7

CBDT and Other Authorities

Comprehensive coverage of Income Tax Authorities, Appointment, CBDT, Jurisdiction, Power to Transfer Cases, Succession, Faceless Jurisdiction, and Faceless Approval as per the official CMA Final syllabus.

Module Structure

Section A: Direct Tax Laws — CBDT and Other Authorities

7.1 INCOME TAX AUTHORITIES	7.2 APPOINTMENT	7.3 CBDT	7.4 JURISDICTION
7.5 JURISDICTION OF AO	7.6 TRANSFER CASES	7.7 SUCCESSION	7.8-7.9 FACELESS

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7.9 Faceless Approval or Registration [Sec. 293D]	7
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7.1 Income Tax Authorities [Sec. 116]

The following are the income-tax authorities:

- 1 The Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963
- 2 Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax
- 3 Directors-General of Income-tax or Chief Commissioners of Income-tax
- 4 Principal Directors of Income-tax or Principal Commissioners of Income-tax
- 5 Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals)
- 6 Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals)
- 7 Joint Directors of Income-tax or Joint Commissioners of Income-tax or Joint Commissioners of Income-tax (Appeals)
- 8 Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals)
- 9 Assistant Directors of Income-tax or Assistant Commissioners of Income-tax
- 10 Income-tax Officers
- 11 Tax Recovery Officers
- 12 Inspectors of Income-tax

TAXPOINT

Key Definitions:

- ▶ **Assessing Officer [Sec. 2(7A)]**: Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or Income-tax Officer vested with relevant jurisdiction; includes Additional Commissioner/Director or Joint Commissioner/Director directed to exercise powers.
- ▶ **Assistant Commissioner [Sec. 2(9A)]**: Person appointed as Assistant Commissioner or Deputy Commissioner u/s 117(1).
- ▶ **Chief Commissioner [Sec. 2(15A)]**: Person appointed as Chief Commissioner or Principal Chief Commissioner u/s 117(1).
- ▶ **Commissioner [Sec. 2(16)]**: Person appointed as Commissioner, Director, Principal Commissioner, or Principal Director u/s 117(1).
- ▶ **Director General/Director [Sec. 2(21)]**: Includes Additional Director, Joint Director, Assistant Director, or Deputy Director.
- ▶ **Joint Commissioner [Sec. 2(28C)]**: Person appointed as Joint Commissioner or Additional Commissioner u/s 117(1).
- ▶ **Joint Commissioner (Appeals) [Sec. 2(28CA)]**: Person appointed as JCIT (Appeals) or Additional CIT (Appeals).
- ▶ **Joint Director [Sec. 2(28D)]**: Person appointed as Joint Director or Additional Director.

7.2 Appointment of Income-tax Authorities [Sec. 117]

- 1 The Central Government may appoint such persons as it thinks fit to be income-tax authorities.
- 2 The Central Government may authorise the Board, or a Principal Director General/Director-General, Principal Chief Commissioner/Chief Commissioner, Principal Director/Director, or Principal Commissioner/Commissioner to appoint income-tax authorities below the rank of Assistant Commissioner or Deputy Commissioner.
- 3 An income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

7.3 Central Board of Direct Taxes (CBDT)

The Central Board of Direct Taxes is a statutory authority functioning under the Central Board of Revenue Act, 1963. The officials of the Board in their ex-officio capacity also function as a Division of the Ministry dealing with matters relating to levy and collection of direct taxes.

The Central Board of Revenue as the apex body of the Department came into existence as a result of the Central Board of Revenue Act, 1924. Initially the Board was in charge of both direct and indirect taxes. However, when the administration of taxes became too unwieldy for one Board to handle, the Board was split up into two — CBDT and Central Board of Excise and Customs — with effect from 1.1.1964.

Composition of CBDT

SL.	DESIGNATION
1	Chairman
2	Member (Income-tax)
3	Member (Legislation & Computerisation)
4	Member (Personnel & Vigilance)
5	Member (Investigation)
6	Member (Revenue)
7	Member (Audit & Judicial)

Powers of CBDT

Sec. 119(1) — Instructions to Subordinate Authorities	Board may issue orders, instructions and directions to other income-tax authorities for proper administration of the Act. Such authorities shall observe and follow these. Exception: No order to require any authority to make a particular assessment or dispose of a particular case in a particular manner; or to interfere with discretion of JCIT(A)/CIT(A).
Sec. 119(2)(a) — General or Special Orders	Board may issue general/special orders for proper and efficient management of assessment and collection of revenue. Such orders: (i) may relax provisions of Sec. 115P, 115S, 139, 143, 144, 147, 148, 154, 155, 158BFA, 201(1A), 210, 211, 234A, 234B, 234C, 234E, 234F, 270A, 271, 271C, 271CA, 273; (ii) shall not be prejudicial to assessee; (iii) act as guidelines for other authorities.
Sec. 119(2)(b) — Admit Application After Time Limit	Board may admit application/claim for exemption, deduction, refund or other relief after expiry of time limit, for avoiding genuine hardship. Cannot be issued to JCIT(A)/CIT(A).
Sec. 119(2)(c) — Relaxation in Chapter IV or VIA	Board may relax requirements of Chapter IV (Sec. 14-59) or Chapter VIA (Sec. 80A-80U) where assessee failed to comply. Conditions: (i) default due to circumstances beyond assessee's control; (ii) assessee complied before completion of assessment.
Sec. 118 — Control over Authorities	Board may, by notification, direct that any income-tax authority shall be subordinate to such other authority as specified.

TAXPOINT

Taxpayer's Charter [Sec. 119A]: The Board shall adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of such Charter.

7.4 Jurisdiction of Income-tax Authorities [Sec. 120]

- ▶ Income-tax authorities shall exercise powers and perform functions in accordance with directions of the Board.
- ▶ Board may authorise any other income-tax authority to issue orders in writing for exercise of powers by any subordinate.
- ▶ Board or authorised authority may have regard to: (a) territorial area; (b) persons or classes of persons; (c) incomes or classes of income; (d) cases or classes of cases.
- ▶ Board may authorise Principal Director General/Director General/Principal Director/Director to perform functions of any other authority.
- ▶ Board may empower Principal DG/DG/Principal CCIT/CCIT/Principal CIT/CIT to issue orders that powers of Assessing Officer in respect of specified area/persons/incomes/cases shall be exercised by Additional Commissioner/Director or Joint Commissioner/Director.
- ▶ Jurisdiction with more than one income-tax authority may be conferred for proper management of work.

7.5 Jurisdiction of Assessing Officers [Sec. 124]

Business or Profession	If place of business/profession is situate within the area, or where business carried on in more places than one, if principal place is situate within the area.
Other Person	Person residing within the area.
Question of Jurisdiction	Determined by PDG/DG/Principal CCIT/CCIT/Principal CIT/CIT. Where areas are within jurisdiction of different authorities — by concerned authorities; if not in agreement — by the Board or notified authority.
Time Limit to Challenge Jurisdiction	(a) Where return filed u/s 139(1): After 1 month from date of service of notice u/s 142(2) or 143(2) or completion of assessment, whichever is earlier. (b) Where no return: After expiry of time allowed by notice u/s 142(1) or 148 or notice u/s 144. (c) Where action u/s 132/132A: After 1 month from service of notice u/s 153A/153C or completion of assessment, whichever is earlier.

7.6 Power to Transfer Cases [Sec. 127]

- ▶ PDG/DG/Principal CCIT/CCIT/Principal CIT/CIT may transfer any case from one or more Assessing Officers subordinate to him to any other AO(s) subordinate to him.
- ▶ **Conditions:** (i) Give assessee reasonable opportunity of being heard wherever possible; (ii) Record reasons for doing so.
- ▶ Where transferor and transferee AOs are not subordinate to same authority: (a) if authorities are in agreement — the transferor authority may pass order; (b) if not in agreement — by the Board or notified higher authority.
- ▶ **Exception:** No opportunity of hearing where transfer is between AOs in same city, locality or place.
- ▶ Transfer may be made at any stage of proceedings; shall not render necessary re-issue of any notice already issued.

7.7 Succession of Income-tax Authority [Sec. 129]

Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and another income-tax authority exercises jurisdiction:

- ▶ The succeeding authority may continue the proceeding from the stage at which it was left by his predecessor.
- ▶ Assessee may demand opportunity of being re-heard before: (i) succeeding authority reopens previous proceeding or any part thereof; or (ii) any order of assessment is passed against him.

7.8 Faceless Jurisdiction of Income-tax Authorities [Sec. 130]

The Central Government may notify a scheme for:

- ▶ Exercise of powers and performance of functions by income-tax authorities u/s 120;
- ▶ Vesting jurisdiction with Assessing Officer u/s 124;
- ▶ Exercise of power to transfer cases u/s 127;
- ▶ Exercise of jurisdiction in case of change of incumbency u/s 129.

Objective: Greater efficiency, transparency and accountability by:

- ▶ Eliminating interface between income-tax authority and assessee to extent technologically feasible;
- ▶ Optimising utilisation of resources through economies of scale and functional specialisation;
- ▶ Introducing team-based exercise of powers by two or more income-tax authorities concurrently with dynamic jurisdiction.

7.9 Faceless Approval or Registration [Sec. 293D]

The Central Government may make a scheme for granting approval or registration by income-tax authority under any provision of the Act, so as to impart greater efficiency, transparency and accountability by:

- ▶ Eliminating interface between income-tax authorities and assessee to extent technologically feasible;
- ▶ Optimising utilisation of resources through economies of scale and functional specialisation;
- ▶ Introducing team-based grant of approval or registration with dynamic jurisdiction.



Multiple Choice Questions

1. **CBDT means:** A) Central Board of Direct Tax B) Central Board of Double Tax C) Central Bank of Direct Tax D) None of the above
[Ans: A]

2. **Sec. 130 deals with:** A) Faceless jurisdiction of the income-tax authority B) Jurisdiction of the income-tax authority C) Jurisdiction of the CBDT D) None of the above [Ans: A]

3. **CBDT was constituted under:** A) Central Board of Revenue Act, 1963 B) Income-tax Act, 1961 C) Companies Act, 1956 D) None
[Ans: A]

4. **The CBDT consists of a Chairman and:** A) 4 Members B) 5 Members C) 6 Members D) 7 Members [Ans: C]

5. **Power to transfer cases is provided under:** A) Sec. 120 B) Sec. 124 C) Sec. 127 D) Sec. 129 [Ans: C]



Short Essay Type Questions

- 1 State the power of the Central Board of Direct Taxes.
- 2 State the provision u/s 127 relating to power to transfer cases.
- 3 Explain the provisions relating to succession of income-tax authority u/s 129.
- 4 Write a note on Faceless Jurisdiction of Income-tax Authorities u/s 130.
- 5 State the provisions relating to jurisdiction of Assessing Officers u/s 124.

CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

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08 MODULE

E-commerce Transaction and Liability in Special Cases

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

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MODULE 8

E-commerce Transaction and Liability in Special Cases

Comprehensive coverage of Tonnage Tax Scheme, Legal Representatives, Executors, Representative Assessee, Company in Liquidation, and Miscellaneous Provisions as per the official CMA Final syllabus.

 Module Structure**Section A: Direct Tax Laws — E-commerce Transaction and Liability in Special Cases**

8.1
TONNAGE TAX

8.2
LEGAL REPRESENTATIVES

8.3
EXECUTORS

8.4
REPRESENTATIVE ASSESSEE

8.5
COMPANY IN LIQUIDATION

8.6
MISCELLANEOUS

269SS
LOANS/DEPOSITS

269ST
RECEIPTS

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8.6.5 Sec. 269SS & 269ST	8
Exercise — MCQ & Questions	9

8.1 Tonnage Tax Scheme [Sec. 115V to 115VZC]

To make the Indian shipping industry more competitive, a tonnage tax scheme for taxation of shipping profits was introduced. Basic features:

- Scheme of **presumptive taxation** — notional income from operation of ship determined based on tonnage.
- Notional income taxed at **normal corporate rate** applicable for the year.
- Tax payable **even if there is a loss** in a year.
- Company may opt for scheme; once exercised, **lock-in period of 10 years**. If opts out, debarred from re-entry for 10 years.
- Conditions: creation of reserves, training etc. required to be met.
- Company may be **expelled** in certain circumstances.

Key Definitions

Operating Ships [Sec. 115VB]	Company regarded as operating a ship if it operates any ship or inland vessel, owned or chartered, including part charter (slot, space, joint charter). NOT regarded as operator if chartered out on bareboat charter-cum-demise or bareboat charter for period exceeding 3 years.
Qualifying Ship [Sec. 115VD]	Sea going ship/vessel or inland vessel of 15 net tonnage or more, registered under Merchant Shipping Act, 1958 or Inland Vessels Act, 2021, with valid certificate. Excludes: factory ships, pleasure crafts, harbour and river ferries, off-shore installations, fishing vessels, ship used as fishing vessel for >30 days in a PY.
Qualifying Company [Sec. 115VC]	Indian company; place of effective management in India; owns at least one qualifying ship; main object is to carry on business of operating ships.

Computation of Tonnage Income [Sec. 115VG]

NET TONNAGE	DAILY TONNAGE INCOME
Up to 1,000	₹70 for each 100 tons
Exceeding 1,000 but not more than 10,000	₹700 + ₹53 for each 100 tons exceeding 1,000 tons
Exceeding 10,000 but not more than 25,000	₹5,470 + ₹42 for each 100 tons exceeding 10,000 tons
Exceeding 25,000	₹11,770 + ₹29 for each 100 tons exceeding 25,000 tons

Σ FORMULA

Tonnage Income = Daily Tonnage Income × Number of days ship operated as qualifying ship

📌 TAXPOINT

Key Points:

- Tonnage rounded off to nearest multiple of 100 tons.
- No deduction or set off allowed in computing tonnage income.
- Tonnage tax scheme treated as separate business from other activities.
- Relevant shipping income includes profits from core activities and incidental activities (incidental income exceeding ¼% of turnover from core activities is taxable under other provisions).
- Loss from tonnage tax business ignored for computing tonnage income.
- MAT (Sec. 115JB) not applicable to tonnage tax company.

8.2 Legal Representatives [Sec. 159]

- ▶ Where a person dies, his legal representatives shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in like manner and to same extent as the deceased.
- ▶ Liability of legal representative limited to extent to which estate is capable of meeting liability.
- ▶ Legal representative **personally liable** if, while liability remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate — limited to value of asset so charged, disposed of or parted with.
- ▶ For assessment of income of deceased: (a) any proceeding taken against deceased before death deemed to have been taken against legal representative and may be continued; (b) any proceeding which could have been taken against deceased if he survived may be taken against legal representative; (c) all provisions apply accordingly.
- ▶ Legal representative deemed to be an assessee.

TAXPOINT

Taxpoint: In year of death, two assessments: (i) up to date of death — Sec. 159 applies; (ii) after date of death — Sec. 168 or other sections apply. In case of death of Karta of HUF, HUF continues with changed composition — Sec. 159 applies only on individual income of Karta.

8.3 Executors [Sec. 168]

- ▶ Income of estate of deceased person chargeable to tax in hands of executor: (a) if only one executor — as if executor were an individual; (b) if more executors than one — as if executors were an AOP.
- ▶ Executor deemed to be resident or non-resident according as deceased person was resident or non-resident during PY in which death took place.
- ▶ Assessment of executor made separately from any assessment on him in respect of his own income.
- ▶ Separate assessments made on total income of each completed PY (or part thereof) from date of death to date of complete distribution to beneficiaries.
- ▶ Income of estate distributed to (or applied for benefit of) any specific legatee during PY excluded from total income of estate; included in total income of such specific legatee.
- ▶ Executor includes administrator or other person administering estate of deceased.
- ▶ Executor entitled to recover tax paid from estate or beneficiaries [Sec. 169].

8.4 Representative Assessee [Sec. 160]

SL.	IN RESPECT OF INCOME	REPRESENTATIVE ASSESSEE
(i)	Of a non-resident specified in Sec. 9(1)	Agent of non-resident, including person treated as agent u/s 163
(ii)	Of a minor, lunatic or idiot	Guardian or manager entitled to receive or in receipt of such income
(iii)	Received by Court of Wards, Administrator-General, Official Trustee, or receiver/manager appointed by court	Such Court of Wards, Administrator-General, Official Trustee, receiver or manager
(iv)	Received by trustee under trust declared by duly executed instrument in writing (testamentary or otherwise, including valid wakf deed)	Such trustee or trustees
(v)	Received by trustee under oral trust	Such trustee or trustees

TAXPOINT

Liability [Sec. 161]: Every representative assessee subject to same duties, responsibilities and liabilities as if income were received beneficially. Assessment deemed to be made in representative capacity only. Tax levied and recovered in like manner and to same extent as leviable from person represented.

Right to Recover [Sec. 162]: Representative assessee entitled to recover sum paid from person on whose behalf paid, or retain from moneys in possession. May secure certificate from AO stating amount to be retained pending final settlement.

8.5 Company in Liquidation [Sec. 178]

- ▶ Liquidator must give notice of appointment to AO within **30 days**.
- ▶ AO shall, within **3 months** from receipt of notice, notify liquidator amount sufficient to provide for any tax then or likely thereafter payable by company.
- ▶ Liquidator shall not part with any assets until notified by AO; on being notified, shall set aside amount equal to amount notified.
- ▶ Liquidator may part with assets for: (i) payment of tax; (ii) payment to secured creditors with priority; (iii) meeting costs and expenses of winding-up as reasonable.
- ▶ If liquidator fails to give notice or set aside amount or parts with assets in contravention — **personally liable** for payment of tax, restricted to notified amount.
- ▶ More than one liquidator — obligations and liabilities attach jointly and severally.
- ▶ Provisions have effect notwithstanding anything contrary in any other law except IBC, 2016.

△ IMPORTANT

Liability of Directors of Private Company [Sec. 179]: Where tax due from a private company cannot be recovered, every person who was a director at any time during relevant PY shall be jointly and severally liable. No liability if director proves non-recovery cannot be attributed to gross neglect, misfeasance or breach of duty. Tax Due includes penalty, interest or any other sum payable.

8.6 Miscellaneous Provisions

8.6.1 Assessment of Persons Leaving India [Sec. 174]

When it appears to AO that any individual may leave India during current AY or shortly after its expiry and has no present intention of returning:

- ▶ Total income for period from expiry of PY for that AY up to probable date of departure chargeable to tax in that AY.
- ▶ Total income of each completed PY or part included in such period chargeable at rates in force in that AY; separate assessments made.
- ▶ AO may estimate income where cannot be readily determined.
- ▶ Notice u/s 142(1)(i) requiring return within not less than **7 days**.

8.6.2 Assessment of AOP/BOI Formed for Shorter Period [Sec. 174A]

Where AO believes any AOP/BOI/artificial juridical person formed for particular purpose likely to be dissolved in AY in which formed or immediately after:

- ▶ Total income for period from expiry of PY up to date of dissolution chargeable in that AY.
- ▶ Proceedings as in Sec. 174 (persons leaving India) applicable.

8.6.3 Assessment of Persons Likely to Transfer Property to Avoid Tax [Sec. 175]

If AO believes during current AY that any person is likely to charge, sell, transfer, dispose of or otherwise part with any assets with a view to avoiding payment of liability:

- ▶ Total income for period from expiry of PY for that AY to date AO commences proceedings chargeable in that AY.
- ▶ Proceedings as in Sec. 174 applicable.

8.6.4 Discontinued Business [Sec. 176]

- ▶ Where business/profession discontinued in any AY, income of period from expiry of PY for that AY up to date of discontinuance may, at AO's discretion, be charged in that AY.
- ▶ Total income of each completed PY or part chargeable at rates in force; separate assessments made.
- ▶ Person discontinuing must give notice to AO within **15 days**.
- ▶ **Sec. 176(3A):** Any sum received after discontinuance deemed to be income of recipient and charged in year of receipt, if would have been included had it been received before discontinuance.
- ▶ **Sec. 176(4):** For profession discontinued on cessation, retirement or death — any sum received after discontinuance deemed income of recipient in year of receipt.

8.6.5 Mode of Taking or Accepting Certain Loans, Deposits and Specified Sum [Sec. 269SS]

Applicability	No person shall take or accept loan/deposit/specified sum otherwise than by account payee cheque, account payee bank draft, or electronic clearing system through bank account, if: (a) amount or aggregate amount $\geq$ ₹20,000; or (b) amount remaining unpaid $\geq$ ₹20,000; or (c) aggregate of (a) and (b) $\geq$ ₹20,000.
Specified Sum	Any sum of money receivable, whether as advance or otherwise, in relation to transfer of immovable property, whether or not transfer takes place.
Exception — Limit	For primary agricultural credit society or primary co-operative agricultural and rural development bank from its member: limit increased to ₹2,00,000 .
Exception — Persons	Not applicable to: Government; banking company; post office savings bank; co-operative bank; corporation established by Central/State/Provincial Act; Government company; notified institution/association/body.
Penalty [Sec. 271D]	Sum equal to amount of loan/deposit/specified sum taken or accepted. Imposed by Joint Commissioner.

Mode of Undertaking Transactions [Sec. 269ST]

Applicability	No person shall receive ₹2,00,000 or more: (a) in aggregate from a person in a day; (b) in respect of a single transaction; (c) in respect of transactions relating to one event or occasion from a person — otherwise than by account payee cheque/draft/electronic clearing system.
Exception	Receipt by Government; banking company; post office savings bank; co-operative bank; transactions u/s 269SS; notified persons/receipts (business correspondent, white label ATM operator, pre-paid payment instruments, credit card bills, receipt not includible u/s 10(17A), receipt from banking company etc.).
Penalty [Sec. 271DA]	Sum equal to amount of receipt. No penalty if person proves good and sufficient reasons.

Mode of Repayment of Certain Loans or Deposits [Sec. 269T]

No branch of banking company/co-operative bank, no other company/co-operative society, no firm/person shall repay loan/deposit/specified advance otherwise than by account payee cheque/draft/electronic clearing system if amount together with interest $\geq$ ₹20,000.

Exception: For primary agricultural credit society or primary co-operative agricultural and rural development bank to/from member — limit ₹2,00,000. Not applicable to Government, banking company, post office savings bank, co-operative bank, corporation, Government company, notified bodies.

Penalty [Sec. 271E]: Sum equal to amount of loan/deposit/specified advance repaid.

Acceptance of Payment Through Prescribed Electronic Modes [Sec. 269SU]

Applicable to: Person carrying on business with total sales/turnover/gross receipts exceeding ₹50 crores during immediately preceding PY. Must provide facility for accepting payment through prescribed electronic modes.

Penalty [Sec. 271DB]: ₹5,000 for every day during which failure continues. No penalty if person proves good and sufficient reasons.



Multiple Choice Questions

1. As per section 178(3), the _____ of a company has to intimate the tax authority before he parts with any of the assets of the company. A) Managing Director B) Manager C) Chartered Accountant D) Liquidator [Ans: D]
2. What is the prescribed threshold limit for attracting the provision of sec. 269SS? A) ₹10,000 B) ₹20,000 C) ₹50,000 D) ₹1,00,000 [Ans: B]
3. Sec. 269ST prohibits receipt of ₹_____ or more otherwise than by account payee cheque/draft/electronic mode. A) ₹1,00,000 B) ₹2,00,000 C) ₹50,000 D) ₹5,00,000 [Ans: B]
4. Tonnage tax scheme lock-in period is: A) 5 years B) 7 years C) 10 years D) 15 years [Ans: C]
5. Liquidator must give notice of appointment to AO within: A) 15 days B) 30 days C) 45 days D) 60 days [Ans: B]



Short Essay Type Questions

- 1 Write a brief note on tonnage tax scheme.
- 2 Who is termed as representative assessee u/s 160?
- 3 What is the duty of the liquidator u/s 178?
- 4 Explain the provisions relating to assessment of persons leaving India u/s 174.
- 5 State the provisions of sec. 269SS and 269ST.

CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

09

MODULE

Income Computation and Disclosure Standards (ICDS)

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 9

Income Computation and Disclosure Standards (ICDS)

Comprehensive coverage of ICDS I to X, Applicability, Accounting Policies, Valuation of Inventories, Construction Contracts, Revenue Recognition, Tangible Fixed Assets, Foreign Exchange Rates, Government Grants, Securities, Borrowing Costs, Provisions, Contingent Liabilities and Contingent Assets, and Miscellaneous Provisions as per the official CMA Final syllabus.

 Module Structure

Section A: Direct Tax Laws — ICDS

ICDS I ACCOUNTING POLICIES	ICDS II INVENTORIES	ICDS III CONSTRUCTION CONTRACTS	ICDS IV REVENUE RECOGNITION
ICDS V TANGIBLE FIXED ASSETS	ICDS VI FOREIGN EXCHANGE	ICDS VII GOVERNMENT GRANTS	ICDS VIII SECURITIES
ICDS IX BORROWING COSTS	ICDS X PROVISIONS	Sec. 145A MISCELLANEOUS	10 ICDS STANDARDS

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Introduction & Applicability of ICDS

In exercise of powers conferred by sec. 145(2), the Central Government has notified (vide Notification No. 87/2016 dated 29-09-2016) the Income Computation and Disclosure Standards (ICDS). The rationale behind issuing ICDS is to lessen the uncertainty of alternative accounting treatment due to flexibility offered by Accounting Standards (AS) & also to reduce litigation.

Applicability

The standards are required to be followed:

- ▶ By all assessees (other than an individual or a HUF who is not required to get his accounts audited u/s 44AB)
- ▶ Who follows the **mercantile system of accounting**
- ▶ For computation of income chargeable to income-tax under the head "**Profits and gains of business or profession**" or "**Income from other sources**"

△ IMPORTANT

Important: The standards are NOT for the purpose of maintenance of books of account. They are for computation of income under the aforesaid heads of income only. In case of conflict between the provision of the Income-tax Act and ICDS, the provision of the Act shall prevail.

List of ICDS Standards

ICDS	NAME OF THE ICDS	CORRESPONDING AS	IND-AS
ICDS I	Accounting Policies	1	1 & 8
ICDS II	Valuation of Inventories	2	2
ICDS III	Construction Contracts	7	11
ICDS IV	Revenue Recognition	9	18
ICDS V	Tangible Fixed Assets	10	16
ICDS VI	Effects of Changes in Foreign Exchange Rates	11	21
ICDS VII	Government Grants	12	20
ICDS VIII	Securities	13	32
ICDS IX	Borrowing Costs	16	23
ICDS X	Provisions, Contingent Liabilities and Contingent Assets	29	37

💡 TAXPOINT

Taxpoint: ICDS is applicable to specified persons having income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources'. Therefore, relevant provisions of ICDS also apply to persons computing income under presumptive taxation schemes (Sec. 44AD, 44AE, 44ADA, etc.).

9.1 ICDS I: Accounting Policies

- ▶ Accounting policies adopted by a person shall be such so as to represent a **true and fair view** of the state of affairs and income of the business, profession or vocation.
- ▶ Treatment and presentation of transactions and events shall be governed by their **substance** and not merely by the legal form.
- ▶ **Marked to market loss or expected loss shall not be recognised** unless recognition is in accordance with provisions of any other ICDS.

Fundamental Accounting Assumptions

The fundamental accounting assumptions — **Going Concern, Consistency and Accrual** — are assumed as followed. No specific disclosure is required if these are followed; however, if not followed, the fact shall be disclosed.

Taxpoint: ICDS does not recognize materiality as an accounting policy.

Change in Accounting Policies

- ▶ An accounting policy shall not be changed without **reasonable cause**.
- ▶ Any change in accounting policy which has a material effect shall be disclosed (with quantum of effect, if ascertainable). Where amount is not ascertainable, the fact shall be indicated.
- ▶ Disclosure of accounting policies or changes therein cannot remedy a wrong or inappropriate treatment of the item.

Comparative Study — ICDS I vs. AS 1

BASIS	AS 1	ICDS I
Concept of Prudence	Provision made for all known liabilities and losses on best estimate basis; anticipated profits not recognized.	Marked to market (MTM) loss or expected loss shall not be recognised unless permitted by any other ICDS. ICDS silent on recognition of anticipated profits.
Materiality	Materiality should be considered while selecting and applying accounting policy.	Concept of Materiality is not recognized in ICDS.
Change in Accounting Policy	Permitted if (a) required by statute; (b) required for compliance of AS; (c) change results in more appropriate presentation.	Accounting policies shall not be changed without a "reasonable cause".
Disclosure of Change	Required in period of change, if impact is not material in current period but material in later periods.	Required in period of change and also in first year in which change has material effect.

9.2 ICDS II: Valuation of Inventories

Scope

Standard applied for valuation of inventories, **except:**

- ▶ Work-in-progress arising under 'construction contract'
- ▶ Work-in-progress dealt with by other Standard
- ▶ Shares, debentures and other financial instruments held as stock-in-trade
- ▶ Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to extent measured at net realisable value
- ▶ Machinery spares which can be used only in connection with a tangible fixed asset and their use is expected to be irregular

Measurement

- ▶ Inventories shall be valued at **cost or net realisable value, whichever is lower.**
- ▶ **Net realisable value** = Estimated selling price in ordinary course of business less estimated costs of completion and estimated costs necessary to make the sale.
- ▶ In case of dissolution of a partnership firm or AOP or BOI, notwithstanding whether business is discontinued or not, inventory on date of dissolution shall be valued at **net realisable value.**

Cost of Inventories

Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing inventories to their present location and condition.

- ▶ **Costs of purchase:** Purchase price including duties and taxes, freight inwards and other expenditure directly attributable to acquisition. Trade discounts, rebates and other similar items shall be deducted.
- ▶ **Costs of services:** Labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.
- ▶ **Costs of conversion:** Costs directly related to units of production and a systematic allocation of fixed and variable production overheads.
- ▶ **Excluded:** Abnormal amounts of wasted materials, labour, or other production costs; storage costs (unless necessary in production process); administrative overheads that don't contribute; selling costs.
- ▶ Interest and other borrowing costs shall not be included unless they meet criteria for recognition as component of cost as specified in ICDS on borrowing costs.

Cost Formulae

Standard recognizes 3 cost formulae: (i) **Specific Identification Method**; (ii) **First-in-First-Out Method (FIFO)**; (iii) **Weighted Average Method**. Method of valuation once adopted shall not be changed without reasonable cause.

Comparative Study — ICDS II vs. AS 2

BASIS	AS 2	ICDS II
Opening Inventory	No specific provision.	Value of opening inventory shall be same as value of inventory at end of immediately preceding financial year. On commencement, cost on day of commencement is opening inventory.
Change in Method	Permitted if (a) required by statute; (b) required for compliance of AS; (c) change results in more appropriate presentation.	Method once adopted shall not be changed without "reasonable cause".
Dissolution	No specific provision.	In case of partnership firm, AOP or BOI, inventory on date of dissolution valued at NRV, whether or not business is discontinued.

9.3 ICDS III: Construction Contracts

Scope

Standard applied in determination of income for a construction contract of a contractor. Construction contract is a contract specifically negotiated for construction of an asset or combination of assets that are closely interrelated or interdependent.

- ▶ Contracts classified as **fixed price contracts** and **cost plus contracts**.
- ▶ **Fixed price contract:** Contractor agrees to a fixed contract price, or fixed rate per unit of output, subject to cost escalation clauses.
- ▶ **Cost plus contract:** Contractor reimbursed for allowable or defined costs, plus a mark up on these costs or a fixed fee.

Contract Revenue & Costs

- ▶ **Contract revenue** recognized when there is reasonable certainty of ultimate collection. Comprises: (a) initial amount agreed in contract, including retentions; (b) variations, claims and incentive payments to extent probable and capable of reliable measurement.
- ▶ **Retentions:** Amounts of progress billings not paid until satisfaction of conditions specified in contract.
- ▶ **Contract costs** comprise: costs directly related to specific contract; costs attributable to contract activity in general and allocable; other costs specifically chargeable to customer per contract; allocated borrowing costs per ICDS on Borrowing Costs. Reduced by incidental income (not interest, dividends or capital gains).

Recognition of Revenue & Expenses

Contract revenue and costs recognized as revenue and expenses by reference to **stage of completion** of contract activity at reporting date. This is referred to as the **percentage of completion method (POCM)**.

Changes in estimates: POCM applied on cumulative basis in each PY to current estimates. Changed estimates used in determination of amount of revenue and expenses in period in which change is made and subsequent periods.

Comparative Study — ICDS III vs. AS 7

BASIS	AS 7	ICDS III
Recognition of Contract Revenue	Recognized if possible to reliably measure outcome of contract.	Criteria of 'reliable measurement of outcome' omitted. Recognized as per ICDS III.
Retention Money	Silent on treatment of accrual.	Required to be considered as part of contract revenue and revenue recognized on POCM basis.
Allowability of Losses	Fully allowable irrespective of commencement, stage of completion and expected profits from other contracts.	Not allowable unless actually incurred and only on POCM basis. ICDS on Accounting Policies also doesn't permit foreseeable loss.
Contract WIP	Contract cost relating to future activity recognized as asset only if recoverability is probable.	Contract cost to be recognized as an asset.
Early Stage of Contract	Revenue recognized only to extent of recoverable costs. No profit during early stages.	Same as AS, however ICDS objectively defines early stage as not exceeding 25% .
Pre-construction Incidental Income	Contract cost may be reduced by any incidental income not included in contract revenue.	Contract cost shall be reduced by any incidental income (except interest, dividend and capital gains) not included in contract revenue.

Disclosure Requirements

- ▶ Amount of contract revenue recognized as revenue in period.
- ▶ Methods used to determine stage of completion of contracts in progress.
- ▶ For contracts in progress at reporting date: (a) amount of costs incurred and recognized profits (less recognized losses) up to reporting date; (b) amount of advances received; (c) amount of retentions.

9.4 ICDS IV: Revenue Recognition

Scope

Standard deals with bases for recognition of revenue arising in course of ordinary activities from: (a) sale of goods; (b) rendering of services; (c) use by others of person's resources yielding interest, royalties or dividends.

Revenue is gross inflow of cash, receivables or other consideration. In an agency relationship, revenue is the amount of **commission** and not the gross inflow.

Sale of Goods

Revenue from sales transactions recognized when:

- ▶ Seller has transferred to buyer the property in goods for a price or all significant risks and rewards of ownership have been transferred to buyer;
- ▶ Seller retains no effective control of goods transferred to a degree usually associated with ownership;
- ▶ There is **reasonable certainty of ultimate collection**.

Rendering of Services

- ▶ Revenue recognized by **percentage completion method**.
- ▶ When services provided by indeterminate number of acts over specific period — revenue recognized on **straight line basis** over specific period.
- ▶ Service contracts with duration of **not more than 90 days** — revenue recognized when rendering of services under that contract is completed or substantially completed.

Interest, Royalty & Dividend

- ▶ **Interest:** Accrues on time basis determined by amount outstanding and rate applicable. Interest on refund of any tax, duty or cess deemed to be income of PY in which such interest is **received**. Discount or premium on debt securities held treated as accruing over period to maturity.
- ▶ **Royalty:** Accrues in accordance with terms of relevant agreement and recognized on that basis unless, having regard to substance of transaction, more appropriate to recognize revenue on some other systematic and rational basis.
- ▶ **Dividend:** Recognized in accordance with provisions of the Act.

Comparative Study — ICDS IV vs. AS 9

BASIS	AS 9	ICDS IV
Postponement of Revenue Recognition	Postponed if significant uncertainty exists on measurability and collectability of revenue from sale of goods, rendering of services, interest, royalties and dividends.	Revenue recognized only if there is reasonable certainty of ultimate collection from sale of goods and rendering of services.
Method for Service Contracts	Proportionate completion method or completed service contract method.	Mandatory to recognize revenue based on percentage completion method . Requires application of ICDS III on Construction contracts for recognition on mutatis mutandis basis.
Disclosure Requirement	Disclose circumstances in which revenue recognition has been postponed pending significant uncertainties.	Disclosures for amounts not recognized as revenue due to lack of reasonable certainty of ultimate collection along with nature of uncertainty.

Disclosure Requirements

- ▶ In transaction involving sale of goods: total amount not recognized as revenue during PY due to lack of reasonable certainty of ultimate collection along with nature of uncertainty.
- ▶ Amount of revenue from service transactions recognized as revenue during PY.
- ▶ Method used to determine stage of completion of service transactions in progress.
- ▶ For service transactions in progress at end of PY: (a) amount of costs incurred and recognized profits (less recognized losses) up to end of PY; (b) amount of advances received; (c) amount of retentions.

9.5 ICDS V: Tangible Fixed Assets

Scope

Deals with treatment of tangible fixed assets.

Tangible fixed asset is an asset being land, building, machinery, plant or furniture held with intention of being used for purpose of producing or providing goods or services and is not held for sale in normal course of business.

- ▶ Stand-by equipment and servicing equipment are to be **capitalised**.
- ▶ Machinery spares shall be **charged to revenue as and when consumed**. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be **capitalised**.

Components of Actual Cost

- ▶ Actual cost comprises purchase price, import duties and other taxes (excluding those subsequently recoverable), and any directly attributable expenditure on making asset ready for intended use. Trade discounts and rebates deducted.
- ▶ Cost may undergo changes subsequent to acquisition or construction on account of: (a) price adjustment, changes in duties or similar factors; or (b) exchange fluctuation as specified in ICDS on Foreign Exchange Rates.
- ▶ Administration and other general overhead expenses excluded if they don't relate to specific tangible fixed asset.
- ▶ Expenditure on start-up and commissioning of project, including test runs and experimental production, shall be **capitalised**.

Self-constructed Assets, Non-monetary Consideration, Improvements

- ▶ **Self-constructed:** Same principles followed. Cost directly related and attributable costs included. Internal profits eliminated.
- ▶ **Non-monetary consideration:** When acquired in exchange for another asset, shares or securities — fair value of asset acquired shall be its actual cost.
- ▶ **Improvements and Repairs:** Expenditure increasing future benefits beyond previously assessed standard of performance added to actual cost. Addition/extension of capital nature and integral part added to actual cost. Addition/extension with separate identity and capable of being used after disposal — treated as separate asset.

Valuation in Special Cases

- ▶ Jointly owned assets: Proportion in actual cost, accumulated depreciation and WDV grouped with similar fully owned assets.
- ▶ Several assets purchased for consolidated price: Consideration apportioned to various assets on a fair basis.

Comparative Study — ICDS V vs. AS 10

BASIS	AS 10	ICDS V
Applicability	Fixed assets such as land, building, plant and machinery, vehicles, furniture and fittings, goodwill, patents, trademarks and designs, royalties and dividends.	Tangible fixed assets being land, building, machinery, plant or furniture.
Component of Cost	'Cost' comprises purchase price, non-refundable taxes and any directly attributable cost. Trade discount and rebates deducted.	Similar definition but words used are 'actual cost' as compared to 'cost' in AS 10.
Stand-by Equipment	Acknowledges capitalization as normal practice but does not mandate it.	Mandates capitalization of stand-by equipment and servicing equipment.
Machinery Spares	Usually charged to P&L on consumption. However, if used only in connection with item of fixed asset with irregular use then may be appropriate to capitalize.	Shall be charged to P&L on consumption. However, if used only in connection with item of fixed asset with irregular use then shall be capitalized.
Asset Acquired Against Non-monetary Consideration	Recorded either at (a) fair market value of asset given up/shares or securities issued or (b) fair market value of asset acquired, whichever is more clearly evident.	Actual cost of tangible fixed asset shall be recorded at fair value of tangible fixed asset acquired .
Assets Acquired for Consolidated Price	Apportioned to various assets on fair basis as determined by competent valuers.	Apportioned to various assets on a fair basis.
Disclosure Requirement	Gross and net book values at beginning and end of year showing additions, deletions and other movements, expenditure incurred in course of construction and revalued amount, if any.	Description of assets/block, depreciation rate, allowable depreciation, actual cost/opening WDV and closing WDV showing additions or deduction including adjustment for CENVAT, exchange difference and subsidy, grant or reimbursement.

9.6 ICDS VI: Effects of Changes in Foreign Exchange Rates

Scope

Standard deals with: (a) treatment of transactions in foreign currencies; (b) translating financial statements of foreign operations; (c) treatment of foreign currency transactions in nature of forward exchange contracts.

- ▶ **Foreign operations** of a person is a branch, by whatever name called, of that person, the activities of which are based or conducted in a country other than India.
- ▶ **Foreign currency transaction** is a transaction denominated in or requires settlement in foreign currency.
- ▶ **Forward exchange contract** means an agreement to exchange different currencies at a forward rate, including foreign currency option contract or similar financial instrument.

Initial Recognition & Conversion at Year End

- ▶ Foreign currency transaction recorded on initial recognition in reporting currency by applying exchange rate at date of transaction.
- ▶ Average rate for a week or month approximating actual rate may be used. If exchange rate fluctuates significantly, actual rate at date of transaction shall be used.
- ▶ **At last day of each PY:** (a) foreign currency **monetary items** converted into reporting currency by applying **closing rate**; (b) **non-monetary items** converted using **exchange rate at date of transaction**; (c) non-monetary item being inventory carried at NRV denominated in foreign currency — reported using exchange rate that existed when such value was determined.

Forward Exchange Contracts

- ▶ Any premium or discount arising at inception of forward exchange contract shall be **amortised as expense or income** over life of contract.
- ▶ Exchange differences on such contract recognized as income or expense in PY in which exchange rates change.
- ▶ Profit or loss on cancellation or renewal recognized as income or expense for the PY.
- ▶ Premium, discount or exchange difference on contracts intended for trading or speculation purposes, or entered to hedge foreign currency risk of firm commitment or highly probable forecast transaction — recognized at time of settlement.

Comparative Study — ICDS VI vs. AS 11

BASIS	AS 11	ICDS VI
Revenue Monetary Items	Converted using closing rate; exchange difference recognized in P&L.	Converted using closing rate; exchange difference recognized as income or expense subject to Rule 115.
Revenue Non-monetary Items	Historical cost: exchange rate on transaction date. Fair value: exchange rate when value determined.	Converted using exchange rate at date of transaction.
Capital Monetary Items	Requires recognition in P&L.	Requires recognition as income or expense subject to Sec. 43A. No distinction between capital and revenue items.
Foreign Operations	Subsidiary, associate, joint venture or branch of reporting enterprise.	Foreign operations of a person is a branch, by whatever name called.
Integral Foreign Operation	Same principles as own assets and liabilities; exchange differences recognized in P&L.	Subject to Sec. 43A and Rule 115, similar to AS 11. No distinction between capital and revenue items.
Non-integral Foreign Operations	All assets & liabilities and income & expense items translated at closing rates; exchange differences accumulated in FCTR.	Similar to AS 11 except resulting exchange differences recognized as income or expense instead of accumulation in FCTR. No distinction between capital and revenue items.
Forex Derivatives for Hedging	Premium/discount amortized over life; restated on MTM at year end; profit/loss on cancellation recognized in P&L.	Same as AS without distinguishing between contracts on capital and revenue account (subject to Sec. 43A applicable to imported assets).
Forex Derivatives for Trading/Speculation	Restated at year end on mark to market basis; difference recognized in P&L. No amortization of premium/discount.	Premium, discount or exchange difference recognized at time of settlement. No distinction between contracts on capital and revenue account.

9.7 ICDS VII: Government Grants

Scope

Standard deals with treatment of Government grants. Government grants are sometimes called subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc. but **does not include** Government participation in ownership of the enterprise.

- ▶ **Government** refers to Central Government, State Governments, agencies and similar bodies, whether local, national or international.
- ▶ **Government grants** are assistance by Government in cash or kind to a person for past or future compliance with certain conditions. Excludes those forms which cannot have a value placed upon them and transactions with Government which cannot be distinguished from normal trading transactions.

Recognition & Treatment of Government Grants

- ▶ Government grants should not be recognized until there is **reasonable assurance** that (i) person shall comply with conditions attached, and (ii) grants shall be received.
- ▶ Recognition shall not be postponed beyond **date of actual receipt**.

GRANT RELATES TO	TREATMENT
Depreciable fixed asset	Deducted from actual cost of asset or from WDV of block of assets.
Non-depreciable asset requiring fulfillment of certain obligations	Recognized as income over same period over which cost of meeting obligations is charged to income.
Not directly relatable to asset acquired	Proportionate amount deducted from actual cost of assets or reduced from WDV of block of assets.
Receivable as compensation for expenses or losses incurred in previous financial year or for giving immediate financial support with no further related costs	Recognized as income of period in which it is receivable.
In other case	Recognized as income over periods necessary to match with related costs which they are intended to compensate.

TAXPOINT

Taxpoint: Government grants in form of non-monetary assets, given at a concessional rate, shall be accounted for on basis of their **acquisition cost**.

Refund of Government Grants

- ▶ Amount refundable applied first against any unamortised deferred credit remaining. To extent refundable exceeds deferred credit, or where no deferred credit exists, amount charged to P&L.
- ▶ For grant related to depreciable fixed asset, recorded by **increasing actual cost or WDV** of block of assets by amount refundable. Where actual cost increased, depreciation on revised cost provided prospectively at prescribed rate.

Comparative Study — ICDS VII vs. AS 12

BASIS	AS 12	ICDS VII
Recognition	On reasonable assurance of compliance and reasonable certainty of ultimate collection. Mere receipt not sufficient.	On reasonable assurance of compliance and reasonable certainty of ultimate collection. Recognition cannot be postponed beyond date of actual receipt .
Grant in Nature of Promoter's Contribution	Credited to capital reserve; treated as shareholders' funds.	ICDS is silent on this category.
Grants Relatable to Depreciable Fixed Assets	Reduced from cost or recognized as deferred revenue by systematic credit to P&L.	Reduced from cost of fixed asset (in line with Explanation 10 to Sec. 43(1)).
Grants Relatable to Non-depreciable Fixed Assets	No conditions: credited to capital reserve. With conditions: credited to P&L over period of incurring cost of meeting conditions.	No conditions: income on upfront basis. With conditions: income over period over which cost of meeting conditions is incurred.
Grants Other Than Above	Revenue grant credited as income or reduced from related expense.	Treated as income over period over which cost of meeting conditions is incurred.
Compensation for Expenses/Loss	Recognized as income in year in which receivable.	Recognized as income in year in which receivable.

9.8 ICDS VIII: Securities

Scope

Standard deals with securities held as stock-in-trade. **Does not deal with:**

- ▶ Bases for recognition of interest and dividends on securities;
- ▶ Securities held by person engaged in business of insurance;
- ▶ Securities held by mutual funds, venture capital funds, banks and public financial institutions formed under Central or State Act or so declared under Companies Act.

Securities shall have meaning assigned in Sec. 2(h) of Securities Contracts (Regulation) Act, 1956 and shall include share of a company in which public are not substantially interested but shall not include derivatives.

Recognition & Measurement

- ▶ A security on acquisition recognized at **actual cost** — purchase price + acquisition charges such as brokerage, fees, tax, duty or cess.
- ▶ Where security acquired in exchange for other securities or other asset, **fair value of security so acquired** shall be its actual cost.
- ▶ Where unpaid interest accrued before acquisition of interest-bearing security included in price paid, subsequent receipt of interest allocated between pre-acquisition and post-acquisition periods; **pre-acquisition portion deducted from actual cost**.

Subsequent Measurement

- ▶ At end of any PY, securities held as stock-in-trade valued at **actual cost initially recognized or net realisable value (NRV), whichever is lower**.
- ▶ Comparison of actual cost and NRV done **category-wise** (shares; debt securities; convertible securities; any other securities) and **not for each individual security**.
- ▶ Securities **not listed** on recognized stock exchange or **listed but not quoted** — valued at **actual cost initially recognized**.

Comparative Study — ICDS VIII vs. AS 13

BASIS	AS 13	ICDS VIII
Applicability	Applicable to accounting for investments. Clarifies principles applicable to 'current investments' can apply to securities held as stock-in-trade.	Applicable to securities held as stock-in-trade .
Security Acquired Against Non-monetary Consideration	Recorded at (a) fair market value of securities issued or (b) fair market value of asset given up, whichever more clearly evident.	Actual cost of security acquired recorded at fair value of security acquired .
Year-end Valuation	Current investments valued at lower of cost or fair value either on individual investment basis or by category, but not on global basis.	Valued at lower of cost or NRV. Comparison done category-wise . Categories: (a) shares; (b) debt; (c) convertible securities; (d) other securities.
Opening Value of Securities	No specific provision.	Value of opening inventory of securities same as value at end of immediately preceding financial year. On commencement, cost on day of commencement is opening value.
Valuation of Unlisted or Thinly Traded Securities	No specific provision.	Valued at actual cost initially recognized .
Ascertainment of Cost	Cost formulae same as AS 2 (e.g., FIFO, average cost, etc.).	Cost which cannot be ascertained by specific identification determined on basis of FIFO method or weighted average formula .

9.9 ICDS IX: Borrowing Costs

Scope & Definition

Standard deals with treatment of borrowing costs. **Does not deal with** actual or imputed cost of owners' equity and preference share capital.

Borrowing costs are interest and other costs incurred by a person in connection with borrowing of funds and include:

- ▶ Commitment charges on borrowings;
- ▶ Amortised amount of discounts or premiums relating to borrowings;
- ▶ Amortised amount of ancillary costs incurred in connection with arrangement of borrowings;
- ▶ Finance charges in respect of assets acquired under finance leases or under other similar arrangements.

Recognition & Capitalisation

Borrowing costs directly attributable to acquisition, construction or production of a **qualifying asset** shall be **capitalised** as part of cost of that asset.

Qualifying asset means:

- ▶ Land, building, machinery, plant or furniture, being tangible assets;
- ▶ Know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;
- ▶ Inventories that require a period of **12 months or more** to bring them to a saleable condition.

Specific Borrowing	Amount of borrowing costs to be capitalised on asset = actual borrowing costs incurred during period on funds so borrowed.
Other than Specific Borrowing	Computed as: $A \times B / C$ A = Borrowing costs incurred during PY except on specific borrowings. B = (i) Average of costs of qualifying asset as appearing in balance sheet on first and last day of PY; (ii) if qualifying asset does not appear on first day, half of cost of qualifying asset; (iii) if does not appear on last day, average of costs as appearing on first day and on date of put to use or completion. C = Average of amount of total assets as appearing in balance sheet on first and last day of PY, other than assets to extent directly funded out of specific borrowings.

Commencement & Cessation of Capitalisation

- ▶ **Commencement:** In case of specific borrowing — from date on which funds were borrowed. In case of other borrowing — from date on which funds were utilised.
- ▶ **Cessation:** In case of asset other than inventory — when such asset is first put to use. In case of inventory — when substantially all activities necessary to prepare such inventory for its intended sale are complete.

Comparative Study — ICDS IX vs. AS 16

BASIS	AS 16	ICDS IX
Borrowing Cost	Includes exchange difference to extent regarded as adjustment to interest costs.	Does not include exchange differences arising from foreign currency borrowings.
Qualifying Assets	Asset which necessarily takes substantial period of time to get ready for intended use or sale.	Inventory requiring 12 months or more to bring to saleable condition. Specified tangible and intangible assets are qualifying assets regardless of substantial period condition.
Commencement & Cessation	Commencement when all three conditions satisfied (incurrence of capital expenditure, borrowing cost, construction in progress). Cessation when asset ready to use.	Specific: from date of borrowing to date asset put to use. General: from date of utilisation of funds to date asset put to use.
Methodology	Specific: directly attributable. General: weighted average cost of borrowing applied to capital expenditure.	Specific: directly attributable. General: prorated borrowing cost allocation as per normative formulae.
Income from Temporary Deployment	Income from temporary deployment of unutilised funds from specific loans reduced from borrowing cost.	No similar provision in ICDS.
Suspension of Capitalisation	Capitalisation suspended during extended periods in which active development is interrupted.	No similar provision in ICDS.

9.10 ICDS X: Provisions, Contingent Liabilities and Contingent Assets

Scope & Definitions

Standard deals with provisions, contingent liabilities and contingent assets, **except those**: (a) resulting from financial instruments; (b) resulting from executory contracts; (c) arising in insurance business from contracts with policyholders; (d) covered by another ICDS.

- ▶ **Provision:** Liability which can be measured only by using a substantial degree of estimation.
- ▶ **Liability:** Present obligation of person arising from past events, settlement of which expected to result in outflow of resources.
- ▶ **Obligating event:** Event that creates an obligation resulting in person having no realistic alternative to settling.
- ▶ **Contingent liability:** (a) Possible obligation arising from past events whose existence will be confirmed only by occurrence or non-occurrence of uncertain future events not wholly within control; or (b) present obligation arising from past events not recognized because (i) not reasonably certain that outflow will be required, or (ii) reliable estimate cannot be made.
- ▶ **Contingent asset:** Possible asset arising from past events whose existence will be confirmed only by occurrence or non-occurrence of uncertain future events not wholly within control.

Recognition

Provisions	Recognized when: (a) person has present obligation as result of past event; (b) it is reasonably certain that outflow of resources will be required to settle; (c) reliable estimate can be made of amount. No provision for costs that need to be incurred to operate in future.
Contingent Liabilities	A person shall not recognize a contingent liability.
Contingent Assets	A person shall not recognize a contingent asset. Assessed continually; when it becomes reasonably certain that inflow of economic benefit will arise, asset and related income recognized in PY in which change occurs.

Measurement, Reimbursements & Review

- ▶ Amount recognized as provision = **best estimate** of expenditure required to settle present obligation at end of PY. Amount of provision **not discounted to present value**.
- ▶ **Reimbursements:** Recognized when it is reasonably certain that reimbursement will be received if person settles obligation. Amount recognized shall not exceed amount of provision. Where person not liable for payment if third party fails to pay — no provision made. Joint and several liability — contingent liability to extent expected to be settled by other parties.
- ▶ **Review:** Provisions reviewed at end of each PY and adjusted to reflect current best estimate. If no longer reasonably certain that outflow will be required, provision reversed.
- ▶ **Use of Provisions:** Provision used only for expenditures for which originally recognized.

Comparative Study — ICDS X vs. AS 29

BASIS	AS 29	ICDS X
Onerous Executory Contracts	Included within scope. Upfront recognition of liabilities required.	Onerous executory contracts excluded from scope of ICDS.
Recognition of Provision	Recognized when it is "probable" that outflow of economic resources will be required.	Recognized when it is "reasonably certain" that outflow of economic resources will be required.
Recognition of Reimbursement Claims	Recognized when realization of related income is "virtually certain".	Recognized when realization of related income is "reasonably certain".

Disclosure Requirements

- ▶ Brief description of nature of obligation;
- ▶ Carrying amount at beginning and end of PY;
- ▶ Additional provisions made during PY, including increases to existing provisions;
- ▶ Amounts used (incurred and charged against provision) during PY;
- ▶ Unused amounts reversed during PY;
- ▶ Amount of any expected reimbursement, stating amount of any asset recognized for that expected reimbursement.

9.11 Miscellaneous Provisions

Method of Accounting in Certain Cases [Sec. 145A]

Valuation of Stock

Inventory valued at lower of **actual cost or net realisable value** computed in accordance with ICDS. Valuation of purchase and sale of goods/services and inventory adjusted to include amount of any tax, duty, cess or fee actually paid or incurred to bring goods/services to place of location and condition. Unlisted or thinly traded securities valued at **actual cost initially recognized**. Other securities valued at lower of actual cost or NRV. Comparison made **category-wise**.

Taxation of Foreign Exchange Fluctuation [Sec. 43AA]

Any gain (or loss) computed in accordance with ICDS arising on account of any change in foreign exchange rates shall be treated as income (or loss). Such gain or loss shall arise in respect of all foreign currency transactions, including those relating to:

- ▶ Monetary items and non-monetary items;
- ▶ Translation of financial statements of foreign operations;
- ▶ Forward exchange contracts;
- ▶ Foreign currency translation reserves.

Taxpoint: Sec. 43AA is not applicable in respect of cases covered u/s 43A (like computation of actual cost of asset, etc.).

Loss as per ICDS [Sec. 36(1)(xviii)]

Marked to market loss or other expected loss as computed in accordance with ICDS shall be **allowed**.

Computation of Income from Construction and Service Contracts [Sec. 43CB]

Profits and gains arising from a construction contract or a contract for providing services shall be determined on basis of **percentage of completion method** in accordance with ICDS.

CASE	METHOD
Contract for providing services with duration of not more than 90 days	Project completion method
Contract for providing services involving indeterminate number of acts over specific period of time	Straight line method

TAXPOINT

For percentage of completion method:

- ▶ Contract revenue shall include **retention money**;
- ▶ Contract costs shall **not be reduced** by any incidental income in nature of interest, dividends or capital gains.



Multiple Choice Questions

1. **ICDS VIII deals with:** A) Government Grants B) Revenue recognition C) Construction Contract D) Securities **[Ans: D]**
2. **ICDS is applicable in case of income under the head:** A) Profits and gains from Business or Profession B) Capital Gains C) Income from House Property D) All heads of income **[Ans: A]**
3. **Which ICDS deals with Accounting Policies?** A) ICDS I B) ICDS II C) ICDS III D) ICDS IV **[Ans: A]**
4. **Under ICDS, marked to market loss:** A) Is always recognized B) Shall not be recognized unless permitted by any other ICDS C) Is recognized only for banks D) None **[Ans: B]**
5. **Early stage of contract under ICDS III does not exceed:** A) 10% B) 15% C) 20% D) 25% **[Ans: D]**
6. **Under ICDS IX, borrowing costs capitalisation ceases in case of inventory when:** A) Inventory is sold B) Substantially all activities necessary to prepare inventory for intended sale are complete C) Inventory is transferred D) None **[Ans: B]**
7. **Contingent asset under ICDS X is recognized when:** A) Virtually certain B) Reasonably certain C) Probable D) Possible **[Ans: B]**
8. **Sec. 145A deals with:** A) Method of accounting B) Valuation of stock C) Both D) Neither **[Ans: C]**
9. **Under ICDS, accounting policy can be changed:** A) At any time B) With reasonable cause C) Without any reason D) Never **[Ans: B]**
10. **Which ICDS deals with Government Grants?** A) ICDS V B) ICDS VI C) ICDS VII D) ICDS VIII **[Ans: C]**



Short Essay Type Questions

- 1 Write a brief note on ICDS I.
- 2 State the disclosure requirements of ICDS III.
- 3 Explain the concept of net realisable value under ICDS II.
- 4 What are the fundamental accounting assumptions under ICDS?
- 5 State the provisions relating to Sec. 145A, 43AA, 36(1)(xviii) and 43CB.
- 6 Explain the treatment of Government Grants under ICDS VII.
- 7 What is the difference between ICDS and Accounting Standards?
- 8 Explain the recognition criteria for provisions under ICDS X.

CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

10

MODULE

Black Money Act, 2015

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 10

Black Money Act, 2015

Complete coverage of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 including Section 10.1 Introduction to Black Money Act and Section 10.2 Highlights of Black Money Act covering Chargeability, Valuation, Assessment, Tax Management, Joint Liabilities, Penalties, Prosecutions, and International Agreements as per the official ICAI Study Material.

 Module Structure & Mapping

Section A: Direct Tax Laws — Module 10: Black Money Act, 2015

10.1

INTRODUCTION TO BLACK MONEY ACT

10.2

HIGHLIGHTS OF BLACK MONEY ACT

 RULE / CONCEPT**SLOB Mapped against the Module:**

To develop understanding about various provisions of direct taxation laws and rules including international taxation laws, and inherent issues that are subject to interpretation with reference to case laws, etc.

Module Learning Objectives: After studying this module, students will be able to:

- ▶ Identify the applicability of the provisions.
- ▶ Understand the requirement of the provisions.
- ▶ Analyse the impact of such provisions in computing income and tax liability.
- ▶ Appreciate the various disclosures and procedure.

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10.1 Introduction to Black Money Act

An Act to make provisions to deal with the problem of the **Black money that is undisclosed foreign income and assets**, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.

10.2 Highlights of Black Money Act

Chargeability

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 had been introduced in the Parliament on **20-03-2015** which thereafter received President's assent on **26th May 2015** and was notified in the month of **July 2015**.

The Act extends to the **whole of India** and provides that tax @ **30%** shall be charged on every assessee for every assessment year in respect of total undisclosed foreign income and asset of the previous year – **[Sec. 3]**

TAXPOINT

Taxpoint: Key Definitions under the Act

- ▶ **Assessee [Sec. 2(2)]**: Means a person, being a **resident other than not ordinarily resident in India** within the meaning of sec. 6(6) of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act and includes every person who is deemed to be an assessee in default under this Act.
- ▶ **Undisclosed Asset Located Outside India [Sec. 2(11)]**: Means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory.
- ▶ **Undisclosed Foreign Income and Asset [Sec. 2(12)]**: Means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5.
- ▶ **Taxable Timing**: An undisclosed asset located outside India shall be charged to tax on its value in the **previous year in which such asset comes to the notice of the Assessing Officer**.
- ▶ **Value of an Undisclosed Asset**: Means the **fair market value (FMV)** of an asset (including financial interest in any entity) determined in such manner as may be prescribed.

Definition of Previous Year [Sec. 2(9)]

Business Setup during the year	The period beginning with the date of setting up of a business and ending with the date of the closure of the business or the 31st day of March following the date of setting up of such business, whichever is earlier.
New Source of Income	The period beginning with the date on which a new source of income comes into existence and ending with the date of closure of the business or the 31st day of March following the date on which such new source comes into existence, whichever is earlier.
Discontinuance / Dissolution / Liquidation	The period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business other than business referred to above or dissolution of an unincorporated body or liquidation of a company, as the case may be.
Any Other Case	The period of 12 months commencing on the 1st day of April of the relevant year in any other case, and which immediately precedes the assessment year.

Scope & Computation of Undisclosed Foreign Income and Asset

Scope of Total Undisclosed Foreign Income and Asset [Sec. 4]

The total undisclosed foreign income and asset of any previous year of an assessee shall be:

- ▶ The income from a source located outside India, which has not been disclosed in the return of income furnished u/s 139 of the Income-tax Act;
- ▶ The income, from a source located outside India, in respect of which a return is required to be furnished u/s 139 of the Income-tax Act but no return of income has been furnished u/s 139 of the Income-tax Act; and
- ▶ The value of an undisclosed asset located outside India.

Exclusions & Double Taxation Relief:

- ▶ Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of **section 29 to section 43C** (PGBP) or **section 57 to section 59** (Other Sources) or **section 92C** (Transfer Pricing) of the said Act, shall **not** be included in the total undisclosed foreign income.
- ▶ To avoid double taxation, the income included in the total undisclosed foreign income and asset under this Act shall **not** form part of the total income under the Income-tax Act.

Computation of Total Undisclosed Foreign Income and Asset [Sec. 5]

RULE / CONCEPT

In computing the total undisclosed foreign income and asset of any previous year of an assessee:

- ▶ **No deduction** in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act.
- ▶ Any income which has been assessed to tax for any assessment year under the Income-tax Act prior to the assessment year to which this Act applies, or which is assessable or has been assessed to tax for any assessment year under this Act, **shall be reduced** from the value of the undisclosed asset located outside India, if the assessee furnishes evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or is assessable.

Σ FORMULA

Deduction for Immovable Property: Deduction = Value of the asset as on the 1st day of the financial year in which it comes to notice of AO × (Assessable or Assessed Foreign Income / Total Cost of the Asset)

ILLUSTRATION

Illustration 1: Valuation and Proportionate Deduction for Immovable Property

Facts: A house property located outside India was acquired by an assessee in the previous year 2009-10 for ₹ 50 lakh. Out of the investment of ₹ 50 lakh, ₹ 20 lakh was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2025-26. The value of the asset in the year 2025-26 is ₹ 1 crore.

✓ SOLUTION

The amount chargeable to tax shall be ₹ 60,00,000 computed as follows:

Chargeable Amount = Value in Year of Detection – Proportionate Assessed Portion

= ₹ 1,00,00,000 – [₹ 1,00,00,000 × (₹ 20,00,000 / ₹ 50,00,000)]

= ₹ 1,00,00,000 – ₹ 40,00,000 = ₹ 60,00,000

(Taxable under Section 3 @ 30% = ₹ 18,00,000).

10.2.2 Tax Management & Assessment Procedure

Tax Authorities [Sec. 6]	The income-tax authorities shall be the tax authorities for the purposes of this Act. Every such authority exercises powers within his jurisdiction as under the Income-tax Act. If an assessee has no income assessable under the Income-tax Act, jurisdiction lies where the assessee resides or carries on business.
Change of Incumbent [Sec. 7]	Successor authority continues proceedings from the stage left by predecessor. The assessee may be given an opportunity of being heard if requested in writing before passing an order.
Assessment Notice [Sec. 10]	AO serves notice requiring production of accounts/documents on receipt of information. No separate return is required to be filed under this Act. There is no time limit for issuance of notice.
Time Limit for Order [Sec. 11]	Assessment order shall be made within 2 years from the end of the financial year in which the notice was issued by the Assessing Officer.
Best Judgment Assessment [Sec. 10(4)]	If any person fails to comply with all terms of notice, AO assesses undisclosed income and assets to the best of his judgment after giving opportunity of being heard.

Comparative Analysis: Income-tax Act vs. Black Money Act

PROCEEDING / MECHANISM	INCOME-TAX ACT, 1961	BLACK MONEY ACT, 2015
Power regarding discovery, inspection, etc.	Sec. 131	Sec. 8
Rectification of Mistake	Sec. 154	Sec. 12
Notice of Demand	Sec. 156	Sec. 13
Appeals to Commissioner (Appeals)	Sec. 246A to 250	Sec. 15 to 17
Appeals to Appellate Tribunal (ITAT)	Sec. 252 to 255	Sec. 18
Appeals to High Court	Sec. 260A	Sec. 19
Appeals to Supreme Court	Sec. 261	Sec. 21
Revision by Principal Commissioner / Commissioner	Sec. 263 / 264	Sec. 23 / 24
Recovery of Tax	Sec. 220	Sec. 30
Tax Recovery Officer (TRO)	Sec. 222 to 232	Sec. 31 to 39
Interest	Sec. 234A to 234C	Sec. 40

Joint and Several Liabilities [Sec. 35 & 36]

Liability of Manager of Company [Sec. 35]

Every person being a manager at any time during the financial year is **jointly and severally liable** for tax due if not recoverable from the company.

Exemption: If manager proves non-recovery is not due to any neglect, misfeasance or breach of duty on his part.

Liability of Participants [Sec. 36]

Every participant in an unincorporated body (or legal representative of deceased participant) is **jointly and severally liable**.

Participant [Sec. 2(7)]: Partner in a firm or Member in an AOP/BOI. A partner of an LLP is exempt if he proves absence of neglect or misfeasance.

Penalties & Prosecutions

NATURE OF DEFAULT	SEC.	PENALTY	SEC.	PROSECUTION
Failure to disclose foreign income and asset	41	300% of tax u/s 10	51(1)	3 years to 10 years + fine
Failure to furnish return of income before expiry of relevant AY ²	42	₹ 10 lakh	—	—
Failure to disclose foreign asset or income in return of income ²	43	₹ 10 lakh	50	6 months to 7 years + fine
Attempt to evade payment of tax, interest and penalty	44	Amount of tax in arrear	51(2)	3 years to 10 years + fine
Failure to answer questions, sign statements, or attend/produce books u/s 8	45	₹ 50,000 to ₹ 2,00,000	—	—
Makes a statement or delivers an account/statement which is false	—	—	52	6 months to 10 years + fine
Abets or induces another person to make/deliver false account/statement	—	—	53	6 months to 10 years + fine
Second and subsequent offences	—	—	58	3 to 10 years + Fine (₹ 5L to ₹ 1 Cr)

△ IMPORTANT

Conditions & Exceptions:

- ▶ ¹ Prosecution under sections 50, 51, 52, 53 is rigorous imprisonment along with fine.
- ▶ ² **Threshold Relief:** Sections 42 and 43 shall **not apply** in respect of an asset or assets (other than immovable property) where the aggregate value of such asset or assets does not exceed ₹ 20 lakh.

💡 TAXPOINT

Taxpoint: Procedural Safeguards & Approvals

- ▶ **Limitation for Penalty [Sec. 47]:** No penalty order shall be passed after the expiry of **1 year** from the end of the financial year in which notice for imposition of penalty is issued u/s 46.
- ▶ **Sanction for Prosecution:** A person shall not be prosecuted except with prior sanction of **Principal Commissioner / Commissioner / Commissioner (Appeals)**.
- ▶ **Joint Commissioner Approval for Penalty:**
 - ▶ Penalty exceeds ₹ 1,00,000 where authority is of the rank of Income-tax Officer (ITO).
 - ▶ Penalty exceeds ₹ 5,00,000 where authority is Assistant / Deputy Commissioner.
- ▶ **Cognizance of Offence [Sec. 80]:** No court inferior to that of a **Metropolitan Magistrate or a Magistrate of the First Class** shall try any offence under this Act.
- ▶ **Bar of Civil Suits [Sec. 82(1)]:** No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act.
- ▶ **Immunity for Action in Good Faith [Sec. 82(2)]:** No prosecution, suit or proceeding shall lie against Government or its officers for anything done in good faith.

Other Provisions & Foreign Agreements

Rounding Off	(a) Undisclosed foreign income and asset shall be rounded off to the nearest multiple of ₹ 100. (b) Any amount payable or receivable by the assessee shall be rounded off to the nearest multiple of ₹ 10.
Agreement with Foreign Countries [Sec. 73]	The Central Government may enter into an agreement with Government of any other country or specified territory outside India: ▶ For exchange of information for prevention of evasion/avoidance of tax or investigation. ▶ For recovery of tax under this Act and corresponding foreign laws. ▶ Any specified association in India may enter into agreement with specified association in specified territory, adopted by CG via notification.

★ Quick Revision Summary — Module 10

★ QUICK REVISION

Core Takeaways at a Glance:

- ▶ ✓ **Target Assessee:** Strictly applies to **Resident and Ordinarily Residents (ROR)** under Sec. 6(6) of IT Act.
- ▶ ✓ **Tax Rate:** Flat **30%** under Section 3 on undisclosed foreign income and asset.
- ▶ ✓ **Concealment Penalty: 300% of tax** under Section 41 (Effective tax + penalty burden = 120% of undisclosed value).
- ▶ ✓ **ITR Reporting Penalty:** Flat **₹ 10 Lakhs** under Sec. 42 (non-filing of ITR) or Sec. 43 (non-disclosure of foreign asset in ITR).
- ▶ ✓ **₹ 20 Lakh Relief:** Penalty u/s 42 & 43 does not apply to non-immovable assets if aggregate value does not exceed ₹ 20 lakh.
- ▶ ✓ **Valuation Basis:** Taxed on **Fair Market Value (FMV)** in the previous year in which the asset comes to the notice of the Assessing Officer.
- ▶ ✓ **No Set-offs:** No deduction, allowances, or loss set-offs permitted under Section 5.
- ▶ ✓ **Time Limit for Order:** Assessment order must be completed within **2 years** from the end of FY in which notice was issued [Sec. 11].

✓ Complete Coverage Checklist

- | | |
|---|--|
| ▶ ✓ 10.1 Introduction, Scope & Purpose | ▶ ✓ Illustration 1 (House Property Solved) |
| ▶ ✓ Assessee Definition [Sec. 2(2)] | ▶ ✓ Tax Authorities & Jurisdiction [Sec. 6, 7] |
| ▶ ✓ Previous Year Definition [Sec. 2(9)] | ▶ ✓ Assessment & Notice Procedure [Sec. 10, 11] |
| ▶ ✓ Undisclosed Foreign Asset [Sec. 2(11)] | ▶ ✓ Best Judgment Assessment [Sec. 10(4)] |
| ▶ ✓ Undisclosed Income & Asset [Sec. 2(12)] | ▶ ✓ Comparative Table (IT Act vs. BMA) |
| ▶ ✓ Chargeability @ 30% [Sec. 3] | ▶ ✓ Company Manager Liability [Sec. 35] |
| ▶ ✓ Scope & Exclusions [Sec. 4] | ▶ ✓ Participant Liability in AOP/Firms [Sec. 36] |
| ▶ ✓ Computation & Rules [Sec. 5] | ▶ ✓ Penalty Table & Prosecutions [Sec. 41–58] |
| ▶ ✓ Immovable Property Proportion Rule | ▶ ✓ Foreign Country Agreements [Sec. 73] |

 Multiple Choice Questions

1. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 extends to:

- ▶ A. Whole of India
- ▶ B. Whole of India excluding Jammu and Kashmir
- ▶ C. Whole of India excluding Jammu and Kashmir and Arunachal Pradesh
- ▶ D. None of the above

[Answer: A — Whole of India]

2. The rate of tax provided by the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is:

- ▶ A. 30%
- ▶ B. 60%
- ▶ C. 50%
- ▶ D. None of the above

[Answer: A — 30%]

 Short Essay Type Questions

1 How to compute total undisclosed foreign income and asset u/s 5 of the Black Money Act?

Guidance: State that no deductions for expenses/allowances or set-off of losses are allowed. Income already assessed to tax under Income-tax Act or Black Money Act is reduced from the value of the asset. For immovable properties, compute the proportional deduction based on value as on the first day of the FY of discovery.

2 State the amount of penalty u/s 41 of the Black Money Act for failure to disclose foreign money and asset.

Guidance: Under Section 41, the penalty is equal to 300% of the tax computed under section 10, over and above the 30% tax liability.

 References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material (Paper 15: Direct Tax Laws & International Taxation)

CMA Knowledge — Direct Tax Laws & International Taxation

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CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

11

MODULE

Case Study

COURSE

CMA Final

SECTION

Section A: Direct Tax Laws (60%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 11

Case Study — Judicial Precedents & Case Laws

Comprehensive coverage of key judicial decisions across Direct Tax Laws and International Taxation. Topics include Royalty/FTS, Faceless Assessment, Subsidies, Section 14A, House Property, TDS Provisions, Section 68/69A, PAN, Slump Sale, Section 41(1), Agricultural Land, Depreciation, Section 54F, Software Royalty, Interest u/s 234B/234C, TDS on Contracts, PE, Penalty, TCS, Transfer Pricing, Section 35D, Section 2(22)(e), Bogus Purchases, NBFC NPAs, Section 194H, GAAR, and more.

 Module Structure**Section A: Direct Tax Laws — Case Study****11.1**

CASE STUDIES

65+

CASE LAWS

20+

TOPICS

30+

PAGES COVERAGE

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Case Studies — Judicial Precedents

CASE STUDY

Case 1: Commissioner of Income Tax (International Taxation) v. Amazon Web Services Inc. [2025] 174 taxmann.com 1188 (Delhi)

Issue: Whether payments made by Indian customers for standardized cloud computing services (IaaS) constitute "Royalty" or "Fees for Technical Services" (FTS) under the India-US DTAA?

Facts: Revenue treated payments to AWS for cloud services as "royalty" for use of scientific equipment/process. AWS argued it provided standard automated services without transferring any rights, control, or technical know-how to customers.

✓ DECISION

Decision: Held in favour of Assessee. The Court held that cloud computing payments are **not Royalty**. Customers merely access the service; they do not acquire any proprietary right, control, or possession over the server hardware or software code. It is a **service**, not a lease of equipment or transfer of copyright.

CASE STUDY

Case 2: Income Tax Bar Association v. Union of India [2025] 179 taxmann.com 290 (Gujarat)

Issue: Can the CBDT extend the due date for filing Tax Audit Reports without simultaneously extending the due date for filing the Income Tax Return (ITR)?

Facts: CBDT extended deadline for filing Tax Audit Reports to 31st October but kept ITR filing deadline as 31st October as well. Petitioners argued this violated statutory scheme which envisages a one-month gap between audit report and ITR filing.

✓ DECISION

Decision: Held in favour of Assessee. The Court directed CBDT to extend ITR filing due date. It held that the "specified date" for audit and "due date" for ITR are **inextricably linked**. Extending one without the other defeats the legislative intent of allowing time to prepare the return after the audit is concluded.

CASE STUDY

Case 3: KMG Wires Pvt. Ltd. v. National Faceless Assessment Centre [2025] (Bombay)

Issue: Is a tax notice valid if it relies on case laws generated by Artificial Intelligence (AI) that do not actually exist?

Facts: Income Tax Department issued a notice relying on three specific judicial precedents. The assessee found these cases were hallucinations (non-existent) generated by an AI tool used by the officer to draft the notice.

✓ DECISION

Decision: Held in favour of Assessee. The Court quashed the notice, calling the process unfair. It observed that while AI is useful, quasi-judicial authorities cannot **blindly rely on it without cross-verification**. Reliance on non-existent cases breaches the principles of natural justice.

CASE STUDY

Case 4: T.K.S. Builders (P.) Ltd. v. Income Tax Officer [2024] 167 taxmann.com 759 (Delhi)

Issue: Do Faceless Assessing Officers (FAO) and Jurisdictional Assessing Officers (JAO) have concurrent jurisdiction to issue reassessment notices under Section 148?

Facts: Assessee challenged a Sec. 148 notice issued by Faceless Assessing Officer, arguing that only Jurisdictional AO had power to issue such notices under specific notifications.

✓ DECISION

Decision: Held in favour of Revenue. The Court clarified that under new regime (Section 144B and related notifications), **both JAO and FAO have concurrent jurisdiction**. A notice issued by Faceless officer is valid and cannot be quashed merely on ground that JAO should have issued it.

CASE STUDY

Case 5: Siemens Public Communications Network Ltd v. CIT (2016) (SC)

Issue: Whether voluntary subsidies paid by a holding company to protect capital investment in its loss-making subsidiary is capital receipt in hands of recipient?

Facts: Subvention received by Assessee-Company from its parent company in Germany where assessee was making losses. AO treated as revenue receipt. CIT(A) and ITAT reversed. High Court restored AO's view relying on Sahney Steel and Ponni Sugars.

✓ DECISION

Decision: Held in favour of Assessee. The Apex Court held that in Ponni Sugars and Sahney Steel, subsidies received were in nature of grant-in-aid from public funds and not voluntary contribution by parent company. Voluntary payments made by parent company to its loss-making Indian company can be understood to be payments made in order to **protect capital investment**. Thus, payments cannot be held to be revenue receipts.

CASE STUDY

Case 6: Pr. CIT v. U. K. Paints India Pvt. Ltd (2016) (Delhi)

Issue: Can AO invoke provisions of Section 14A by rejecting suo-moto disallowances made by assessee, without assigning any reasons?

Facts: Assessee's return reported tax exempt income of over ₹25 crores. AO applied disallowance u/s 14A without accepting proffered disallowance of ₹7.5 lakhs. Order rectified u/s 154 clarifying amount was not "taken into consideration" at time of passing order u/s 143(3). CIT(A) restored matter for fresh computation. ITAT held AO can make independent determination under Rule 8D read with Sec. 14A(2) after recording satisfaction.

✓ DECISION

Decision: High Court held that AO must base opinion on **appraisal of objective material** relating to assessee's voluntary disallowance. If assessee discloses larger amount, it is incumbent upon AO to enquire into such larger amounts and determine whether it has nexus with expenditure relatable to exempt income to attract Sec. 14A(1).

CASE STUDY

Case 7: Raj Dadarkar & Associates v. ACIT (2017) (SC)

Issue: Whether income from sub-licensing of property is taxable as house property income or business income?

Facts: MHADA handed over ground floor to Market Department of MCGB. In 1993, MCGB auctioned property on monthly license basis. Assessee was successful bidder. Assessee spent substantial amount on additions/alternations. Constructed 95 shops and 30 stalls. Collected compensation from sub-licensees, leave and license fees, service charges. Offered income as business income. AO computed as Income from House Property. CIT(A) allowed appeal. ITAT reversed. High Court dismissed assessee's appeal.

✓ DECISION

Decision: Apex Court held that wherever there is income from leasing out of premises and collecting rent, normally such income is to be treated as **income from house property** if provisions of Sec. 22 are satisfied. Assessee held to be 'deemed owner' by virtue of Sec. 27. Merely because there is entry in object clause of business showing particular object would not be determinative factor. Service charges received were inseparable from basic charges of rent.

CASE STUDY

Case 8: Palam Gas Service v. CIT (2017) (SC)

Issue: Does provision of Sec. 40(a)(ia) cover cases where amount is actually paid?

Facts: Assessee engaged in business of purchase and sale of LPG cylinders. Received freight payments from IOC. Transportation done through three truck-owners to whom total freight payment of ₹20 lakhs was made. AO disallowed expenses u/s 40(a)(ia) for failure to deduct tax u/s 194C. CIT(A) and ITAT upheld. High Court ruled in favour of Revenue.

✓ DECISION

Decision: Apex Court held that when entire scheme of obligation to deduct tax at source and paying it over to Central Government is read holistically, **it cannot be held that word 'payable' occurring in Sec. 40(a)(ia) refers to only those cases where amount is yet to be paid** and does not cover cases where amount is actually paid. If interpreted otherwise, a person who has violated provisions of Chapter XVII-B would go scot free.

CASE STUDY

Case 9: Maneklal Agarwal v. DCIT (2017) (SC)

Issue: Whether higher rentals received from third party sub-lessees taxable in hands of first lessor where lease is shown to be sham?

Facts: Assessee leased out property to his own family members for nominal rent, who in turn sub-leased it to third parties on much higher rental values. Tax authorities held sub-letting income taxable in hands of assessee only. CIT(A) upheld. Tribunal directed to consider municipal valuation. High Court allowed revenue's appeal. Assessee appealed to Supreme Court.

✓ DECISION

Decision: Supreme Court observed that assessee devised a structure to show lesser income by entering into lease agreement with wife, son, and daughter-in-law at nominal rates and allowing them to sub-let at much higher rental value. Given finding of fact that first lease transaction was **bogus**, assessee was found to be **'right person'**, making it permissible for revenue to tax said rental income in hands of assessee. To avoid double taxation, relatives could seek redressal in appropriate proceedings.

CASE STUDY

Case 10: CIT v. Smt. Sarika Jain (2017) (All)

Issue: Whether ITAT competent to make addition under different section if it wasn't subject matter of appeal?

Facts: Assessee was partner in firm, introduced certain capital. Notice u/s 148 issued to explain source. Assessee submitted she received gift from 2 persons through banking channel. Gift deeds produced. Statements of donors recorded u/s 131. AO held gifts not genuine, added as undisclosed income u/s 68. CIT(A) affirmed. Tribunal held addition u/s 68 could not be sustained, but proceeded to add amount as income u/s 69-A.

✓ DECISION

Decision: High Court held that use of word 'thereon' in Sec. 254(1) is important — it reflects that Tribunal has confined itself to questions arising or subject matter in appeal and cannot travel beyond same. Power to pass such orders as Tribunal thinks fit can be exercised only in relation to matter that arises in appeal. When said income could not be added u/s 68, Tribunal was not competent to make addition u/s 69A. Entire order of Tribunal vitiated in law.

CASE STUDY

Case 11: Purnima Advertising Agency Pvt Ltd v. DCIT (2017) (Guj)

Issue: Can higher tax demand u/s 206AA be raised on account of incorrect PAN mentioned in TDS return?

Facts: Assessee made payments to various recipients, deducted tax at 2%. In TDS returns for Q2 and Q3, PAN of one deductee wrongly mentioned due to typographical error. AO found PAN did not match. Invoked Sec. 206AA, raised demand for remaining tax after adjusting tax deducted.

✓ DECISION

Decision: High Court held that once tax department recognises possibility of errors and makes provisions for corrections, it is wholly illogical to limit such corrections on arithmetical working out of only two alphabets or two numeric being found incorrect. Decision to limit correction to limited characters has **no rationale relation**. Tax department shall verify taxpayer's claim of actual deduction at prescribed rate, verify PAN sought to be corrected belongs to deductee, and tax was actually deposited.

CASE STUDY

Case 12: CIT v. Equinox Solution Pvt. Ltd (2017) (SC)

Issue: If an undertaking is sold as a running business with all assets and liabilities for a slump price, can any part of consideration be attributed to depreciable assets and assessed as short-term capital gain u/s 50(2)?

Facts: Assessee company engaged in manufacturing sheet metal components sold entire business in one go with all assets and liabilities to another company, claimed sale to be of 'slump sale' in nature of long term capital gains as undertaking owned for almost 6 years. AO rejected contention, held covered u/s 50(2). CIT(A) allowed assessee's claim. ITAT and High Court ruled in assessee's favour.

✓ DECISION

Decision: Apex Court observed that Sec. 50(2) would apply to any block of assets transferred which assessee was using in running of business. However, where entire running business with assets and liabilities stood transferred in one go, such sale **could not be treated as short-term capital assets** and is in nature of LTCG. Upheld assessee's claim relying on Artex Manufacturing Co. and Premier Automobiles Ltd.

CASE STUDY

Case 13: Mcdowell & Company Ltd v. CIT (2017) (SC)

Issue: Whether deemed income u/s 41(1) of amalgamating company should be reduced from loss to be set off u/s 72A by amalgamated company?

Facts: Assessee company took over sick company HPL through scheme of amalgamation. HPL owed money to banks and financial institutions. Interest accrued shown as payable and claimed as expenditure. Banks agreed to waive off interest. On waiver, it became income u/s 41(1). Assessee claimed set off of accumulated losses taken over from HPL u/s 72A. AO adjusted income from accumulated losses. ITAT held income u/s 41(1) not at hands of assessee but HPL (different entity). High Court reversed ITAT order.

✓ DECISION

Decision: Apex Court held that waiver of liability due by amalgamating company after amalgamation is **taxable in hands of amalgamated company u/s 41(1)**. When assessee is allowed benefit of accumulated losses while computing those losses, income which accrued to it had to be adjusted and only thereafter net losses could have been allowed to be set off.

CASE STUDY

Case 14: Shankar Dalal & others v. CIT (2017) (Bom.)

Issue: Should provisions of local land laws be considered while determining land as agricultural land?

Facts: Assessee declared gain on sale of agricultural land as exempt since land does not constitute "Capital Assets" u/s 2(14). AO denied exemption as no agricultural operations carried out regularly and sold to company engaged in infrastructure development. Also ruled land beyond 8 kms from municipal limits yet capital asset. CIT(A) held as agricultural land. Tribunal upon re-inspection held only 1/5th actually used for dry crop as agricultural, balance 4/5th not agricultural.

✓ DECISION

Decision: Bombay High Court reversed ITAT order and held that merely because assessee could not produce and utilize land fully by employing labour, and/or unable to give crop statements should not have been criteria. Revenue fell in error in **not considering provisions of local land laws**, as activities performed by assessee on land were recognised as 'agricultural' activities under Local land law.

CASE STUDY

Case 15: Mother Hospital (P) Ltd v. CIT (2017) (SC)

Issue: Can lessee be said to be "owner" for purposes of claiming depreciation? Is lessee entitled to depreciation on cost of construction incurred by him but not on cost incurred by owner and reimbursed by lessee?

Facts: Partnership firm constituted by 'M' and family members owned land. Purpose was to run super speciality hospital, started construction of building. Agreement between firm and company — firm would complete construction and hand over possession on condition entire cost borne by assessee company. Assessee claimed depreciation on building. AO rejected. Assessee claimed it had become owner.

✓ DECISION

Decision: Apex Court held that building constructed by firm belonged to firm. Title in case of immovable property cannot pass when its value is more than ₹100 unless executed on proper stamp paper and duly registered. Nothing of sort took place. It is only when assessee holds lease right or other right of occupancy and any capital expenditure incurred by it on construction or renovation, assessee would be entitled to depreciation to extent of such expenditure incurred. Where construction carried out by owner-lessor and expenditure reimbursed by assessee-lessee, **Explanation 1 to Sec. 32(1) would not come to aid of assessee.**

CASE STUDY

Case 16: Rajesh Kumar Aggarwal v. CIT (2017) (Delhi)

Issue: Can exemption u/s 54F be granted in revision u/s 264?

Facts: Assessee for AY 2009-10 claimed set off of capital gains from sale towards house property against capital losses and loss in respect of shares. Set off not permitted. Assessee purchased new property in July 2008 with intention of seeking benefit u/s 54F. Original property sold on 20.06.2008. Benefit of Sec. 54F not claimed when return filed on 30.09.2009. Assessment disallowed set off. Time to file revised return elapsed. Assessee filed revision petition u/s 264. Commissioner rejected stating no documentary evidence filed during assessment proceedings.

✓ DECISION

Decision: High Court held that phraseology adopted by Sec. 264 is of widest amplitude. Term "any such order as he thinks fit" is only qualified by "subject to provisions of this Act". Unless there is direct impediment to power u/s 264 which inhibits grant of relief, it is per se admissible. Sec. 54F does not per se contain any such impediment. Therefore, **there is no bar in grant of relief despite assessee having missed the bus** and having committed mistake.

CASE STUDY

Case 17: Pr. CIT v. Ramgopal Minerals (2017) (Kar)

Issue: No cessation of liability even if creditors were untraceable but evidences of payments to them were produced?

Facts: AO made addition to assessee's income u/s 41(1) in respect of cessation/remission of trading liability of various transporters who transported minerals for assessee stating assessee failed to produce transporters/trade creditors before authority despite summons. Tribunal set aside additions. Revenue appealed to High Court.

✓ DECISION

Decision: High Court held that in legal parlance, merely because creditor could not be traced on date when verification was made, **same is not ground to conclude that there was cessation of liability**. Cessation of liability has to be cessation in law. Debt is recoverable even if creditor has expired, by legal heirs. Conditions precedent were not satisfied for invoking Sec. 41(1).

CASE STUDY

Case 18: CIT v. Vinzas Solutions India (P.) Ltd (2017) (Mad)

Issue: Whether payment made by dealer for outright purchase of software is tantamount to "royalty"?

Facts: Assessee was dealer in computer software, purchased from various companies. During assessment, disallowance effected u/s 40(a) (ia) on ground that consideration for purchase was of nature of 'royalty' under Explanation 4 and 5 of Sec. 9(1)(vi) and tax ought to have been deducted u/s 194J. CIT(A) affirmed. Tribunal reversed CIT(A) order.

✓ DECISION

Decision: High Court held that term "royalty" normally connotes payment made by person who has exclusive right over thing for allowing another to make use of that thing. Exclusivity of right should be with grantor. Mere passing of information concerning design of machine which is tailor-made to meet requirement of buyer does not by itself amount to transfer of any right of exclusive user so as to render payment as 'royalty'. There is difference between transaction of sale of a '**copyrighted article**' and one of '**copyright**' itself. Provisions of Sec. 9(1)(vi) would stand attracted in case of latter and not former.

CASE STUDY

Case 19: CIT v. Subhash Vinayak Supnekar (2016) (Bom.)

Issue: Can investment be made out of advance received under sale agreement for Sec. 54EC relief?

Facts: Assessee entered into agreement to sell property on 21-2-2006 and sale deed executed on 5-4-2007. Assessee invested ₹50 lakhs from advance received under agreement to sale in Rural Electrification Corporation Ltd. bonds on 2-2-2007. AO and CIT(A) held assessee not entitled to Sec. 54EC as amount invested prior to sale of subject property. Tribunal held even when assessee made investment in bonds on receipt of advance as per agreement to sell, still entitled to claim benefit u/s 54EC. High Court affirmed Tribunal order.

✓ DECISION

Decision: High Court held that assessee was entitled to benefit of Sec. 54EC as investment made out of advance received under sale agreement. The investment was made within the prescribed period from the date of transfer and the assessee had complied with the substantive provisions of the section.

CASE STUDY

Case 20: Ian Peter Morris v. ACIT (2016) (SC)

Issue: Does interest u/s 234B & 234C apply on salary income?

Facts: Appellant-assessee along with three others promoted a Company. Company acquired by Synergy Credit Corporation Limited. Appellant offered position of Executive Director. Non-Compete Agreement signed between appellant and Acquirer Company imposing restriction from carrying on business of Computer Software development for 5 years, for which appellant paid ₹21,00,000. Question was whether amount is 'salary' or 'capital receipt'. High Court held salary amount on which interest u/s 234B and 234C chargeable.

✓ DECISION

Decision: Supreme Court held that in cases where receipt is by way of salary, deductions u/s 192 are required to be made. No question of payment of advance tax under Part 'C' of Chapter VII can arise in cases of receipt by way of 'salary'. Therefore, **interest obligations u/s 234B and 234C would have no application** since High Court already decided that Non-Compete Agreement was by way of salary. Modified order, deleting interest u/s 234B & 234C.

CASE STUDY

Case 21: Pr. CIT v. Bharat Heavy Elect. Ltd. (2016) (P&H)

Issue: Do usual clauses in contract involving payments for construction, erection & commissioning etc. of plants involving inputs from technical personnel constitute "payments for technical services" attracting TDS obligations u/s 194J?

Facts: Post TDS inspection u/s 133A, AO found company made payments to five contractors in respect of various contracts and deducted tax u/s 194C, whereas all contracts involved provision of professional and technical services which fell within ambit of Sec. 194J. Question was whether amounts paid constitute fees for professional or technical services attracting Sec. 194J or whether they constitute payments to contractors attracting Sec. 194C.

✓ DECISION

Decision: High Court held that testing, pre-commissioning, commissioning and post commissioning are required to be carried out by contractor to satisfy customer that work has been executed in proper manner. Personnel required to test and commission plant and equipment perform functions not under contract for supply of technical services to customer, but to satisfy customer on behalf of contractor that plant and equipment has been duly supplied as per contractual specifications. Technical personnel deployed not for and on behalf of customer, but **for and on behalf of contractor itself**. Contract did not involve supply of professional or technical services within meaning of Sec. 194J.

CASE STUDY

Case 22: CIT v. Greenfield Hotels & Estates Pvt. Ltd (2016) (Bom.)

Issue: Where Revenue accepts decision of a Court/Tribunal on an issue of law, not challenging it in appeal, can a subsequent decision following earlier be challenged?

Facts: Revenue in appeal against Tribunal's order of having made provisions of Sec. 50C inapplicable to transfer of land & building being leasehold property. It was brought to notice of Court that Revenue had not preferred any appeal against decision of Tribunal in like case where facts were similar and it could be inferred that it had been accepted.

✓ DECISION

Decision: High Court followed decisions in DIT v. Credit Agricole Indosuez 377 ITR 102 and UOI v. Satish P. Shah 249 ITR 221, which laid down salutary principle that where Revenue has accepted decision of Court/Tribunal on issue of law and not challenged it in appeal, then a **subsequent decision following earlier decision cannot be challenged**. Question framed by Revenue did not give rise to substantial question of law.

CASE STUDY

Case 23: ADIT v. E-Funds IT Solution Inc (2017) (SC)

Issue: Does outsourcing services provided by E-Funds Corporation, USA to its Indian affiliate constitute Permanent Establishment under India-USA Tax Treaty?

Facts: E-Funds US and E-Funds IT US entered into contracts with clients in US for provision of ITES. Contracts assigned or sub-contracted to E-Funds India for execution. AO relying upon FAR Analysis observed E-Funds US allowed E-Funds India to use technology and infrastructure free; US entities undertook marketing activities. AO concluded E-Funds India was fixed place PE. CIT(A) affirmed, also held service PE and agency PE. ITAT affirmed fixed place PE and service PE. High Court set aside. Revenue appealed to Supreme Court.

✓ DECISION

Decision: Supreme Court held that a fixed place would constitute PE of non-resident only when such fixed place was "at the disposal" of that non-resident. Neither E-Funds US nor E-Funds IT US had physical premise in India at its disposal nor control over use of E-Funds India's premises for their business. It was "fundamentally erroneous" to say that merely by contracting with 100% subsidiary, PE would be created. Outsourcing of work by E-Funds US and E-Funds IT US to India would **not result in creation of fixed place PE**. For service PE, none of customers of US entities were located in India or receiving services in India. No agency PE as tests under Article 5(4) not satisfied.

CASE STUDY

Case 24: R.B Shreeram Durgaprasad v. CIT (2016) (Bom.)

Issue: Is penalty order illegal and without jurisdiction if passed during pendency of assessment proceeding?

Facts: Certain addition made to assessee income in reassessment proceedings. Assessee filed appeal before Tribunal against addition. AO levied penalty u/s 271(1)(c) while appeal was pending before Tribunal. Assessee contended in terms of Sec. 275(1)(a), penalty proceedings could not have been initiated pending appeal before Tribunal.

✓ DECISION

Decision: High Court ruled in favour of assessee contending that language of Sec. 275(1)(a) clearly shows order imposing penalty cannot be passed if appeal against basic order of assessment is pending before competent superior authority. Here, though 1st appellate authority disposed of appeal, further appeal before Tribunal was very much pending. Order imposing penalty was **premature and therefore illegal and without jurisdiction**. Notices for initiation were during pendency of appeal before Tribunal. Essential ingredients of Sec. 275(1) clearly not in contemplation of notice issuing authority.

CASE STUDY

Case 25: Hightension Switchgears Pvt Ltd v. CIT (2016) (Kolkata)

Issue: No TDS on transportation charges reimbursed by buyer if seller is liable to pay such charges to GTA?

Facts: During 2006-07, seller sold goods to assessee (buyer). Under contract of sale, seller was bound to send goods to buyer and to pay transportation charges to GTA. Seller entitled to recover transportation charges from buyer. Assessee reimbursed freight component to seller and claimed deduction. Tribunal held assessee liable to deduct tax u/s 194C. Lower authorities disallowed freight component u/s 40(a)(ia).

✓ DECISION

Decision: High Court ruled in favour of assessee holding that even assuming supplier in transporting goods acted as agent of assessee and assessee reimbursed freight charges to supplier, who in turn paid to concerned transporter, no other conclusion possible. Agent being supplier has admittedly paid to transporter and has also deducted tax at source. When agent has complied with provision, **principal cannot be visited with penal consequences**. For one payment there could not have been two deductions. When a person acts through another, in law, he acts himself.

CASE STUDY

Case 26: CIT v. Anil Kumar & Co. (2016) (Kar.)

Issue: Can addition be made on estimated basis without rejecting books of account of assessee?

Facts: Assessee partnership firm carrying on business as cotton merchants and commission agents. Filed return for AY 2006-07 declaring NIL total income. Assessment u/s 143(3). AO noticed gross profit declared varied from earlier years, adopted GP at 4% of total turnover. CIT(A) sustained differential GP of ₹5.99 lakhs. Tribunal allowed appeal, deleted addition. Revenue appealed to High Court.

✓ DECISION

Decision: High Court held that when books of account of assessee had not been rejected and assessment not framed u/s 144, AO and CIT(A) were in error in resorting to estimation of income. Such exercise not sustainable. Sec. 145(3) lays down AO can proceed to make assessment to best of judgment u/s 144 only in event of not being satisfied with correctness of accounts. When books maintained in accordance with system of accounting in regular course of business, same would form basis for computation of income. Tribunal rightly deleted entire addition.

CASE STUDY

Case 27: CIT v. Kotak Securities Ltd (2016) (SC)

Issue: Is transaction charge paid to BSE 'FTS'? Is BSE providing customized services to members?

Facts: Bombay High Court held transaction charges paid by member of BSE to transact business of sale and purchase of shares amounts to payment of fee for 'technical services' rendered by BSE. Therefore, u/s 194J, TDS deductible. Deductions not made, entire amount not deducted in computing income u/s 40(a)(ia). High Court held benefit should be granted to assessee and disallowance u/s 40(a)(ia) not correct.

✓ DECISION

Decision: Apex Court ruled in favour of assessee holding that view taken by Bombay High Court that transaction charges paid to BSE by its members are for 'technical services' rendered is **not appropriate view**. Such charges really are in nature of payments made for facilities provided by Stock Exchange. **No TDS on such payments deductible u/s 194J.**

CASE STUDY

Case 28: IVRCL-KBL (JV) v. ACIT (2016) (Andhra Pradesh)

Issue: Can credit of TDS be denied to a contractor even if entire work has been sub-contracted to others?

Facts: Assessee was joint-venture executing civil contract works. Awarded contracts by Irrigation Department of State Government. Gave contracts subsequently on sub-contract basis to one of its constituents without any margin. Filed return claiming refund of tax deducted at source from bills paid by State Government. Assessing authority contended no real work carried on by assessee, no income accrued, therefore credit for TDS not allowable in hands of assessee in terms of Rule 37BA(2)(i).

✓ DECISION

Decision: High Court ruled in favour of assessee holding that there are two distinct and independent contracts. There is no privity of contract between government and constituent of assessee (sub-contractor). Contractual obligation to execute work for Government is that of assessee joint venture alone, not of constituent member of JV. Contractual receipts under first contract is only that of assessee and income arising out of said contract is assessable only in their hands, not in hands of sub-contractor. Directed to determine quantum of credit for TDS assessee is entitled to and refund amount so computed.

CASE STUDY

Case 29: CIT v. Priya Blue Industries (P) Ltd (2016) (Guj)

Issue: Are finished products obtained from ship breaking activity usable as such and hence not 'waste and scrap' though commercially known as scrap? Is provision of TCS applicable?

Facts: Assessee-company engaged in ship breaking activity sold old and used plates, wood etc. Did not produce document to show collection of tax at source on sale and payment to credit of Central Government. AO observed such items were in nature of scrap, therefore assessee liable to collect tax at source from buyers of scrap. Demand u/s 201(1) with interest u/s 201(1A) raised. Assessee claimed items usable as such, hence not 'scrap'. CIT(A) observed assessee engaged in ship breaking, products obtained were finished products. Tribunal found assessee collected and paid tax for seven items but did not collect tax at source on certain items. Observed 'waste and scrap' must be from manufacture or mechanical working of material which is definitely not usable as such. Since items/products are finished products usable as such, not 'waste and scrap' though commercially known as scrap.

✓ DECISION

Decision: High Court concurred with view of Tribunal. Finished products obtained from ship breaking activity are usable as such and hence **not 'waste and scrap'** though commercially known as scrap. Provision of TCS not applicable.

CASE STUDY

Case 30: CIT v. M/s Thyssen Krupp Industries Private Ltd (2015) (Bom)

Issue: Can adjustment with respect to transfer pricing be made with respect to transactions with unrelated third parties?

Facts: Assessee in business of execution of turnkey contracts involving design, manufacture, supply, erection and commissioning of sugar plants, cement plants, etc. During subject AY, entered into international transactions with AEs as well as transactions with independent parties. TPO proposed addition on account of enhancement of profit margin on all transactions. ITAT held only transactions entered into by assessee with AE are subject to transfer pricing adjustment and not otherwise. Revenue filed appeal with High Court.

✓ DECISION

Decision: High Court dismissed revenue appeal contending that as per Chapter X of the Act, redetermination of consideration is to be done only with regard to income arising from International Transactions on determination of ALP. The adjustment which is mandated is **only in respect of International Transaction and not transactions entered into by assessee with independent unrelated third parties**. This adjustment is beyond scope and ambit of Chapter X of the Act.

CASE STUDY

Case 31: Berger Paints India Ltd. v. CIT (2017) (SC)

Issue: Should securities premium be considered as part of capital employed for purpose of Sec. 35D?

Facts: Appellant Limited Company engaged in manufacture and sale of paints. Notice issued u/s 143(2) called upon appellant to explain basis of claiming deduction under head "preliminary expenses" amounting to ₹7,03,306 being 2.5% of "capital employed in business of company" u/s 35D. Appellant contended issued shares on premium which was part of capital employed. AO did not agree. CIT(A) deleted addition. Tribunal reversed CIT(A). High Court concurred with Tribunal.

✓ DECISION

Decision: Apex Court observed that if intention of Legislature were to treat amount of "premium" collected by Company from its shareholders while issuing shares to be part of "capital employed in business of company", then it would have been specifically said so in Explanation (b) of sub-section (3) of Sec. 35D. Non-mentioning of words does indicate legislative intent that Legislature did not intend to extend benefit of Sec. 35D to such sum. **Securities premium shall not be considered as part of capital employed for purpose of Sec. 35D.**

CASE STUDY

Case 32: National Travel Services v. CIT (2018) (SC)

Issue: Does Sec. 2(22)(e) get attracted where loan made to a shareholder who is beneficial owner of shares holding not less than 10% of voting power?

Facts: Reading of amended definition indicates after 31.05.1987, "shareholder" is now person who is beneficial owner of shares holding not less than 10% of voting power of Company. After amendment of 1988 in Sec. 2(22)(e), in order to invoke provisions, 'shareholder' has only to be person who is beneficial owner of shares.

✓ DECISION

Decision: Apex Court held that one cannot be registered owner and beneficial owner in sense of beneficiary of trust or otherwise at same time. It is clear that moment there is shareholder, who need not necessarily be member of Company on its register, who is beneficial owner of shares, Section gets attracted without more. To state that two conditions have to be satisfied, namely, shareholder must first be registered shareholder and thereafter also be beneficial owner is not only mutually contradictory but is plainly incorrect. What is important is addition by way of amendment of such beneficial owner holding not less than 10% of voting power.

CASE STUDY

Case 33: PCIT v. Tejua Rohitkumar Kapadia (2018) (SC)

Issue: Can purchases be treated as bogus u/s 69 if they are duly supported by bills, payments made by account payee cheques, supplier confirmed transactions, no evidence of cash back, sales accepted, supplier accounted for purchases and paid taxes?

✓ DECISION

Decision: Supreme Court affirmed that purchases cannot be treated as bogus u/s 69 when: (a) duly supported by bills; (b) all payments made by account payee cheques; (c) supplier has confirmed transactions; (d) no evidence to show purchase consideration has come back to assessee in cash; (e) sales out of purchases have been accepted; and (f) supplier has accounted for purchases made by assessee and paid taxes thereon.

CASE STUDY

Case 34: CIT v. Vasisth Chay Vyapar Limited (2018) (SC)

Issue: In case of NBFCs, is income from NPAs taxable on receipt basis?

Facts: Assessee, an NBFC, advanced certain Inter-Corporate Deposits (ICD) to another company. As no interest received for more than six months, in terms of RBI directions, taxpayer treated ICDs as NPA and did not offer interest income. Tax officer imputed interest on said ICDs by applying mercantile system. CIT(A) affirmed. ITAT held in favour of taxpayer. Delhi HC held in favour of assessee that income in hands of NBFCs is to be recognised as per RBI prudential norms regardless of fact even if they deviate from mercantile system. SC confirmed Delhi HC order.

✓ DECISION

Decision: Supreme Court confirmed that in case of NBFCs, **income from NPAs is taxable on receipt basis**. Income in hands of NBFCs is to be recognised as per RBI prudential norms regardless of fact even if they deviate from mercantile system of accounting.

CASE STUDY

Case 35: Honda Siel Cars India Ltd. v. CIT (2017) (SC)

Issue: Is technical fee paid under technical collaboration agreement for setting up joint venture company in India treated as capital expenditure if upon termination of agreement, joint venture would come to an end?

Facts: Assessee, Honda Siel Cars India Ltd., joint venture company between Honda Motors, Japanese company and Siel Ltd., Indian company. Entered into technical collaboration agreement (TCA) on May 21, 1996 under which technical fee of 30.5 million USD payable in five equal instalments yearly. Honda Motors to provide manufacturing facilities, know-how, technical information, information regarding intellectual property rights to assessee as licensee without proprietary rights. Assessee treated technical fees as revenue while Revenue authorities contended capital in nature.

✓ DECISION

Decision: Apex Court held that technical fee is **capital in nature** since upon termination of TCA, joint venture itself would come to an end. If limited rights to use technical know-how is obtained for limited period for improvising existing business, expenditure is revenue in nature. However, **if technical know-how is obtained for setting up new business, know-how is capital expenditure**.

CASE STUDY

Case 36: Director, Prasar Bharati v. CIT (2018) (SC)

Issue: Is payment made by Prasar Bharati Doordarshan Kendra to various accredited advertising agencies to secure more business in nature of commission liable to TDS u/s 194H?

Facts: Appellant functioning under Ministry of Information and Broadcasting. In course of business activities, telecasting advertisements of several advertising agencies. Entered into agreement with various advertising agencies. As per agreement, in order to receive status of 'accredited' agencies, said agencies had to make application and in return allowed to telecast advertisements. One stipulation was appellant would pay commission of 15% to agency which agency allowed to retain from revenue generated from telecasting advertisements. AO held payments were in nature of commission, Sec. 194H attracted, appellant defaulted in not deducting TDS. Appellant argued relationship was principal-to-principal, agencies purchased air time and sold it in market after retaining 15% commission.

✓ DECISION

Decision: Apex Court considered agreements and held that provisions of Sec. 194H are applicable because payments made by appellant pursuant to agreement were in nature of payment made by way of "commission" and appellant was under statutory obligation to deduct income tax at time of credit or payment to payee. Agreement itself used expression "commission" in all relevant clauses. Transaction did not show relationship was principal to principal; rather it was principal and Agent. Payment of 15% was made by appellant to agencies **for securing more advertisements and to earn more business**. Non-compliance of Sec. 194H attracts rigor of Sec. 201.

CASE STUDY

Case 37: Tooltech Global Engineering P. Ltd. vs. ACIT (2015) (Bom)

Issue: Is Chapter X of the Act an anti-avoidance measure and not an anti-evasion measure?

Facts: Assessee granted certain loans to its associated enterprises (AE) on which no interest was charged. AO of opinion granting loans to AE is international transaction. Worked out interest income thereon to determine ALP. Affirmed by Tribunal. Assessee challenged in High Court. Primary contention: by reworking interest on loans granted to AE, AO/Department sought to tax notional or hypothetical income and not real income. As per provisions of Income-tax Act, 1961 only real income could have been taxed.

✓ DECISION

Decision: High Court dismissed appeal holding that Chapter X of the Act is an **anti-avoidance measure and not an anti-evasion measure**. It is not premised on basis that transactions entered into between parties suffers from under/over invoicing. Value of transactions is brought in line with consideration which would pass between two independent parties by legislative mandate. Legislature introduced special provisions in respect of International Transactions to bring income to tax having regard to ALP. Parties obliged to establish ALP to bring to tax real income i.e., correct price of transactions, shorn of price arrived at on account of relationship. Object of TPO is to put a stop to capital erosion and transfer of profits from one taxable territory to another taxable territory.

CASE STUDY

Case 38: Renault Nissan Automotive India Private Ltd. v. DRP & Others (2018) (Madras)

Issue: Is cryptic order passed/directions issued by DRP without application of mind, simply accepting TPO's order, without independent reasoning and findings, liable to be set aside?

Facts: TPO rejected overseas tested party approach and economic adjustments, proposed TP adjustment. Assessee filed objection before DRP against draft assessment order. DRP issued directions to AO, which in effect accepted conclusion arrived by TPO in toto. Assessee filed writ petition contending DRP passed order in total non-application of mind to objections. DRP not justified in rejecting objections and confirming TPO's order simply by stating it was in agreement with findings rendered by TPO without any detailed discussions and independent findings on each issue.

✓ DECISION

Decision: Court held that perusal of DRP's order clearly indicated that apart from extracting objections raised by Petitioner and relevant portion of TPO's order dealing with such objection, DRP had not further discussed anything on said objection in detail. Sec. 144C(5) r.w.s. 144C(6) contemplates DRP shall issue directions only after considering objections raised by assessee, evidences filed etc. Issuance of such directions **could not be made mechanically or as an empty formality**. DRP had to issue directions only after considering above stated materials and such consideration must be apparent on face of order. In absence of independent reasoning and finding, DRP passed cryptic order without application of mind. Set aside DRP's order and directed fresh order.

CASE STUDY

Case 39: PCIT v. Iven Interactive Limited (SC) (2019)

Issue: Is mere mentioning of new address in return of income without specifically intimating AO with respect to change of address and without getting PAN database changed, enough and sufficient?

✓ DECISION

Decision: Supreme Court held that notices u/s 143(2) are issued on selection of case generated under automated system which picks up address from PAN database. Therefore, **change of address in database of PAN is must**. Implications: (a) important to get address in PAN database updated; (b) if not done, AO right in sending notice u/s 143(2) on old address, cannot escape claiming didn't receive notice on new address; (c) without PAN updation, cannot claim notices u/s 143(2) & 142(1) not served; (d) in absence of intimation to AO about change in address, AO justified in issuing notice at address available as per PAN database.

CASE STUDY

Case 40: The Peerless General Finance And Investment Company Ltd. v. CIT (SC) (2019)

Issue: Are receipts of subscriptions pursuant to collective investment schemes to be treated as capital receipts even if shown as income in books of accounts?

Facts: Assessee-company floated various schemes requiring subscribers to deposit amounts by way of subscriptions, depending upon scheme, subscribed amounts at end of scheme ultimately repaid with interest. Scheme contained forfeiture clauses — if mid-way certain amount forfeited, amount would immediately become income in hands of assessee. AO treated amounts as income as under accounting system followed, amounts credited to profit and loss account as income. Held that subscriptions received from public at large under collective investment scheme, never forfeited, could only be stated to be capital receipts. Theoretical aspect was assessee treated subscription receipts as income. Reality was business aspect when viewed as whole led to conclusion receipts in question were capital receipts and not income.

✓ DECISION

Decision: Supreme Court held that receipts of subscriptions pursuant to collective investment schemes are to be treated as **capital receipts** even if shown as income in books of accounts. The theoretical aspect of assessee treating subscription receipts as income cannot override reality of situation — business aspect when viewed as whole leads to conclusion that receipts were capital receipts and not income.

CASE STUDY

Case 41: P. P. Mahatme, POA Lorna Margaret Pinto v. ACIT (Bombay) (2019)

Issue: Is there transfer on family settlement amongst family members in context of 'pre-existing right'?

✓ DECISION

Decision: Bombay High Court held that a family settlement which is a settlement amongst family members in context of their 'pre-existing right' is **not a "transfer"**. Such settlement only defines a pre-existing joint interest as a separate interest. However, if there is no pre-existing right, family arrangement constitutes a "transfer". Merely because dispute involved some family members and such dispute ultimately settled by filing consent terms, same cannot be styled as family arrangement or family settlement so as to hold that consideration received as result of such settlement does not constitute capital gain.

CASE STUDY

Case 42: PCIT v. State Bank of India (Bombay) (2019)

Issue: Are genuine contributions to unapproved and unrecognized funds allowable as deduction?

Facts: Assessee claimed deduction of expenditure of ₹50 lakhs towards contribution to fund created for health care of retired employees. Revenue argued fund not being one recognized u/s 36(1)(iv) or (v), claim of expenditure hit by provisions of Sec. 40A(9).

✓ DECISION

Decision: Bombay High Court held that very purpose of insertion of Sec. 40A(9) was to restrict claim of expenditure by employers towards contribution to funds, trust, association of persons etc. which was wholly discretionary and did not impose any restriction or condition for expanding such funds which had possibility of misdirecting or misuse of such funds after employer claimed benefit of deduction. In plain terms, provision was **not meant to hit genuine expenditure by an employer for welfare and benefit of employees**. Assessee entitled for deduction.

CASE STUDY

Case 43: CIT v. NCR Corporation Pvt. Ltd (Kar) (2020)

Issue: Can ATM be considered as computer and charged higher rate of depreciation?

✓ DECISION

Decision: Karnataka High Court held that so long as functions of computers are performed with other functions and other functions are dependent on functions of computer, **ATMs are to be treated as computers** and are entitled to higher rate of depreciation.

CASE STUDY

Case 44: UOI v. UAE Exchange Centre (SC) (2020)

Issue: Do activities carried out by Liaison Office (LO) of preparatory and auxiliary character constitute Permanent Establishment under India-UAE DTAA?

Facts: Assessee was limited company incorporated in UAE. Engaged in offering remittance services for transferring amounts from UAE to various places in India. Set up liaison offices in Cochin, Chennai, New Delhi, Mumbai and Jalandhar. Activities carried on stated to be in conformity with terms and conditions prescribed by RBI. Entire expenses met exclusively out of funds received from UAE through normal banking channels. Liaison offices undertake no activity of trading, commercial or industrial. No fee/commission charged or received in India. Remittance services offered to NRIs in UAE. Revenue of view income deemed to accrue in India from activity carried out by liaison offices under Article 5 and Article 7.

✓ DECISION

Decision: Supreme Court held that from onerous stipulations specified by RBI, it could be safely concluded that activities of liaison office(s) of Assessee in India were in nature of **preparatory or auxiliary character**. Same being "of preparatory or auxiliary character" by virtue of Article 5(3)(e) of tax treaty, fixed place of business (liaison office) of Assessee in India otherwise a PE was deemed to be expressly excluded from being so. Since by legal fiction deemed not to be PE, not amenable to tax liability under Article 7.

CASE STUDY

Case 45: Yum! Restaurants (Marketing) Private Limited v. CIT (SC) (2020)

Issue: Is doctrine of mutuality applicable in case of a commercial concern and arrangement?

Facts: Appellant company was fully owned subsidiary of YRIPL. Purpose was cost advertisement and promotion to franchised economies. Secretariat for Industrial Assistance approved purpose with conditions. Appellant obligated to operate as non-profit entity based on principle of mutuality. Got into Tripartite Operating Agreement between Appellant, YRIPL and franchises. Received 5% of Gross sales as fixed contribution for advertising and promotional activities as mutual benefit to franchises & parent company. Filed returns as NIL stating mutual character. AO rejected. Commissioner upheld explaining rejection on basis of undesirable Commerciality in activities undertaken. ITAT held essentials of Doctrine of Mutuality not fulfilled. Delhi HC upheld. Apex Court held that if realization of money by taxpayer from both members as well as non-members was in course of same activity and is tainted with commerciality, test of mutuality not met.

✓ DECISION

Decision: Apex Court held that where participants did not have right to participate in surplus or were not entitled to get back unspent portion of their respective contributions, this was against concept of mutuality. Income earned inter-se held chargeable to income tax. Doctrine of mutuality bestows special status to qualify for exemption from tax liability. Settled proposition that exemptions to be put to strict interpretation. Assessee having failed to fulfil stipulations and prove existence of mutuality, question of extending exemption from tax liability to Assessee, at cost of public exchequer, does not arise.

CASE STUDY

Case 46: Navin Jolly v. ITO (Kar) (2020)

Issue: Can multiple independent residential units in same building be treated as one residential unit for section 54F Exemption? Is usage of property considered in determining whether residential or commercial property?

Facts: AO held assessee owns nine residential flats in his name, deriving income from residential flats and declared under head income from house property, not eligible to claim exemption by invoking proviso (a)(i) and (b) to Sec. 54F(1). ITAT dismissed appeal saying immaterial how assessee utilized residential units and whether used for commercial or residential purposes, so long as units recognized as residential units. Assessee cannot claim benefit of exemption u/s 54F.

✓ DECISION

Decision: High Court held that assessee is entitled to benefit of exemption u/s 54F though assessee owns more than one apartment of 500 square feet in same building. Multiple independent residential units in same building can be **treated as one residential unit** for section 54F Exemption. Usage of property has to be considered in determining whether it is residential property or commercial property.

CASE STUDY

Case 47: PCIT v. Open Solutions Software Services (Del) (2020)

Issue: Does Transactional Net Margin Method require functional similarity between tested party and comparables?

Facts: Grievance of Appellant against exclusion of four comparables introduced by TPO for benchmarking international transaction of rendition of software services by Respondent. From exposition of law in Rampgreen Solutions Pvt. Ltd. v. CIT, clear that even while applying TNMM, comparables cannot be picked on basis of broad classification under various heads, actual functional profile of comparable must be similar, if not same, to that of taxpayer-assessee. In comparability analysis, business environment; demand and supply of services; assets employed, and competence to provide different services are factors having material bearing on profitability. In application of TNMM, broad similarity in domain of services not enough and overall FAR analysis of comparable sought to be used must be similar with taxpayer-assessee.

✓ DECISION

Decision: Delhi High Court held that none of comparables excluded solely on ground of high turnover. Primary reason for excluding four comparables is on account of dissimilarity in overall profile of said comparables with Respondent-assessee. Test of functional similarity applied by Tribunal is in consonance with legal position. No merit in contentions urged by Revenue. Filters applied to narrow down search to find comparables closest to assessee. Use of filters necessarily validated from annual reports. Merely because comparable clears filters, its inclusion in list of comparables is not immune to challenge by assessee.

Case 48: DIT v. Samsung Heavy Industries Co Ltd (SC) (2020)

Issue: Does Project Office undertaking non-core activities in India constitute Permanent Establishment?

Facts: Taxpayer, non-resident company incorporated in South Korea, awarded turnkey contract by ONGC for work involving surveys, design, engineering, procurement, fabrication, installation and modification of existing facilities; start-up and commissioning of entire facilities of oil and gas rig at north-west of Mumbai. Set up PO in Mumbai to act as 'communication channel' between taxpayer and ONGC. Entire activities undertaken from outside India, rig platforms brought to Mumbai for installation at Project site. Indian tax return disclosed loss of INR 2.35mn incurred on account of activities carried out in India. Tax officer concluded project was single indivisible turnkey project wholly executed by PO which constitute PE in India, profits (attributed at 25% of revenue) taxable in India. DRP and Tribunal affirmed. Uttarakhand HC held no finding or justification on record that 25% of gross revenue of taxpayer outside India attributable to business carried out by PO. Revenue appealed to SC.

✓ **DECISION**

Decision: Apex Court observed that for 'fixed place' PE under Tax Treaty, condition precedent for applicability of Article 5(1) is there should be place 'through which business of an enterprise' is wholly or partly carried on. Profits of foreign enterprise taxable in India only if said enterprise carries on its core business through PE in India. Perused documents: Board Resolution showed PO established to coordinate and execute 'delivery documents in connection with construction of offshore platform modification of existing facilities for ONGC'. Tribunal's finding that PO involved in core activity of execution of Project is perverse. Tribunal ignored facts that no expenditure incurred by PO in India and only 2 employees (no technical qualification) engaged to perform non-core activities. Tribunal's finding that onus to establish PO does not constitute PE is on taxpayer, against SC decision in E-Funds IT Solution Inc. Held taxpayer's PO in Mumbai did not constitute Fixed Place PE in India. Affirmed PO in Mumbai falls within exclusionary Article 5(4)(e) of Tax Treaty as PO is only auxiliary office meant to act as liaison office between taxpayer and ONGC.

CASE STUDY

Case 49: DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295 (SC)

Issue: Would automatic vacation of stay order upon expiry of extended period of stay of 365 days be valid where delay in disposing appeal is not attributable to assessee?

Facts: Third proviso to Sec. 254(2A) provides where appeal filed before Appellate Tribunal is not disposed of within period of stay or extended period of stay granted by Tribunal, order of stay shall stand vacated after expiry of 365 days, even if delay in disposing appeal is not attributable to assessee.

✓ DECISION

Decision: Apex Court observed that Appellate Tribunal, wherever possible, has to hear and decide appeals within period of four years from end of financial year in which appeal is filed. It is only when stay is granted by Appellate Tribunal, appeal required to be disposed of within 365 days. So far as disposal of appeal by Appellate Tribunal is concerned, this is directory provision. However, condition of automatic vacation of stay on expiry of period becomes mandatory so far as assessee is concerned. Apex Court pointed out said proviso would result in automatic vacation of stay upon expiry of 365 days, even if Appellate Tribunal could not take up appeal in time for no fault of assessee. Vacation of stay in favour of Department would ensue even if Department is itself responsible for delay in hearing appeal. In this sense, proviso is manifestly arbitrary being provision which is capricious, irrational and disproportionate so far as assessee is concerned. Held third proviso to Sec. 254(2A) has to be read **without word "even" and word "not" after words "delay in disposing of the appeal"**. Any order of stay shall stand vacated after expiry of period or periods mentioned in section, **only if delay in disposing of appeal is attributable to assessee**.

CASE STUDY

Case 50: Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021) (SC)

Issue: Would amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers as consideration for use/resale of computer software through EULAs/distribution agreements be considered as payment of royalty for use of copyright in computer software? If yes, liable for deduction of tax at source u/s 195?

Facts: Apex Court observed as per definition in Explanation 2(v) to Sec. 9(1)(vi), "royalty" means consideration for transfer of all or any rights (including granting of licence) in respect of any copyright, literary, artistic or scientific work. As per Explanation 4, such transfer includes transfer of all or any right for use or right to use computer software (including granting of licence). As per DTAA with Singapore, "royalty" means payment received as consideration for "use of, or right to use, any copyright" of literary, artistic or scientific work. Meaning in India's DTAA with other countries similar if not identical.

✓ DECISION

Decision: Apex Court observed four categories of cases in which distribution agreements and end-user licence agreements did not create any interest or right to such distributors or end-users which would amount to use of or right to use any copyright:

- ▶ (a) Where computer software is purchased directly by end-user, resident in India, from foreign, non-resident supplier or manufacturer.
- ▶ (b) Where resident Indian companies acting as distributors or resellers, purchase computer software from foreign, non-resident suppliers or manufacturers and then resell same to resident Indian end-users.
- ▶ (c) Where distributor happens to be foreign, non-resident vendor, who after purchasing software from foreign, non-resident seller, resells same to resident Indian distributors or end-users.
- ▶ (d) Where computer software is affixed onto hardware and sold as integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.

In all above cases, Apex Court held amount paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers as consideration for resale or use of computer software through EULAs or distribution agreements is **not royalty** for use of copyright in computer software. Provisions of Sec. 9(1)(vi) read with Explanations 2 and 4, not being more beneficial to assessee, have no application. Consequently, consideration paid not chargeable to tax in India. Hence, **no tax required to be deducted at source u/s 195**.

CASE STUDY

Case 51: PCIT v. Dr. Ranjan Pai (2021) 431 ITR 250 (Kar)

Issue: Can bonus shares received by shareholders be taxable under head 'Income from other sources' as per provisions of Sec. 56(2)(x), as they are received without consideration?

✓ DECISION

Decision: Karnataka High Court held that issue of bonus shares by capitalization of reserves is merely reallocation of company's funds. There is no inflow of fresh funds or increase in capital employed, which remains same. Thus, there is no addition or alteration to profit-making apparatus and total funds available with company remain same. When shareholder gets bonus shares, value of original shares held by him goes down and market value as well as intrinsic value of two shares put together will be same or nearly same as value of original share before issue of bonus shares. Any profit derived by assessee shareholder on account of receipt of bonus shares is adjusted by depreciation in value of equity shares originally held by him. Held bonus shares were not issued in order to evade any tax so to attract provisions of Sec. 56(2)(x). **Provisions of Sec. 56(2)(x) not attracted** in hands of recipient shareholders on receipt of bonus shares.

Case 52: CIT and another v. Corporation Bank [2021] 431 ITR 554 (Kar)

Issue: Are provisions of TDS u/s 194H attracted on payment made by assessee-bank for services rendered by M/s. NFS, a network of shared ATMs in India?

✓ **DECISION**

Decision: Karnataka High Court observed that National Financial Switch (NFS) is ATM network which facilitates convenience banking. It links together country's ATMs in single network. Relationship between assessee-bank and NFS is **not of an agency but that of two independent parties on principal to principal basis**. Therefore, provisions of Sec. 194H are **not attracted** on payment made by Corporation Bank, which issued credit card, for payment gateway services provided by NFS.

CASE STUDY

Case 53: CIT v. Reliance Telecom Ltd (SC) (2021)

Issue: Does ITAT have power to recall its order even if submissions were filed on merits?

✓ DECISION

Decision: Supreme Court held that order passed by ITAT recalling its earlier order is beyond scope and ambit of powers u/s 254(2). In exercise of powers u/s 254(2), ITAT may amend any order passed by it to rectify any mistake apparent from record only. Tribunal cannot revisit its earlier order and go into detail on merits. Powers u/s 254(2) are only to correct and/or rectify mistake apparent from record. Merely because assessee might have filed detailed submissions, it does not confer jurisdiction upon ITAT to pass order de hors Sec. 254(2). In instant case, detailed order already passed by ITAT, which was held in favour of revenue. Said order could not have been recalled by ITAT in exercise of powers u/s 254(2). If assessee believed order passed by ITAT was erroneous, either on facts or in law, only remedy available was to prefer appeal before High Court.

CASE STUDY

Case 54: Board of Control for Cricket in India v. PCIT (2021) (Mum-Trib)

Issue: Is BCCI engaged in commercial activities? Are funds generated from IPL used for promoting cricket?

✓ DECISION

Decision: Mumbai Tribunal allowed relief to BCCI and directed CIT to grant registration u/s 12A citing BCCI is still promoting game of cricket. Court ruled prime character of popularising cricket is not lost just because sports tournament is structured to make it more popular, resulting in more paying sponsorship and greater mobilisation of resources. Basic character of popularising cricket is not lost just because sports tournament is structured in such manner to make it more popular. Predominant object remains promotion of cricket but activity done in more effective and financially optimal manner. There is no conflict in cricket becoming more popular and cricket becoming more entertaining after introduction of IPL tournament. As long as object of promoting cricket remains intact, assessee cannot be said to be not following object of promoting cricket. All funds available at disposal of BCCI, including additional funds generated by holding IPL tournaments, are employed for promoting cricket, and that matters. Assessee is entitled to continuance of its registration u/s 12A, and order passed by CIT stands quashed.

CASE STUDY

Case 55: Kohinoor Indian (P.) Ltd. v. ACIT (2021) (Amritsar-Trib)

Issue: Is 'iPad' a computer for higher depreciation?

✓ DECISION

Decision: Amritsar Tribunal ruled that predominant purpose of iPad is communication, and it is not computing device. Main features are email, WhatsApp, Facetime calls, music, films, etc. Though iPad may discharge some functions of computers, it is not substitution for computers or laptops. In common parlance, iPad considered as communicating device with some additional features of computer. Apple stores do not sell iPad as computer device, but rather selling it as communicating/entertainment device. Another reason iPad can be held as communication device is it has IMEI number. Though assessee denied having IMEI number, no concrete records produced on record in this regard. Accordingly, ITAT held **iPad is not a computer**. Hence, depreciation applicable at lower rate.

CASE STUDY

Case 56: PCIT v. Tally Solutions (P.) Ltd. (2021) (Kar.)

Issue: Can non-deduction of tax on purchase of assets take away right to claim depreciation?

✓ DECISION

Decision: Karnataka High Court held that Sec. 40(a)(i) and 40(a)(ia) provide for disallowance only in respect of expenditure which is revenue in nature. Therefore, provision does not apply to assessee claiming depreciation, which is not an expenditure but an allowance. Depreciation is not an outgoing expenditure, and therefore, provisions of Sec. 40(a)(i) and 40(a)(ia) not applicable. In absence of any requirement of law for making deduction of tax out of expenditure which has been capitalised and no amount claimed as revenue expenditure, **no disallowance would be made**. Depreciation is statutory deduction available to assessee on asset wholly or partly owned by it and used for business or profession. Depreciation is an allowance and not expenditure, loss or trading liability.

CASE STUDY

Case 57: Noida Cyber Park (P.) Ltd. v. ITO (2021) (Delhi-Trib)

Issue: Is Section 50C applicable on transfer of leasehold rights in land and building?

✓ DECISION

Decision: Delhi ITAT held that expression 'land or building' in its coverage is quite distinct from expression 'any right in land or building'. Legislature, in its wisdom, used expression 'land or building or both' in Section 50C, and not expression 'any right in land or building'. Therefore, express use of one expression would exclude other. Supreme Court supported these legal premises in GVK Industries Ltd. v. ITO [2011] (SC). Thus, **transfer of leasehold rights does not warrant invoking Sec. 50C** as said property is not of nature covered by Sec. 50C.

CASE STUDY

Case 58: Aditya Balkrishna Shroff v. ITO (2021) (Mum-Trib)

Issue: Is gain received on personal loan due to forex fluctuation capital receipt not liable to tax?

✓ DECISION

Decision: Mumbai ITAT held that even before deciding whether gain was of income nature, AO proceeded to put cart before horse by deciding head under which income is to be taxed. AO mixed up concept of income with concept of gains. In case of Shaw Wallace & Co Ltd v. DCIT [2001] (Cal), ITAT held capital receipt, in principle, is outside scope of income chargeable to tax. Receipt cannot be taxed as income unless it is in nature of revenue receipt or is specifically brought within ambit of income by way of specific provisions of Income-tax Act. AO accepted transaction was in capital field and proceeded to hold income arising out of loan transaction required to be treated as interest or income from other sources. If transaction is in capital field, question of its taxability does not arise unless there is specific provision of bringing such receipt to tax. In any case, where loan was foreign currency-denominated and amount advanced as loan, as also received back as repayment, was precisely same, there was no question of interest component at all. Benefit or gain received by assessee was on account of foreign exchange fluctuation. Since foreign exchange fluctuation was with respect to transaction in capital field, **foreign exchange fluctuation receipt itself turned out to be capital receipt**.

CASE STUDY

Case 59: CIT (International Taxation) v. Gracemac Corporation (Delhi)

Issue: Is licensing of software products by Microsoft not taxable in India as royalty?

✓ DECISION

Decision: Delhi High Court held that licensing of software products of Microsoft in Territory of India by Respondent was **not taxable in India as Royalty** u/s 9(1)(vi) of Act read with Article 12 of Indo-US DTAA. Department approached High Court contending Tribunal failed to appreciate distribution model in case of respondent-assessee involved making of multiple copies of software clearly indicating transfer of copyright. Court relied on decisions in EY Global Services Limited v. ACIT and EYGBS (India) Private Limited v. JCIT wherein Apex Court held payment received by EYGSL (UK) for providing access to computer software to its member firms of EY Network located in India does not amount to 'royalty' liable to be taxed in India under provisions of Income Tax Act, 1961 and India-UK DTAA.

CASE STUDY

Case 60: SAP Labs India Pvt. Ltd. v. ITO [2023] 454 ITR 121 (SC)

Issue: Determination of ALP by High Court — Powers of High Court to consider substantial question of law involving determination of ALP?

✓ DECISION

Decision: Apex Court laid down following with respect to powers of High Court to consider substantial question of law involving determination of ALP:

- ▶ While determining ALP, Tribunal has to follow guidelines stipulated under Chapter X of Income-tax Act, 1961, namely, Sec. 92 to 92F and Rules 10A to 10E. Any determination of ALP under Chapter X not in accordance with relevant provisions of Income-tax Act and Rules can be considered as perverse and it may be considered as substantial question of law as perversity itself can be said to be substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where Tribunal has determined ALP, same is final and cannot be subject matter of scrutiny by High Court in appeal.
- ▶ When determination of ALP is challenged before High Court, it is always open for High Court to consider and examine whether ALP has been determined while taking into consideration relevant guidelines under Act and Rules.
- ▶ High Court can also examine question of comparability of two companies or selection of filters and examine whether same is done judiciously and on basis of relevant material/evidence on record. High Court can also examine whether comparable transactions have been taken into consideration properly or not, i.e., to extent as to whether non-comparable transactions are considered as comparable transactions or not.

Therefore, view taken by Karnataka High Court in case of Softbrands India (P.) Ltd. that in transfer pricing matters, determination of ALP by Tribunal is final and cannot be subject matter of appeal under section 260A cannot be accepted. In appeal challenging determination of arm's length price, it is always open for High Court to examine in each case, within parameters of section 260A, whether while determining ALP, guidelines laid down under Income-tax Act and Rules are followed or not and whether determination of ALP and findings recorded by Tribunal while determining ALP are perverse or not.

CASE STUDY

Case 61: Secunderabad Club v. CIT [2023] 457 ITR 263 (SC)

Issue: Does principle of mutuality apply to interest income derived from fixed deposits made with banks by clubs if such banks are members of club?

✓ DECISION

Decision: Supreme Court held that interest income earned on fixed deposits made with banks by appellant club has to be treated like any other income from other sources within meaning of section 2(24). Conversely, if any income is earned by club through its assets and resources from persons who are not members of club, such income would also not be covered under principle of mutuality. It would be liable to be taxed under provisions of Income-tax Act. The principle of mutuality works on triple test: (a) Complete identity between contributors and participators; (b) Action of participators and contributors in furtherance of mandate of associations or Clubs; (c) No scope for profiteering by contributors from fund made by them. Applying principles, in relation to transactions of deposit of surplus funds earned by club in banks which are members, principle of mutuality applies till stage of deposit of funds and **would lose its application once funds deposited as fixed deposit in banks**. Funds exposed to commercial banking operations — deposits could be used for lending to third parties and earning higher interest thereon by paying lower interest rate on fixed deposits to club. Bank utilising funds of club deposited in fixed deposit receipts for banking business would completely rupture "privity of mutuality", and as result, element of complete identity between contributors and participators would be lost.

CASE STUDY

Case 62: CIT v. Cognizant Technology Solutions of India Pvt. Ltd. (2023) 454 ITR 1 (SC)

Issue: Is deduction under section 10AA available in respect of foreign exchange gain solely relating to export business of assessee?

✓ DECISION

Decision: In order to allow deduction u/s 10AA, it has to be seen whether such benefit earned by assessee was derived by virtue of export made by assessee. Exchange value based on upward or downward of rupee value is not in hands of assessee. Assessee does not determine exchange value of Indian rupee. But for fact that assessee is export house, there was no question of earning any foreign exchange. Therefore, when fluctuation in foreign exchange rate was solely relatable to export business of assessee and higher rupee value was earned by virtue of such exports carried out by assessee, **deduction u/s 10AA would be available** in respect of such foreign exchange gains.

CASE STUDY

Case 63: CIT v. Reliance Energy Ltd. (2022) 441 ITR 346 (SC)

Issue: Whether deduction u/s 80-IA has to be limited to extent of Income from Business or profession as per Sec. 80AB or has to be allowed to extent of profit of eligible undertaking?

✓ DECISION

Decision: A plain reading of Sec. 80AB shows provision pertains to determination of quantum of deductible income in "gross total income". Sec. 80AB cannot be read to be curtailing width of Sec. 80-IA. Relevant to take note of Sec. 80A(1) which stipulates in computation of "total income" of assessee, deductions specified in Sec. 80C to 80U shall be allowed from his "gross total income". Sec. 80A(2) provides aggregate amount of deductions under Chapter VI-A shall not exceed "gross total income" of assessee. Thus, Sec. 80AB which deals with determination of deductions under Part C of Chapter VI-A is with respect only to computation of deduction on basis of "net income". Import of Sec. 80-IA is "total income" of assessee is computed by taking into account allowable deduction in respect of profits and gains derived from "eligible business". Scope of Sec. 80-IA(5) is limited to determination of quantum of deduction u/s 80-IA(1) by treating "eligible business" as "only source of income". Sub-section (5) cannot be pressed into service for reading limitation of deduction under sub-section (1) only to income under head "Profits and gains of business and profession". For purpose of calculating profit-linked deduction under any section of Chapter VI-A, **loss sustained in other divisions or units cannot be taken into account**, as only profits from eligible business have to be taken into account as if it was only source of income. Profits and gains from eligible business cannot be reduced by loss suffered in any other business owned by assessee.

CASE STUDY

Case 64: CIT v. KBD Sugars and Distilleries Ltd. [2023] 454 ITR 800 (SC)

Issue: Can resulting entity set off and carry forward losses of dysfunctional unit of demerged entity?

✓ DECISION

Decision: AO contended assessee ineligible to benefit of brought forward loss u/s 72A(4) for reason demerged company was dysfunctional since 1999 and therefore does not qualify to be 'going concern'. Since undertaking not being 'going concern', condition laid down in Sec. 2(19AA) for demerger stands violated. Tribunal opined words used 'on a going concern basis' in Sec. 2(19AA) only means transfer should be based on 'going concern', and it does not mean undertaking being transferred should be 'going concern' as on date of transfer. Scheme of demerger approved by High Courts and jurisdictional Court clearly establishes fact transfer of undertaking is indeed on 'going concern basis'. Assets, liabilities, employees, debts, obligations, rights, etc., of undertaking immediately prior to demerger stand entirely vested with assessee upon 'demerger'. This amounts to 'transfer of undertaking on going concern basis'. Simple reading makes clear assessee eligible for benefits u/s 72A(4). Act does not state undertaking being demerged ought to be going concern at time of demerger. It only states undertaking being demerged should stand transferred in manner similar to manner in which 'going concern' is transferred. Accordingly, High Court held if unit were running and profitable, same would not be available for demerger. It would be incongruous to construe Sec. 2(19AA) to mean running unit. Scheme of demerger approved by High Courts. Therefore, assessee entitled to set off brought forward losses u/s 72A(4). Apex Court affirmed decision of High Court.

Case 65: Bharti Cellular Ltd. v. ACIT [2024] 462 ITR 247 (SC)

Issue: Are cellular mobile telephone service providers required to deduct tax at source u/s 194H on difference between discounted price at which it sold start-up kits and recharge vouchers to franchisees or distributors and sale price at which these products were subsequently sold by franchisees or distributors?

✓ **DECISION**

Decision: Apex Court held that obligation to deduct tax at source in terms of Sec. 194H arises when legal relationship of principal and agent is established. Agency is triangular relationship between principal, agent and third party. To decide whether contracting party acts for himself as independent contractor (and not as agent), it needs to be examined whether in course of work, he intends to make profits for himself, or is entitled to receive pre-arranged remuneration. If party concerned about acting for himself and making maximum profits possible, he is usually regarded as buyer, or independent contractor and not as agent of principal. Legal position of distributor generally regarded as different from that of agent. Distributor buys goods on his account and sells them in his territory. Profit made is margin of difference between purchase price and sale price. Unlike agent, he does not act as communicator or creator of relationship between principal and third party. Based on perusal of agreement between assessee and distributors/franchisee, franchisee/distributor paid discounted price regardless of, and even before, pre-paid products being sold and transferred to retailers or actual consumer. Franchisee/distributor was free to sell pre-paid products at any price below price printed on pack. Franchisee/distributor determined his profits/income. Sec. 194H fixes liability to deduct tax at source on 'person responsible to pay' and liability to deduct tax at source arises when income is credited or paid by person responsible for paying. Expression "direct or indirect" used in Explanation (i) to Sec. 194H is meant to ensure "person responsible for paying" does not dodge obligation to deduct tax at source, even when payment is indirectly made by principal-payer to agent-payee. However, deduction of tax at source in terms of Sec. 194H is not to be extended and widened in ambit to apply to true/genuine business transactions, where assessee is not person responsible for paying or crediting income. In present case, assessee neither pays nor credits any income to person with whom he has contracted. Assessee not privy to transactions between distributors/franchisees and third parties. Impossible for assessee to deduct tax at source and comply with Sec. 194H on difference between total/sum consideration received by distributors/franchisees from third parties and amount paid by distributors/franchisees to them. Accordingly, Apex Court held contractual obligations of franchises or distributors did not reflect fiduciary character of relationship, or business being done on Principal's account. Hence, **Sec. 194H not applicable** to facts and circumstances of this case and assessee would not be under legal obligation to deduct tax at source on income/profit component in payments received by distributors/franchisees from third parties/customers, or while selling/transferring pre-paid coupons or starter-kits to distributors.

★ Quick Revision Summary — Key Case Laws

TOPIC	CASE LAW	PRINCIPLE
Cloud Computing / Royalty	CIT v. Amazon Web Services (2025)(Delhi)	Cloud computing payments not Royalty — service, not lease of equipment
Due Date Extension	Income Tax Bar Association v. UOI (2025)(Guj)	Audit report and ITR due dates inextricably linked
AI-Generated Cases	KMG Wires v. NFAC (2025)(Bom)	Notice based on non-existent AI cases quashed
Concurrent Jurisdiction	T.K.S. Builders v. ITO (2024)(Delhi)	FAO and JAO have concurrent jurisdiction u/s 148
Subsidy	Siemens v. CIT (2016)(SC)	Voluntary subsidy from parent = capital receipt
Section 14A	U.K. Paints v. Pr. CIT (2016)(Delhi)	AO must appraise objective material for disallowance
House Property	Raj Dadarkar v. ACIT (2017)(SC)	Sub-licensing income = house property income
Section 40(a)(ia)	Palam Gas Service v. CIT (2017)(SC)	'Payable' covers actually paid cases
Sham Lease	Maneklal Agarwal v. DCIT (2017)(SC)	Sham lease — first lessor taxable on sub-letting income
ITAT Powers	CIT v. Sarika Jain (2017)(All)	ITAT cannot add u/s 69A if not subject matter of appeal
PAN Error	Purnima Advertising v. DCIT (2017)(Guj)	Limited correction of PAN not acceptable
Slump Sale	CIT v. Equinox Solution (2017)(SC)	Slump sale = LTCG, not STCG u/s 50(2)
Section 41(1)	Mcdowell v. CIT (2017)(SC)	Waiver taxable in hands of amalgamated company
Agricultural Land	Shankar Dalal v. CIT (2017)(Bom)	Local land laws must be considered
Depreciation	Mother Hospital v. CIT (2017)(SC)	Lessee entitled to depreciation only on own construction cost
Section 54F	Rajesh Kumar v. CIT (2017)(Delhi)	Exemption u/s 54F can be granted in revision u/s 264
Section 41(1)	Ramgopal Minerals v. Pr. CIT (2017)(Kar)	Untraceable creditors ≠ cessation of liability
Software Royalty	Vinzas Solutions v. CIT (2017)(Mad)	Outright purchase ≠ royalty
Section 54EC	Subhash Supnekar v. CIT (2016)(Bom)	Investment from advance eligible for Sec. 54EC
Interest 234B/234C	Ian Peter Morris v. ACIT (2016)(SC)	No interest on salary income
Section 194J	Bharat Heavy Elect. v. Pr. CIT (2016)(P&H)	Testing/commissioning ≠ FTS u/s 194J
Precedent	Greenfield Hotels v. CIT (2016)(Bom)	Accepted decision cannot be challenged later
Permanent Establishment	E-Funds IT Solution v. ADIT (2017)(SC)	Outsourcing to subsidiary ≠ PE
Penalty	Shreeram Durgaprasad v. CIT (2016)(Bom)	Penalty during pendency of appeal = invalid
TDS Reimbursement	Hightension Switchgears v. CIT (2016)(Kol)	No TDS on reimbursement if agent already deducted
Estimation	Anil Kumar & Co. v. CIT (2016)(Kar)	No estimation without rejecting books
Transaction Charges	Kotak Securities v. CIT (2016)(SC)	BSE transaction charges not FTS
TDS Credit	IVRCL-KBL v. ACIT (2016)(AP)	TDS credit allowed to JV even if sub-contracted
TCS Scrap	Priya Blue Industries v. CIT (2016)(Guj)	Ship breaking products not 'waste and scrap'
Transfer Pricing	Thyssen Krupp v. CIT (2015)(Bom)	TP adjustment only for AE transactions
Section 35D	Berger Paints v. CIT (2017)(SC)	Securities premium not part of capital employed
Section 2(22)(e)	National Travel Services v. CIT (2018)(SC)	Beneficial owner holding ≥10% attracts Sec. 2(22)(e)
Bogus Purchases	Tejua Rohitkumar v. PCIT (2018)(SC)	Purchases not bogus if documented
NBFC NPA	Vasisth Chay Vyapar v. CIT (2018)(SC)	Income from NPAs taxable on receipt basis
Technical Fee	Honda Siel v. CIT (2017)(SC)	Technical fee for new business = capital expenditure
Commission TDS	Prasar Bharati v. CIT (2018)(SC)	Commission to advertising agencies attracts Sec. 194H
TP Anti-Avoidance	Tooltech Global v. ACIT (2015)(Bom)	Chapter X is anti-avoidance, not anti-evasion
DRP Powers	Renault Nissan v. DRP (2018)(Mad)	DRP must apply mind, not mechanically accept TPO
Notice Address	IVen Interactive v. PCIT (2019)(SC)	PAN database address must be updated
Collective Investment	Peerless General Finance v. CIT (2019)(SC)	Subscriptions under collective investment = capital receipts
Family Settlement	P.P. Mahatme v. ACIT (2019)(Bom)	Family settlement with pre-existing right ≠ transfer
Unapproved Funds	State Bank of India v. PCIT (2019)(Bom)	Genuine contributions to unapproved funds allowable
ATM Depreciation	NCR Corporation v. CIT (2020)(Kar)	ATMs treated as computers for depreciation
Liaison Office PE	UAE Exchange Centre v. UOI (2020)(SC)	Preparatory/auxiliary LO not PE
Mutuality	Yum! Restaurants v. CIT (2020)(SC)	Commerciality taints mutuality
Section 54F	Navin Jolly v. ITO (2020)(Kar)	Multiple units in same building = one residential unit
TNMM	Open Solutions v. PCIT (2020)(Del)	Functional similarity required for comparables
Project Office PE	Samsung Heavy Industries v. DIT (2020)(SC)	Non-core activities PO not PE
Stay Order	Pepsi Foods v. DCIT (2021)(SC)	Stay not vacated if delay not attributable to assessee
Software Licensing	Engineering Analysis v. CIT (2021)(SC)	Software purchase not royalty, no TDS u/s 195
Bonus Shares	Dr. Ranjan Pai v. PCIT (2021)(Kar)	Bonus shares not taxable u/s 56(2)(x)
TDS 194H ATM	Corporation Bank v. CIT (2021)(Kar)	NFS charges not commission u/s 194H
ITAT Recall	Reliance Telecom v. CIT (2021)(SC)	ITAT cannot recall order beyond Sec. 254(2)
BCCI Registration	BCCI v. PCIT (2021)(Mum-Trib)	IPL funds used for cricket promotion — Sec. 12A valid
iPad Depreciation	Kohinoor Indian v. ACIT (2021)(Amritsar-Trib)	iPad not computer, lower depreciation
Depreciation TDS	Tally Solutions v. PCIT (2021)(Kar)	No disallowance of depreciation for TDS default
Section 50C	Noida Cyber Park v. ITO (2021)(Del-Trib)	Sec. 50C not applicable to leasehold rights

TOPIC	CASE LAW	PRINCIPLE
Forex Fluctuation	Aditya Shroff v. ITO (2021)(Mum-Trib)	Forex gain on personal loan = capital receipt
Software Royalty	Gracemac Corp v. CIT (Delhi)	Software licensing not royalty
ALP Determination	SAP Labs v. ITO (2023)(SC)	High Court can examine ALP perversity
Mutuality Interest	Secunderabad Club v. CIT (2023)(SC)	Interest on FD with member banks = taxable
Section 10AA	Cognizant v. CIT (2023)(SC)	Forex gain on export eligible for Sec. 10AA
Section 80-IA	Reliance Energy v. CIT (2022)(SC)	Loss from other units not to reduce eligible profits
Demerger Losses	KBD Sugars v. CIT (2023)(SC)	Resulting entity can set off losses of dysfunctional unit
TDS 194H Franchisee	Bharti Cellular v. ACIT (2024)(SC)	No TDS u/s 194H on franchisee margin

★ QUICK REVISION

Key Takeaways for Exam

- ▶ ✓ Cloud computing / software licensing — not royalty if no transfer of copyright.
- ▶ ✓ Subsidies from parent to protect capital investment = capital receipt.
- ▶ ✓ Section 14A — AO must record satisfaction with objective material.
- ▶ ✓ Sub-licensing income = house property income (not business income).
- ▶ ✓ Section 40(a)(ia) applies even when amount is actually paid.
- ▶ ✓ Sham lease — first lessor taxable on sub-letting income.
- ▶ ✓ Slump sale — LTCG, not STCG u/s 50(2).
- ▶ ✓ Waiver of liability u/s 41(1) taxable in hands of amalgamated company.
- ▶ ✓ Untraceable creditors ≠ cessation of liability.
- ▶ ✓ Outright purchase of software ≠ royalty.
- ▶ ✓ No interest u/s 234B/234C on salary income.
- ▶ ✓ Outsourcing to subsidiary ≠ PE.
- ▶ ✓ Software purchase not royalty — no TDS u/s 195.
- ▶ ✓ ATMs treated as computers for depreciation.
- ▶ ✓ Preparatory/auxiliary liaison office ≠ PE.
- ▶ ✓ Commerciality taints mutuality.
- ▶ ✓ Multiple units in same building = one residential unit u/s 54F.
- ▶ ✓ Non-core project office ≠ PE.
- ▶ ✓ Stay not vacated if delay not attributable to assessee.
- ▶ ✓ Bonus shares not taxable u/s 56(2)(x).
- ▶ ✓ NFS/ATM network charges not commission u/s 194H.
- ▶ ✓ iPad not computer — lower depreciation.
- ▶ ✓ No disallowance of depreciation for TDS default.
- ▶ ✓ Sec. 50C not applicable to leasehold rights.
- ▶ ✓ Forex gain on personal loan = capital receipt.
- ▶ ✓ High Court can examine ALP perversity.
- ▶ ✓ Interest on FD with member banks = taxable.
- ▶ ✓ Forex gain on export eligible for Sec. 10AA.
- ▶ ✓ Loss from other units not to reduce eligible profits u/s 80-IA.
- ▶ ✓ Resulting entity can set off losses of dysfunctional unit in demerger.
- ▶ ✓ No TDS u/s 194H on franchisee margin.

Multiple Choice Questions

1. In **CIT v. Amazon Web Services Inc.**, the Court held that cloud computing payments are: a) Royalty b) FTS c) Not Royalty d) Business income **[Ans: c]**
2. In **Palam Gas Service v. CIT**, the Apex Court held that **Sec. 40(a)(ia)** covers: a) Only payable cases b) Only paid cases c) Both paid and payable cases d) Neither **[Ans: c]**
3. In **CIT v. Equinox Solution**, the Apex Court held that slump sale of entire business results in: a) STCG u/s 50(2) b) LTCG c) Business income d) Exempt income **[Ans: b]**
4. In **Mother Hospital v. CIT**, the Apex Court held that lessee is entitled to depreciation: a) On entire building b) Only on own construction cost c) Not at all d) On market value **[Ans: b]**
5. In **Ian Peter Morris v. ACIT**, the Apex Court held that interest u/s 234B & 234C: a) Applies to salary income b) Does not apply to salary income c) Applies partially d) None **[Ans: b]**
6. In **ADIT v. E-Funds IT Solution**, the Apex Court held that outsourcing to a 100% subsidiary: a) Creates PE b) Does not create PE c) Creates service PE d) Creates agency PE **[Ans: b]**
7. In **Engineering Analysis v. CIT**, the Apex Court held that software purchase: a) Is royalty b) Is not royalty c) Attracts TDS u/s 195 d) Is taxable in India **[Ans: b]**
8. In **UOI v. UAE Exchange Centre**, the Apex Court held that liaison office of preparatory/auxiliary character: a) Is PE b) Is not PE c) Is fixed place PE d) Is agency PE **[Ans: b]**
9. In **DCIT v. Pepsi Foods**, the Apex Court held that stay shall stand vacated after 365 days: a) Always b) Only if delay attributable to assessee c) Only if delay attributable to department d) Never **[Ans: b]**
10. In **Bharti Cellular v. ACIT**, the Apex Court held that **Sec. 194H**: a) Applies to franchisee margin b) Does not apply to franchisee margin c) Applies partially d) None **[Ans: b]**

Short Essay Type Questions

- 1 Discuss the implications of the Amazon Web Services case on cloud computing taxation.
- 2 What is the principle laid down in Palam Gas Service v. CIT regarding Section 40(a)(ia)?
- 3 Explain the Supreme Court's ruling in Mother Hospital regarding depreciation to lessee.
- 4 What is the significance of the E-Funds IT Solution case on Permanent Establishment?
- 5 Discuss the ruling in Engineering Analysis Centre of Excellence on software licensing and royalty.
- 6 What is the principle laid down in Samsung Heavy Industries regarding Project Office PE?
- 7 Explain the Supreme Court's ruling in Pepsi Foods regarding automatic vacation of stay.
- 8 What is the significance of the Bharti Cellular case on TDS u/s 194H?
- 9 Discuss the key principles from the Secunderabad Club case on mutuality.
- 10 Explain the ruling in KBD Sugars regarding demerger losses.

Practical Case Scenarios

Case 1: A foreign company provides cloud computing services to Indian customers. Is the payment taxable as royalty in India? **[Ans: No — AWS case]**

Case 2: An Indian company pays freight charges to a supplier who has already deducted TDS on payment to transporter. Can AO disallow the payment u/s 40(a)(ia)? **[Ans: No — Hightension Switchgears case]**

Case 3: A company sells its entire business as a slump sale. Is the gain taxable as STCG u/s 50(2)? **[Ans: No — Equinox Solution case]**

Case 4: A foreign company outsources its ITES services to its Indian subsidiary. Does the subsidiary constitute a PE of the foreign company? **[Ans: No — E-Funds IT Solution case]**

Case 5: A cellular company sells recharge vouchers to franchisees at a discount. Is it required to deduct TDS u/s 194H on the discount?
[Ans: No — Bharti Cellular case]

References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material
- ▶ <https://www.incometaxindia.gov.in/Pages/right-to-information/case-laws.aspx>
- ▶ Taxmann.com | ITAT Online | Supreme Court Judgments

✓ Module 11 — Complete Coverage Checklist

★ QUICK REVISION

- | | |
|---|--|
| ▶ ✓ Case 1: Amazon Web Services — Cloud Computing | ▶ ✓ Case 33: Tejua Rohitkumar — Bogus Purchases |
| ▶ ✓ Case 2: Income Tax Bar Association — Due Date | ▶ ✓ Case 34: Vasisth Chay — NBFC NPA |
| ▶ ✓ Case 3: KMG Wires — AI-Generated Cases | ▶ ✓ Case 35: Honda Sael — Technical Fee |
| ▶ ✓ Case 4: T.K.S. Builders — Concurrent Jurisdiction | ▶ ✓ Case 36: Prasar Bharati — Commission TDS |
| ▶ ✓ Case 5: Siemens — Subsidy | ▶ ✓ Case 37: Tooltech Global — TP Anti-Avoidance |
| ▶ ✓ Case 6: U.K. Paints — Section 14A | ▶ ✓ Case 38: Renault Nissan — DRP |
| ▶ ✓ Case 7: Raj Dadarkar — House Property | ▶ ✓ Case 39: Iven Interactive — Notice Address |
| ▶ ✓ Case 8: Palam Gas — Section 40(a)(ia) | ▶ ✓ Case 40: Peerless — Collective Investment |
| ▶ ✓ Case 9: Maneklal Agarwal — Sham Lease | ▶ ✓ Case 41: P.P. Mahatme — Family Settlement |
| ▶ ✓ Case 10: Sarika Jain — ITAT Powers | ▶ ✓ Case 42: State Bank — Unapproved Funds |
| ▶ ✓ Case 11: Purnima Advertising — PAN Error | ▶ ✓ Case 43: NCR Corporation — ATM Depreciation |
| ▶ ✓ Case 12: Equinox Solution — Slump Sale | ▶ ✓ Case 44: UAE Exchange — Liaison Office PE |
| ▶ ✓ Case 13: Mcdowell — Section 41(1) | ▶ ✓ Case 45: Yum! Restaurants — Mutuality |
| ▶ ✓ Case 14: Shankar Dalal — Agricultural Land | ▶ ✓ Case 46: Navin Jolly — Section 54F |
| ▶ ✓ Case 15: Mother Hospital — Depreciation | ▶ ✓ Case 47: Open Solutions — TNMM |
| ▶ ✓ Case 16: Rajesh Kumar — Section 54F | ▶ ✓ Case 48: Samsung Heavy — Project Office PE |
| ▶ ✓ Case 17: Ramgopal Minerals — Section 41(1) | ▶ ✓ Case 49: Pepsi Foods — Stay Order |
| ▶ ✓ Case 18: Vinzas Solutions — Software Royalty | ▶ ✓ Case 50: Engineering Analysis — Software Licensing |
| ▶ ✓ Case 19: Subhash Supnekar — Section 54EC | ▶ ✓ Case 51: Dr. Ranjan Pai — Bonus Shares |
| ▶ ✓ Case 20: Ian Peter Morris — Interest 234B/C | ▶ ✓ Case 52: Corporation Bank — TDS 194H ATM |
| ▶ ✓ Case 21: Bharat Heavy — Section 194J | ▶ ✓ Case 53: Reliance Telecom — ITAT Recall |
| ▶ ✓ Case 22: Greenfield Hotels — Precedent | ▶ ✓ Case 54: BCCI — Section 12A |
| ▶ ✓ Case 23: E-Funds IT — PE | ▶ ✓ Case 55: Kohinoor Indian — iPad |
| ▶ ✓ Case 24: Shreeram Durgaprasad — Penalty | ▶ ✓ Case 56: Tally Solutions — Depreciation TDS |
| ▶ ✓ Case 25: Hightension — TDS Reimbursement | ▶ ✓ Case 57: Noida Cyber Park — Section 50C |
| ▶ ✓ Case 26: Anil Kumar — Estimation | ▶ ✓ Case 58: Aditya Shroff — Forex Fluctuation |
| ▶ ✓ Case 27: Kotak Securities — Transaction Charges | ▶ ✓ Case 59: Gracemac — Software Licensing |
| ▶ ✓ Case 28: IVRCL-KBL — TDS Credit | ▶ ✓ Case 60: SAP Labs — ALP Determination |
| ▶ ✓ Case 29: Priya Blue — TCS Scrap | ▶ ✓ Case 61: Secunderabad Club — Mutuality Interest |
| ▶ ✓ Case 30: Thyssen Krupp — TP Third Parties | ▶ ✓ Case 62: Cognizant — Section 10AA |
| ▶ ✓ Case 31: Berger Paints — Section 35D | ▶ ✓ Case 63: Reliance Energy — Section 80-IA |
| ▶ ✓ Case 32: National Travel — Section 2(22)(e) | ▶ ✓ Case 64: KBD Sugars — Demerger Losses |
| | ▶ ✓ Case 65: Bharti Cellular — TDS 194H Franchisee |

CMA Knowledge — Direct Tax Laws & International Taxation

Master Revision Handbook | December 2026 Edition

Module 11: Case Study — Judicial Precedents

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CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

12

MODULE

Double Taxation and Avoidance Agreements (DTAA)

COURSE

CMA Final

SECTION

Section B: International Taxation (40%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 12

Double Taxation and Avoidance Agreements (DTAA) [Sec. 90, 90A and 91]

Comprehensive coverage of Types of DTAA, Models of DTAA (OECD and UN), Interlink of DTAA with Section 90, Overview of Articles in DTAA, Relief Methods (Exemption and Credit), Unilateral Relief, Foreign Tax Credit Rules, Permanent Establishment, and practical illustrations as per the official CMA Final syllabus.

 Module Structure**Section B: International Taxation — DTAA****12.1**

TYPES OF DTAA

12.2

OECD & UN MODELS

12.3

INTERLINK WITH SEC. 90

12.4

ARTICLES OVERVIEW

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Relief Methods — Bilateral & Unilateral	2
12.1 Types of DTAA	4
12.2 Models of DTAA (OECD and UN)	4
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Introduction to Double Taxation

In home country, tax is an obligation, while in the host country, tax is a cost. Every nation has a sovereign right to tax its residents/nationals on their global incomes. As a result, the income of a person can get taxed in both countries — in the home country (country of his residence) and the host country (country where income is generated) — due to conflict of jurisdictions to tax.

Double taxation is harmful for movement of capital, technology transfer, commerce, trade, and of course, people. Article 51 of the Indian Constitution provides that the State shall endeavour to foster respect for international law and treaty obligations.

Types of Double Taxation

ECONOMIC DOUBLE TAXATION	JURIDICAL DOUBLE TAXATION
Same income taxed in two or more countries but in the hands of different taxpayers .	Two or more states levy taxes on same entity on same income for identical periods.
E.g., business profits and dividend in different countries.	Arises due to overlapping claims of tax jurisdictions.
Tax treaties largely prevent/mitigate juridical double taxation.	Tax treaties largely prevent/mitigate juridical double taxation.

TAXPOINT

Basis of Taxation: Income is taxable on two bases: (i) Source of income basis; and (ii) Residential Status basis. This results in double taxation of the same income. First, such income is taxed in the country where it is generated; again, the same income may be taxed on the basis of residential status in another country.

Example: Mr. X, an ordinarily resident in India, earned bank interest of ₹1,00,000 on money deposited in a bank located in US. Such income is taxable in US on source basis and again in India as he is ordinarily resident.

Relief Against Double Taxation

Relief is provided by two ways: (i) **Bilateral Relief** [Sec. 90 or Sec. 90A]; and (ii) **Unilateral Relief** [Sec. 91].

Bilateral

SEC. 90 / 90A

Unilateral

SEC. 91

Exemption

METHOD

Credit

METHOD

Bilateral Relief — Methods

Exemption Method	Residence country gives up its right and source country gets exclusive right to tax. a) Full Exemption: Income earned in source state is fully exempt in residence state. b) Exemption with Progression: Income from source state is considered by residence state only for rate purposes. The doubly taxed income may be considered for rate purpose in resident state.
Credit Method	Resident remains liable in residence country on global income, but credit/deduction for tax paid in source country is given against domestic tax. a) Full Credit: Total tax paid in source state allowed as credit against tax payable in residence state. b) Ordinary Credit: Credit restricted to that part of income tax which is attributable to income taxable in residence state. c) Tax Sparing: Residence state allows credit for deemed tax paid on income otherwise exempt in source state. d) Underlying Tax Credit: Mitigates economic double taxation — credit allowed for taxes paid on underlying profits out of which dividend is paid.

Exemption with Progression — Illustration

ILLUSTRATION

Facts: An Indian Company has earned income from Indian sources of ₹75 Lacs. Income from foreign sources (relief available as per exemption with progression method) is ₹35 Lacs. Additional surcharge of 7% is levied if total income exceeds ₹1 crore; 12% if exceeds ₹10 crores.

✓ SOLUTION

Computation:

PARTICULARS	AMOUNT (₹)
Income from India	75,00,000
Income from a foreign country	35,00,000
Total Income	1,10,00,000
Tax on above @ 30%	33,00,000
Add: Surcharge @ 7%	2,31,000
Tax and surcharge	35,31,000
Add: HEC @ 4%	1,41,240
Tax, Surcharge and Cess [A]	36,72,240
Average rate of tax [A / Total Income × 100]	33.38%
Relief [₹35,00,000 × 33.38%] [B]	11,68,440
Tax, Surcharge and Cess [A – B]	25,03,800

Effectively: ₹75,00,000 × 30% × 107% × 104% = ₹25,03,800. If foreign income is not considered, tax on ₹75,00,000 would be calculated without surcharge.

Full Credit vs. Ordinary Credit — Illustration

ILLUSTRATION

Facts: Mr. A is a resident of country X, went on 3 months assignment to Country Y. Salary income of Mr. A is ₹24,00,000. Country Y taxed 3 months income of ₹6,00,000 @ 28%.

✓ SOLUTION

Computation of Tax Liability of Mr. A:

PARTICULARS	COUNTRY X (₹)	COUNTRY Y (₹)
Total Income	24,00,000	6,00,000
Tax rate	Slab	28%
Tax on above before relief	3,12,000	1,68,000
Relief — Full Credit	1,68,000	—
Relief — Ordinary Credit (Lower of):	1,06,600	—
— Tax paid in Country Y	—	1,68,000
— Tax paid in Country X [₹3,12,000 × ₹6,00,000 / ₹24,00,000]	—	78,000

Tax Sparing — Illustration

ILLUSTRATION

Facts: A Ltd, parent located in Country X, has a branch in Country Y. Branch earns profit of ₹10,00,000. Country X taxes residents @ 30%. Tax rate in Country Y is 25%. However, as a measure to promote economic development, Country Y is not levying any tax. DTAA between X-Y has tax sparing provisions.

✓ SOLUTION

Computation of Tax Liability of A Ltd:

PARTICULARS	COUNTRY X (₹)	COUNTRY Y (₹)
Total Income	10,00,000	10,00,000
Tax on above before relief	3,00,000	0
Relief as per tax sparing provision [₹10,00,000 × 25%]	2,50,000	—
Tax Payable	50,000	0

Note: Relief is available in Country X deeming that tax has been paid in Country Y @ 25% though no tax has been paid.

Underlying Tax Credit — Illustration

Facts: A Ltd, parent in Country X, has subsidiary B Ltd in Country Y. B Ltd out of profits of ₹10,00,000 paid dividend to A Ltd ₹1,00,000. Other income of A Ltd is ₹11,00,000. Dividend withholding tax rates in Country Y — 15%. Tax rate in Country Y — 25%, Country X — 30%. DTAA has underlying tax credit (UTC) provision.

✓ SOLUTION

Computation:

PARTICULARS	A LTD (₹)	B LTD (₹)
Total Income	12,00,000	10,00,000
Tax on above before relief	3,60,000	2,50,000
Less: Tax credit for withholding tax	(15,000)	0
Tax Liability without relief	3,45,000	—
Relief as per underlying tax credit [₹10,00,000 × 25%]	2,50,000	—
Tax Payable after relief	95,000	0

Unilateral Relief [Sec. 91]

If any person who is resident in India in any previous year proves that:

- ▶ Income has accrued or arisen during PY outside India (and which is not deemed to accrue or arise in India);
- ▶ He has paid in any country income-tax on such income, by deduction or otherwise, under the law in force in that country;
- ▶ India does not have any agreement u/s 90 for relief or avoidance of double taxation with that country;

then he shall be entitled to deduction from Indian income-tax payable:

- ▶ Of a sum calculated on such doubly taxed income at the **average of Indian rate of tax**; or
- ▶ Of a sum calculated on such doubly taxed income at the **average rate of tax of the said country**;
- ▶ **Whichever is lower**, or at the Indian rate of tax if both rates are equal.

TAXPOINT

Taxpoint: Relief u/s 91 is calculated on income country-wise and not on basis of aggregation of income of all foreign countries [CIT v. Bombay Burmah Trading Corpn. Ltd. (2003)]. No benefit is available on income deemed to accrue or arise in India, even though such income is doubly taxed.

12.1 Types of DTAA

DTAA can be of two types: **Limited** or **Comprehensive**.

- ▶ **Limited DTAA:** Those which are limited to certain types of incomes only. E.g., DTAA between India and Pakistan is limited to shipping and aircraft profits only.
 - ▶ **Comprehensive DTAA:** Those which cover almost all types of incomes covered by any model convention.
- Taxpoint:** Presently India has DTAA with more than 90 countries.

12.2 Models of DTAA (OECD and UN)

Global trade and commerce have made the world a single integrated market. Model tax treaties serve as the starting point (or standard format) for negotiations between two countries. Although model treaties are not legally binding, their language often is incorporated verbatim in the text of bilateral treaties.

MODEL	KEY FEATURES	APPLICABILITY
OECD Model	Emergence traced to 1927 (League of Nations). Latest revision 2017. Essentially a model treaty between two developed nations . Advocates residence principle — emphasizes right of state of residence to tax income.	Between developed countries
UN Model	Set up in 1968 by UN Adhoc Group of Experts. Finalized in 1980; revised 2021. Gives more weight to source principle . Designed to encourage flow of investments from developed to developing countries. Most of India's tax treaties based on UN Model.	Between developed and developing countries
US Model	First published in 1976; revised several times. Used by United States while entering into tax treaties with various countries.	Treaty with US

Articles in OECD Model and UN Model

ARTICLE	OECD MODEL	UN MODEL
1	Person covered	Person covered
2	Taxes covered	Taxes covered
3	General definitions	General definitions
4	Resident	Resident
5	Permanent establishment	Permanent establishment
6	Income from immovable property	Income from immovable property
7	Business profits	Business profits
8	Shipping, inland waterways, air transport	Shipping, inland waterways, air transport (Alt A & B)
9	Associated enterprise	Associated enterprise
10	Dividends	Dividends
11	Interest	Interest
12	Royalties	Royalties
12A	Fee for Technical Services	Fee for Technical Services
12B	--	Income from automated digital services
13	Capital Gains	Capital Gains
14	Deleted	Independent personal services
15	Income from employment	Dependent personal services
16	Directors' fees	Directors' fees and remuneration of top-level managerial officials
17	Entertainers and sportspersons	Artistes and sportspersons
18	Pensions	Pensions and Social Security Payments (Alt A & B)
19	Government service	Government service
20	Students	Students
21	Other Income	Other Income
22	Capital	Capital
23A	Exemption method	Exemption method
23B	Credit method	Credit method
24	Non discrimination	Non discrimination
25	Mutual agreement procedure	Mutual agreement procedure (Alt A & B)
26	Exchange of information	Exchange of information
27	Assistance in collection of taxes	Assistance in collection of taxes
28	Members of diplomatic missions	Members of diplomatic missions
29	Entitlement of benefits	Entitlement of benefits
30	Territorial extension	Entry in force
31	Entry in force	Termination
32	Termination	—

12.3 Interlink of DTAAs with Section 90 of Income Tax Act, 1961

Agreement with Foreign Countries [Sec. 90] — Bilateral Relief

The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India:

- ▶ For granting of relief in respect of income on which income-tax has been paid both under this Act and in that country;
- ▶ For avoidance of double taxation of income under this Act and under corresponding law in that country, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including treaty-shopping arrangements);
- ▶ For exchange of information for prevention of evasion or avoidance of income-tax;
- ▶ For recovery of income-tax under this Act and corresponding law in force in that country.

Applicability of DTAA

More Beneficial Provision	Where Central Government has entered into agreement with any country for granting relief or avoidance of double taxation, then, in relation to assessee to whom such agreement applies, provisions of this Act shall apply to the extent they are more beneficial to that assessee. However, provisions of Chapter X-A (GAAR) shall apply even if not beneficial to him.
Example	If as per DTAA with foreign country, FTS is taxable @ 25% whereas it is taxable u/s 115A @ 20%, then it will be beneficial to apply Sec. 115A. On the other hand, if as per DTAA, it is either not taxable or taxable at a rate lower than 20%, then DTAA is applicable.
Conflict Resolution	In case of any conflict between provisions of agreement and the Act, the provisions of the agreement would prevail over the Act in view of Sec. 90(2) [CIT v. Kulandagan Chettiar (2004)(SC)]. If any matter or income is not covered by agreement, the Income-tax Act shall be applicable.
Tax Rate under DTAA	When tax rate is determined under DTAA, tax rate prescribed therein shall have to be followed strictly without any additional taxes in form of surcharge or education cess [DCIT v. BOC Group Ltd. (2016)].
Foreign Company	Charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable shall not be regarded as less favourable charge or levy of tax.
TDS on Remittance	In case of remittance to a country with which DTAA is in force, tax should be deducted at the rate provided in Finance Act of relevant year or at the rate provided in DTAA, whichever is more beneficial to the assessee.
No Tax Liability	If no tax liability is imposed under this Act, the question of relief does not arise [UOI v. Azadi Bachao Andolan (2003)(SC)].
Proof of Double Taxation	Relief cannot be granted unless the income which has been taxed in one of the contracting countries has also suffered tax in the other contracting country. Proof has to be provided.

Tax Residency Certificate

An assessee, not being a resident, to whom DTAA applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident in any country outside India or specified territory outside India is obtained by him from the Government of that country or specified territory. Further, the assessee shall also provide such other documents and information, as may be prescribed.

Taxpoint: Where the Government of the State certified that a person is a resident of that state or has a permanent establishment in the State, the certificate is **binding** on the other Government [UOI v. Azadi Bachao Andolan (2003)(SC)].

Meaning of Terms

- ▶ Where any term used in an agreement is defined under the said agreement, the said term shall have the same meaning as assigned to it in the agreement;
- ▶ Where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act;
- ▶ Where any term is used but not defined in the Act or in the agreement, it shall have the same meaning as assigned to it in the notification issued by the Central Government.

Adoption by Central Government of Agreements Between Specified Associations [Sec. 90A]

Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government may, by notification, make such provisions as may be necessary for adopting and implementing such agreement:

- ▶ For granting of relief in respect of income on which income-tax has been paid both under this Act and in specified territory;
- ▶ For avoidance of double taxation;
- ▶ For exchange of information;
- ▶ For recovery of income-tax.

Definitions:

- ▶ **Specified association:** Any institution, association or body, whether incorporated or not, functioning under any law in force in India or laws of specified territory outside India and notified by Central Government.
- ▶ **Specified territory:** Any area outside India notified by Central Government.

Certificate for Claiming Relief u/s 90/90A [Rule 21AB]

For the purposes of certificate discussed in Sec. 90 and 90A, the following information shall be provided by an assessee in **Form No. 10F**:

- ▶ Status (individual, company, firm etc.) of the assessee;
- ▶ Nationality (in case of individual) or country of incorporation/registration (in case of others);
- ▶ Assessee's tax identification number in country of residence;
- ▶ Period for which residential status is applicable;
- ▶ Address of the assessee in country outside India.

Taxpoint: An assessee, being a resident in India, shall, for obtaining a certificate of residence, make an application in **Form No. 10FA** to the Assessing Officer. The AO on being satisfied shall issue certificate of residence in **Form No. 10FB**.

Countries with Which No Agreement Exists [Sec. 91] — Unilateral Relief

If any person who is resident in India in any PY proves that:

- ▶ Income has accrued or arisen during PY outside India (and which is not deemed to accrue or arise in India);
- ▶ He has paid in any country income-tax on such income, by deduction or otherwise, under law in force in that country;
- ▶ India does not have any agreement u/s 90 for relief or avoidance of double taxation with that country;

then he shall be entitled to deduction from Indian income-tax payable:

- ▶ Of a sum calculated on such doubly taxed income at the **average of Indian rate of tax**; or
- ▶ Of a sum calculated on such doubly taxed income at the **average rate of tax of the said country**;
- ▶ **Whichever is lower**, or at Indian rate of tax if both rates are equal.

TAXPOINT

Taxpoint: "Such doubly taxed income" really purports to indicate that it is only that portion of the income on which tax has been imposed and been paid by the assessee that is eligible for double tax relief. Relief u/s 91 is to be calculated on **income country-wise** and not on basis of aggregation or amalgamation of income of all foreign countries.

12.4 Overview of Articles in DTAAs

Most of the world's income tax systems impose tax on world-wide income of their residents and on profits with a source in the country where income is derived by a non-resident. In event of cross-border investments or business activities, two jurisdictions may wish to tax same profits — source country because income is attributable to factors within that country, and residence country because all residents are taxed on world-wide incomes.

Wealthier countries (OECD nations) very often enter into treaties to divide taxing rights flowing from competing claims to tax same income. Treaties limit source country's taxing rights, leaving more room for country in which investor or business is resident to tax profits.

Article 1 — Persons Covered

- ▶ Convention shall apply to persons who are residents of one or both of Contracting States.
- ▶ Income derived by or through an entity or arrangement treated as wholly or partly fiscally transparent under tax law of either Contracting State shall be considered income of a resident of a Contracting State but only to extent income is treated as income of a resident of that State.
- ▶ Convention shall not affect taxation by a Contracting State of its residents except with respect to benefits granted under paragraph 3 of Article 7, paragraph 2 of Article 9, Articles 19, 20, 23[A][B], 24, 25 and 28.

Article 2 — Taxes Covered

- ▶ Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or its political subdivisions or local authorities, irrespective of manner in which they are levied.
- ▶ Taxes on income and on capital include all taxes imposed on total income, total capital, or on elements of income or capital, including taxes on gains from alienation of movable or immovable property, taxes on total amounts of wages or salaries paid by enterprises, and taxes on capital appreciation.

Article 3 — General Definitions

- ▶ **Person** includes an individual, a company and any other body of persons;
- ▶ **Company** means any body corporate or any entity treated as a body corporate for tax purposes;
- ▶ **Enterprise** applies to carrying on of any business;
- ▶ **International traffic** means any transport by ship or aircraft except when operated solely between places in a Contracting State;
- ▶ **Competent authority** means the person nominated by each Contracting State;
- ▶ **National** means: (i) any individual possessing nationality/citizenship of that Contracting State; (ii) any legal person, partnership or association deriving its status from laws in force in that State.

Article 4 — Resident

- ▶ **Resident of a Contracting State** means any person who, under laws of that State, is liable to tax therein by reason of domicile, residence, place of management or any other criterion of similar nature.
- ▶ Term does not include any person liable to tax in that State only in respect of income from sources in that State.

Tie-Breaker Rules (for individuals):

- 1 **Permanent Home:** Deemed resident of State in which he has permanent home available to him;
- 2 **Centre of Vital Interests:** If permanent home in both — State with which personal and economic relations are closer;
- 3 **Habitual Abode:** If centre of vital interests cannot be determined — State in which he has habitual abode;
- 4 **Nationality:** If habitual abode in both or neither — State of which he is a national;
- 5 **Mutual Agreement:** If national of both or neither — competent authorities settle by mutual agreement.

Article 5 — Permanent Establishment

- ▶ **PE** means a fixed place of business through which business of enterprise is wholly or partly carried on.
 - ▶ PE includes: place of management, branch, office, factory, workshop, mine, oil/gas well, quarry or any other place of extraction of natural resources.
 - ▶ **Building site or construction/installation project** constitutes PE only if it lasts more than **12 months** (OECD) or **6 months** (UN).
 - ▶ **Furnishing of services (UN Model):** Including consultancy services through employees, if activities continue for period aggregating more than **183 days** in any 12-month period.
- Exclusions:** Use of facilities solely for storage/display of goods; maintenance of stock solely for storage/display/processing; maintenance of fixed place solely for purchasing goods/collecting information; maintenance of fixed place solely for advertising/scientific research/similar activities of preparatory or auxiliary character.

Article 6 — Income from Immovable Property

- ▶ Income derived by resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
- ▶ **Immovable property** shall have meaning under law of Contracting State in which property is situated. Includes property accessory to immovable property, livestock, equipment used in agriculture and forestry, usufruct of immovable property, rights to variable/fixed payments as consideration for working of mineral deposits, sources and other natural resources. Ships and aircraft are NOT immovable property.

Article 7 — Business Profits

- ▶ Profits of an enterprise of a Contracting State shall be taxable only in that State unless enterprise carries on business in other Contracting State through a PE situated therein.
- ▶ If enterprise carries on business through PE, profits attributable to PE may be taxed in that other State.
- ▶ **Force of Attraction Rule (UN Model):** Where enterprise has PE in other State, profits from sales of goods or merchandise of same or similar kind, or other business activities of same or similar kind, may be taxed in that other State.
- ▶ **Arm's Length Principle:** Profits attributable to PE are those it might be expected to make if it were a separate and independent enterprise engaged in same or similar activities under same or similar conditions.

Article 8 — International Shipping and Air Transport

- ▶ Profits of an enterprise of a Contracting State from operation of ships or aircraft in international traffic shall be taxable only in that State.
- ▶ Provisions also apply to profits from participation in a pool, a joint business or an international operating agency.
- ▶ **UN Model Alternative B:** Profits from operation of ships may be taxed in other State if shipping activities are more than casual. Profits taxed on basis of appropriate allocation of overall net profits, reduced by negotiated percentage.

Article 9 — Associated Enterprises

- ▶ Where enterprise of a Contracting State participates directly or indirectly in management, control or capital of enterprise of other Contracting State, and conditions are made/imposed between them which differ from those between independent enterprises, then any profits which would have accrued to one of them but have not so accrued may be included in profits of that enterprise and taxed accordingly.
- ▶ Where a Contracting State includes in profits of an enterprise — and taxes accordingly — profits on which enterprise of other Contracting State has been charged to tax in that other State, then that other State shall make an appropriate adjustment to amount of tax charged thereon.
- ▶ Provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that one of the enterprises is liable to penalty with respect to fraud, gross negligence or wilful default.

Article 10 — Dividends

- ▶ Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- ▶ However, dividends may also be taxed in Contracting State of which company paying dividends is a resident, but if beneficial owner is resident of other Contracting State, tax so charged shall not exceed:
 - ▶ **5%** of gross amount if beneficial owner is a company which holds directly at least **25%** of capital of company paying dividends (throughout a 365-day period that includes day of payment);
 - ▶ **15%** of gross amount in all other cases (OECD Model).
- ▶ **Dividends** means income from shares, "jouissance" shares or rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights subjected to same taxation treatment as income from shares.

Article 11 — Interest

- ▶ Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- ▶ However, interest may also be taxed in Contracting State in which it arises, but if beneficial owner is resident of other Contracting State, tax so charged shall not exceed **10%** of gross amount of interest (OECD Model).
- ▶ **Interest** means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in debtor's profits, including income from government securities, bonds or debentures.
- ▶ Penalty charges for late payment shall NOT be regarded as interest.

Article 12 — Royalties

- ▶ Royalties arising in a Contracting State and beneficially owned by a resident of other Contracting State shall be taxable only in that other State (OECD Model).
- ▶ UN Model allows source state to tax royalties at rate to be established through bilateral negotiations.
- ▶ **Royalties** means payments of any kind received as consideration for use of, or right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

Article 12A — Fees for Technical Services (UN Model)

- ▶ Fees for technical services arising in a Contracting State and paid to resident of other Contracting State may be taxed in that other State.
- ▶ May also be taxed in Contracting State in which they arise, but if beneficial owner is resident of other Contracting State, tax so charged shall not exceed rate to be established through bilateral negotiations.
- ▶ **Fees for technical services** means any payment in consideration for any service of a managerial, technical or consultancy nature, unless payment is made: (a) to an employee of person making payment; (b) for teaching in an educational institution; (c) by an individual for services for personal use.

Article 13 — Capital Gains

- ▶ Gains derived by resident of a Contracting State from alienation of immovable property situated in other Contracting State may be taxed in that other State.
- ▶ Gains from alienation of movable property forming part of business property of PE may be taxed in that other State.
- ▶ Gains from alienation of shares or comparable interests may be taxed in other Contracting State if, at any time during 365 days preceding alienation, these shares derived more than **50%** of their value directly or indirectly from immovable property situated in that other State.

Article 15 — Income from Employment

- ▶ Salaries, wages and other similar remuneration derived by resident of a Contracting State in respect of employment shall be taxable only in that State unless employment is exercised in other Contracting State.
- ▶ Remuneration may be taxed in other State if: (a) recipient is present in other State for period not exceeding aggregate 183 days in any 12-month period; (b) remuneration is paid by or on behalf of employer who is not resident of other State; (c) remuneration is not borne by a PE which employer has in other State.

Article 17 — Entertainers and Sportspersons

- ▶ Income derived by resident of Contracting State as entertainer or sportsperson from personal activities exercised in other Contracting State may be taxed in that other State.
- ▶ Where income accrues not to entertainer/sportsperson but to another person, that income may be taxed in Contracting State in which activities are exercised.

Article 21 — Other Income

- ▶ Items of income of a resident of a Contracting State, wherever arising, not dealt with in foregoing Articles shall be taxable only in that State (OECD Model).
- ▶ UN Model: Such income arising in other Contracting State may also be taxed in that other State.

Article 23A/23B — Elimination of Double Taxation

ARTICLE 23A	EXEMPTION METHOD	ARTICLE 23B — CREDIT METHOD
Where resident derives income which may be taxed in other State, first-mentioned State shall exempt such income from tax.	Doubly taxed income exempted in resident State; taxable in source State.	Resident State allows deduction from tax on income of amount equal to income tax paid in other State.
Where resident derives items of income which may be taxed in other State, first-mentioned State shall allow deduction from tax on income of amount equal to tax paid in other State.	—	Such deduction shall not exceed that part of tax which is attributable to income which may be taxed in other State.
Where income is exempt in resident State, such State may nevertheless, in calculating amount of tax on remaining income, take into account exempted income.	Doubly taxed income may be considered for rate purpose.	Where income is exempt, resident State may take into account exempted income for rate purpose.

Article 24 — Non-Discrimination

- ▶ Nationals of a Contracting State shall not be subjected in other Contracting State to any taxation or requirement connected therewith which is other or more burdensome than taxation and connected requirements to which nationals of that other State in same circumstances are subjected.
- ▶ Taxation on a PE which enterprise of a Contracting State has in other Contracting State shall not be less favourably levied in that other State than taxation levied on enterprises of that other State carrying on same activities.

Article 25 — Mutual Agreement Procedure

- ▶ Where a person considers that actions of one or both Contracting States result or will result for him in taxation not in accordance with provisions of Convention, he may present his case to competent authority of either Contracting State.
- ▶ Case must be presented within **3 years** from first notification of action resulting in taxation not in accordance with provisions of Convention.
- ▶ Competent authority shall endeavour to resolve case by mutual agreement with competent authority of other Contracting State.
- ▶ Where competent authorities are unable to reach agreement within **2 years** (OECD) or **3 years** (UN) from date when all information required has been provided, any unresolved issues shall be submitted to arbitration if person so requests.

Article 26 — Exchange of Information

- ▶ Competent authorities of Contracting States shall exchange such information as is foreseeably relevant for carrying out provisions of Convention or to administration or enforcement of domestic laws concerning taxes.
- ▶ Exchange of information is not restricted by Articles 1 and 2.
- ▶ Information received shall be treated as secret in same manner as information obtained under domestic laws.
- ▶ In no case shall provisions be construed so as to impose on a Contracting State obligation to carry out administrative measures at variance with laws and administrative practice, or to supply information which would disclose any trade, business, industrial, commercial or professional secret.

💡 Foreign Tax Credit [Rule 128]

An assessee, being a resident, shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.

More Than One Year	Where foreign income is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which income is offered to tax or assessed to tax in India.
No Credit for Interest, etc.	Credit shall be available against amount of tax, surcharge and cess payable under the Act but NOT in respect of any sum payable by way of interest, fee or penalty.
No Credit for Disputed Tax	No credit shall be available in respect of any amount of foreign tax or part thereof which is disputed in any manner by the assessee. However, credit of such disputed tax shall be allowed for year in which such income is offered to tax if assessee within 6 months from end of month in which dispute is finally settled furnishes evidence of settlement and evidence that liability has been discharged.

Meaning of Foreign Tax

IN RESPECT OF	FOREIGN TAX
Country with which India has entered into agreement u/s 90 or 90A	Tax covered under said agreement
Any other country or specified territory	Tax payable under law of that country in nature of income-tax referred to in Explanation to Sec. 91

Manner of Computation

- ▶ Credit shall be the **lower** of: (a) tax payable under the Act on such income; and (b) foreign tax paid on such income.
- ▶ Where foreign tax paid exceeds amount of tax payable in accordance with provisions of agreement for relief or avoidance of double taxation, such excess shall be **ignored**.
- ▶ Credit shall be determined by conversion of currency of payment of foreign tax at **telegraphic transfer buying rate** on last day of month immediately preceding month in which such tax has been paid or deducted.

Tax Payable Under MAT or AMT

- ▶ Where any tax is payable u/s 115JB or 115JC, credit of foreign tax shall be allowed against such tax in same manner as allowable against any tax payable under normal provisions.
- ▶ Where amount of foreign tax credit available against tax payable u/s 115JB or 115JC exceeds amount of tax credit available against normal provisions, then while computing amount of credit u/s 115JAA or 115JD in respect of taxes paid u/s 115JB or 115JC, such excess shall be **ignored**.

Documents Required for Credit

Credit of any foreign tax shall be allowed on furnishing the following documents by assessee within due date of furnishing return of income:

- ▶ A statement of income from country outside India offered for tax for PY and of foreign tax deducted or paid on such income in **Form No. 67**;
- ▶ Certificate or statement specifying nature of income and amount of tax deducted therefrom or paid by assessee: (a) from tax authority of country outside India; or (b) from person responsible for deduction of such tax; or (c) signed by assessee — accompanied by acknowledgement of online payment or bank counter foil or challan, and proof of deduction.

🏢 Permanent Establishment (PE)

One of the most important terms in all DTAAs is "Permanent Establishment" (PE), which has not been defined in the Income Tax Act. As per DTAAs, PE includes a wide variety of arrangements: a place of management, a branch, an office, a factory, a workshop or a warehouse, a mine, a quarry, an oilfield, etc. Imposition of tax on a foreign enterprise is done only if it has a PE in the contracting state. Tax is computed by treating PE as a distinct and independent enterprise.

PE Includes

PLACE	DESCRIPTION
Place of management	Where management decisions are taken
Branch	A branch office
Office	An office
Factory	A factory
Workshop	A workshop
Mine, oil/gas well, quarry	Any place of extraction of natural resources
Warehouse	In relation to person providing storage facilities for others
Farm, plantation	Where agricultural, pastoral, forestry or plantation activities carried on
Premises used as sales outlet	For receiving or soliciting orders
Installation or structure, plant or equipment	Used for exploration or exploitation of natural resources
Building site or construction project	Where site or project exists for more than specified months (generally 6 months in UN Model; 12 months in OECD Model)

Exclusions — PE Not Deemed

An enterprise shall not be deemed to have a PE merely by reason of:

- ▶ Use of facilities solely for storage or display of goods or merchandise belonging to the enterprise;
- ▶ Maintenance of stock of goods or merchandise solely for storage or display;
- ▶ Maintenance of stock of goods or merchandise solely for processing by another enterprise;
- ▶ Maintenance of fixed place of business solely for purchasing goods or merchandise, or of collecting information, for the enterprise;
- ▶ Maintenance of fixed place of business solely for advertising, supply of information, scientific research, or similar activities of preparatory or auxiliary character.

TAXPOINT

Agent PE: An enterprise shall not be deemed to have a PE merely because it carries on business through a broker, general commission agent or any other agent of an independent status, where that person is acting in ordinary course of his business. However, when activities of such agent are carried on wholly or principally on behalf of that enterprise, the person will not be considered an agent of independent status.

Taxation of Business Process Outsourcing Units — Circular 05/2004

- ▶ A non-resident entity may outsource certain services to resident Indian entity. If no business connection between two, resident entity may not be PE of non-resident entity.
- ▶ Non-resident will be liable to tax in India only if IT-enabled BPO unit in India constitutes its PE.
- ▶ Non-resident or foreign company is treated as having PE in India under Article 5 if it carries on business through branch, sales office, etc., or through an agent (other than independent agent) who habitually exercises authority to conclude contracts.
- ▶ Profits of non-resident attributable to business activities carried out in India by PE become taxable in India under Article 7.
- ▶ In determining profits attributable to IT-enabled BPO unit constituting PE, it is necessary to determine price of services rendered by PE to Head Office on basis of **arm's length principle**.

Solved Illustrations — Step by Step

ILLUSTRATION

Illustration 1: Bilateral Relief — Sec. 90

Facts: Mr. Ramesh, a resident Indian, has derived the following incomes for PY relevant to A.Y. 2026-27:

- Income from profession in India — ₹12,44,000
- Income from profession in country A (Tax paid in foreign country @ 5%) — ₹4,50,000

Compute Indian tax liability assuming that as per treaty between India and Country A, ₹4,50,000 is taxable in India. Foreign tax can be set off against Indian tax liability.

✓ SOLUTION

Computation of Total Income and Tax Liability of Mr. Ramesh — A.Y. 2026-27:

PARTICULARS	AMOUNT (₹)
Income from profession in India	12,44,000
Income from profession in Country A	4,50,000
Gross Total Income	16,94,000
Less: Deduction u/ch. VIA	NA
Total Income	16,94,000
Tax on above	1,38,800
Add: Health & Education cess	5,552
Tax and cess payable	1,44,352
Less: Relief u/s 90 [$₹4,50,000 \times 5\%$]	22,500
Tax payable in India (Rounded off u/s 288B)	1,21,850

ILLUSTRATION

Illustration 2: Exemption with Progression — Sec. 90

Facts: Shri Anuj, an ordinarily resident in India, provides the following details:

- Income from India — ₹13,40,000
- Income from Country Z — ₹12,00,000
- Investment in PPF — ₹1,00,000
- India has DTAA with Country Z. As per agreement, income is taxable in country where it is earned and not in other country. However, in other country, such income can be included for rate purpose.
- Foreign income has been taxed in Country Z @ 20%.

Compute Indian tax payable.

✓ SOLUTION

Computation of Total Income and Tax Liability of Shri Anuj — A.Y. 2026-27:

PARTICULARS	AMOUNT (₹)
Income from India	13,40,000
Income from Country Z	12,00,000
Gross Total Income	25,40,000
Less: Deduction u/s 80C [Investment in PPF]	NA
Total Income	25,40,000
Tax on above	3,42,000
Add: Health & Education cess	13,680
Tax and cess payable	3,55,680
Less: Relief u/s 90 [$₹12,00,000 \times 14.00\%$]	1,68,000
Tax payable in India (Rounded off u/s 288B)	1,87,680

Note: Average rate of Indian tax = $₹3,55,680 / ₹25,40,000 \times 100 = 14.00\%$. Since the agreement provides exemption with progression, relief is calculated at Indian average rate on doubly taxed income.

ILLUSTRATION

Illustration 3: Unilateral Relief — Sec. 91

Facts: Mr. Saha, a resident Indian, has derived the following incomes for PY relevant to A.Y. 2026-27:

- ▶ Income from profession — ₹3,74,000
- ▶ Royalty on books from foreign country Y (₹3,00,000 is eligible for deduction u/s 80QQB) — ₹5,00,000 (Tax paid in foreign country @ 20%)

Compute Indian tax liability, if he has opted for old regime, assuming India does not have any agreement with Country Y.

✓ SOLUTION

Computation of Total Income and Tax Liability of Mr. Saha — A.Y. 2026-27:

PARTICULARS	AMOUNT (₹)
Income from profession	3,74,000
Royalty earned in Country Y	5,00,000
Gross Total Income	8,74,000
Less: Deduction u/s 80QQB	3,00,000
Total Income	5,74,000
Tax on above	27,300
Add: Health & Education cess	1,092
Tax and cess payable	28,392
Average rate of tax [$\frac{₹28,392}{₹5,74,000} \times 100$]	4.95%
Rate of tax in Country Y	20%
Relief u/s 91 [4.95% of ₹2,00,000]	9,900
Tax payable (Rounded off u/s 288B)	18,490

Note: Indian average tax rate: 4.95%, Foreign average tax rate: 20%. Relief u/s 91 is available at lower of aforesaid rates, i.e., **4.95%**. Relief is calculated on doubly taxed income of ₹2,00,000 (₹5,00,000 – ₹3,00,000 deduction u/s 80QQB).

ILLUSTRATION

Illustration 4: Unilateral Relief — Business Income

Facts: Arvind, a textile merchant and resident Indian, is doing business in India and abroad. During PY 2025-26:

- ▶ Income from business in India — ₹27,00,000
- ▶ Income from business in Country A (no DTAA with India) — ₹15,00,000
- ▶ Income-tax levied by government in Country A — ₹5,00,000
- ▶ Loss from business in Country B (no DTAA with India) — (₹4,00,000)
- ▶ Contribution to PPF — ₹1,50,000
- ▶ LIC premium on life of father and mother — ₹20,000

Compute tax liability for A.Y. 2026-27.

✓ SOLUTION

Computation of Total Income and Tax Liability — A.Y. 2026-27:

PARTICULARS	AMOUNT (₹)
Income from business in India	27,00,000
Income from business in Country A	15,00,000
Income from business in Country B	(4,00,000)
Gross Total Income	38,00,000
Less: Deduction u/s 80C	NA
Total Income	38,00,000
Tax on above	7,20,000
Add: Health & Education cess	28,800
Tax and cess payable	7,48,800
Average rate of tax [$\frac{₹7,48,800}{₹38,00,000} \times 100$]	19.71%
Rate of tax in Country A	33.33%
Relief u/s 91 [19.71% of ₹15,00,000]	2,95,650
Tax payable (Rounded off u/s 288B)	4,53,150

Note: Indian average tax rate: 19.71%, Foreign average tax rate: 33.33%. Relief u/s 91 available at lower rate, i.e., **19.71%**.

ILLUSTRATION

Illustration 5: Relief u/s 91 — Professional Fees

Facts: Amar, an individual, resident of India, receives the following payments after TDS during PY 2025-26:

- ▶ Professional fees on 17.08.2025 — ₹12,40,000 (TDS ₹50,000)
- ▶ Professional fees on 04.03.2026 — ₹1,60,000 (TDS ₹30,000)
- ▶ Both services rendered in Country X
- ▶ Expenditure incurred for earning both receipts — ₹2,00,000
- ▶ Income from other sources in India — ₹5,00,000
- ▶ Payment towards LIC — ₹70,000

Compute tax liability and relief u/s 91 for A.Y. 2026-27.

✓ SOLUTION

Computation of Total Income and Tax Liability of Mr. Amar — A.Y. 2026-27:

PARTICULARS	AMOUNT (₹)
Income from profession from foreign	14,00,000
Less: Expenses	(2,00,000)
Net professional income from foreign	12,00,000
Income from profession in India	5,00,000
Gross Total Income	17,00,000
Less: Deduction u/s 80C	NA
Total Income	17,00,000
Tax on above	1,40,000
Add: Health & Education cess	5,600
Tax and cess payable	1,45,600
Average rate of tax [$\frac{₹1,45,600}{₹17,00,000} \times 100$]	8.56%
Rate of tax in Country X	16.67%
Relief u/s 91 [8.56% of ₹12,00,000]	1,02,720
Tax payable (Rounded off u/s 288B)	42,880

Note: Relief u/s 91 available at lower rate, i.e., **8.56%**.

Solved Case 1: Comprehensive DTAA Computation

Facts: Mr. Amin, a resident individual in India (age 42), furnishes the following particulars of income for PY 2025-26:

PARTICULARS	₹
Income from business in India (computed)	11,00,000
Dividend received from Company incorporated in Country X (gross)	2,00,000
Royalty income from writing text book for schools in Country Y (gross)	6,00,000
Expenditure incurred for authoring text book	50,000
Business loss in Country Y (gross)	2,50,000
Health insurance premium paid for his father (age 67) — not dependent	30,000

Business loss in Country Y is eligible for set off against other income as per Income-tax law of that country. No DTAA between India and Country X and Country Y. Rate of tax in Country X — 10%, Country Y — 25% (without threshold exemption).

✓ SOLUTION

Computation of Total Income of Mr. Amin — A.Y. 2026-27:

PARTICULARS	₹	₹
Profits and gains of Business or Profession		
Income from business in India	11,00,000	
Loss from business in Country Y	(2,50,000)	
Less: Set off against royalty income	2,50,000	—
Income from Other Sources		
Dividend from companies in Country X	2,00,000	
Royalty income from Country Y	6,00,000	
Less: Expenditure thereon	(50,000)	5,50,000
Less: Loss from business in Country Y	(2,50,000)	3,00,000
Total from Other Sources		5,00,000
Gross Total Income		16,00,000
Less: Deduction u/s 80D (Health insurance for father — senior citizen)		(30,000)
Less: Deduction u/s 80QQB (Not eligible — text book for schools in Country Y)		—
Total Income		15,70,000
Tax on above		2,83,500
Add: Health & Education cess		11,340
Tax and cess		2,94,840
Less: Relief u/s 91 [See Working]		(76,339)
Tax after relief		2,18,500

Working — Relief u/s 91:

PARTICULARS	₹
Average rate of tax in India [$\text{₹}2,94,840 / \text{₹}15,70,000 \times 100$]	18.78%
Average rate of tax in Country X	10%
Doubly taxed income of Country X	2,00,000
Relief u/s 91 [10% or 18.78%, whichever lower — 10% on ₹2,00,000]	20,000
Doubly taxed income of Country Y (after set-off of business loss)	3,00,000
Rate of tax in Country Y	25%
Relief u/s 91 [18.78% or 25%, whichever lower — 18.78% on ₹3,00,000]	56,339
Total Relief u/s 91	76,339

★ Quick Revision Summary

★ QUICK REVISION

Key Sections & Rules — Module 12

SECTION / RULE	PARTICULARS
Sec. 90	Agreement with foreign countries — Bilateral Relief
Sec. 90A	Adoption of agreements between specified associations
Sec. 91	Unilateral Relief — Countries with no agreement
Sec. 90(2)	DTAA prevails over Income-tax Act if more beneficial to assessee
Rule 21AB	Certificate for claiming relief u/s 90/90A — Form 10F
Form 10FA	Application for certificate of residence
Form 10FB	Certificate of residence issued by AO
Rule 128	Foreign Tax Credit
Form 67	Statement for claiming FTC
Rule 115	Rate of exchange for conversion of foreign income
Sec. 44DA	Royalty/FTS to non-residents with PE in India
Sec. 115A	Special tax rates for non-residents

★ QUICK REVISION

Key Concepts — DTAA

- ▶ **Double Taxation:** Same income taxed in two countries — Juridical (same entity) vs Economic (different entities).
- ▶ **Bilateral Relief:** Through DTAA — Exemption Method or Credit Method.
- ▶ **Unilateral Relief [Sec. 91]:** Where no DTAA exists — relief at lower of Indian average rate or foreign average rate.
- ▶ **Exemption Method:** Full exemption or Exemption with Progression.
- ▶ **Credit Method:** Full Credit, Ordinary Credit, Tax Sparing, Underlying Tax Credit.
- ▶ **OECD Model:** Between developed countries — Residence principle.
- ▶ **UN Model:** Between developed and developing countries — Source principle. Most Indian treaties based on this.
- ▶ **Permanent Establishment (PE):** Fixed place of business through which business is wholly or partly carried on.
- ▶ **Tax Residency Certificate:** Mandatory for claiming DTAA benefits — Form 10F.
- ▶ **FTC:** Lower of tax payable in India or foreign tax paid.

Key Articles — DTAA

ARTICLE	PARTICULARS
1	Persons Covered
2	Taxes Covered
3	General Definitions
4	Resident — Tie-Breaker Rules
5	Permanent Establishment
6	Income from Immovable Property
7	Business Profits
8	Shipping and Air Transport
9	Associated Enterprises
10	Dividends
11	Interest
12	Royalties
12A	Fees for Technical Services (UN Model)
12B	Income from Automated Digital Services (UN Model)
13	Capital Gains
14	Independent Personal Services (UN Model)
15	Income from Employment
16	Directors' Fees
17	Entertainers and Sportspersons
18	Pensions
19	Government Service
20	Students
21	Other Income
22	Capital
23A/23B	Exemption Method / Credit Method
24	Non-Discrimination
25	Mutual Agreement Procedure
26	Exchange of Information
27	Assistance in Collection of Taxes

★ QUICK REVISION

Key Case Laws — Module 12

- **CIT v. Kulandagan Chettiar (2004)(SC)** — DTAA prevails over Income-tax Act if more beneficial.
- **UOI v. Azadi Bachao Andolan (2003)(SC)** — TRC issued by foreign government is binding on Indian Government.
- **DCIT v. BOC Group Ltd. (2016)** — Tax rate under DTAA strictly followed without surcharge/cess.
- **CIT v. Bombay Burmah Trading Corpn. Ltd. (2003)** — Relief u/s 91 calculated country-wise, not on aggregation.
- **Formula One World Championship Ltd v. CIT** — Fixed place PE requires place "at the disposal" of enterprise.
- **ADIT v. E-Funds IT Solution Inc (2017)(SC)** — Outsourcing to Indian subsidiary does not constitute PE.
- **UOI v. UAE Exchange Centre (2020)(SC)** — Liaison Office activities of preparatory/auxiliary character not PE.
- **DIT v. Samsung Heavy Industries Co Ltd (2020)(SC)** — Project Office undertaking non-core activities not PE.
- **Engineering Analysis Centre of Excellence P. Ltd v. CIT (2021)(SC)** — Payment for software not royalty.
- **CIT v. Gracemac Corporation** — Licensing of software products not taxable in India as royalty.



Multiple Choice Questions

1. In respect of DTAA, generally, India follows: a) UN Model b) UK Model c) OECD Model d) US Model [Ans: a]
2. Sec. 91 deals with: a) Bilateral Relief b) Unilateral Relief c) Both (a) and (b) d) None of the above [Ans: b]
3. DTAA between India and Pakistan is limited to: a) All incomes b) Shipping and aircraft profits only c) Royalty only d) None [Ans: b]
4. In case of conflict between DTAA and Income-tax Act, which prevails? a) Income-tax Act b) DTAA if more beneficial c) Both equally d) Neither [Ans: b]
5. Under the OECD Model, dividend withholding tax rate for portfolio investors is: a) 5% b) 10% c) 15% d) 20% [Ans: c]
6. Under the OECD Model, dividend withholding tax rate where beneficial owner holds at least 25% of capital is: a) 5% b) 10% c) 15% d) 20% [Ans: a]
7. Under the OECD Model, interest withholding tax rate is: a) 5% b) 10% c) 15% d) 20% [Ans: b]
8. Building site or construction project constitutes PE if it lasts more than (OECD Model): a) 3 months b) 6 months c) 9 months d) 12 months [Ans: d]
9. As per Rule 128, foreign tax credit shall be allowed on furnishing Form: a) 10F b) 10FA c) 67 d) 10FB [Ans: c]
10. Mutual Agreement Procedure under Article 25 — case must be presented within: a) 1 year b) 2 years c) 3 years d) 5 years [Ans: c]



Short Essay Type Questions

- 1 State the provisions of Sec. 91.
- 2 Write a brief note on Model tax conventions.
- 3 Explain the concept of Permanent Establishment under DTAA.
- 4 State the provisions relating to Foreign Tax Credit under Rule 128.
- 5 Explain the different methods of granting relief against double taxation.
- 6 What is the significance of Tax Residency Certificate? How is it obtained?
- 7 Explain the tie-breaker rules for determining residential status of an individual under DTAA.
- 8 Discuss the provisions of Sec. 90 with respect to applicability of DTAA.
- 9 What is the significance of the phrase "to the extent they are more beneficial" in Sec. 90(2)?
- 10 Explain the provisions relating to Mutual Agreement Procedure under DTAA.

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Comprehensive Numerical Problems

Problem 1 (Relief u/s 90/91): Anupam Gulati, a resident in India, is a famous badminton player, who plays in several tournaments. For the year ended 31-03-2026, he has derived income from playing in tournaments outside India and also share income from a firm, from nations with which no DTAA exists.

PARTICULARS	₹
Income from tournaments in India	32,50,000
Income from tournaments outside India (as converted into INR)	16,00,000
Share of loss from a partnership firm abroad (Set off permitted in that nation)	2,00,000
Residential house property purchased at Colombo (including registration and stamp duty for ₹1,80,000)	4,00,00,000

On the foreign income, he has paid tax of ₹3,50,000. Compute relief u/s 90 or 91, assuming that he has opted for old regime.

[Ans: ₹3,50,000]

Problem 2 (Sec. 91 — Suresh): Suresh (age 61) an individual resident in India furnishes particulars of income for PY 2025-26. He earned income in Country M and India has not entered into DTAA with that country.

PARTICULARS	₹
Income from house property in Country M	2,50,000
Business income in India	8,00,000
Royalty income Country M (see note below)	4,00,000
Business income in Country M	2,00,000
Dividend from Country M	1,00,000
Income from house property in India	5,00,000
Donation to PM's National Relief Fund	50,000
Medical expenses for mother aged 85	50,000

Note: He disputed royalty income in Country M but paid tax on that income in June 2025 after appeal decided. Royalty income is charged at concessional rate of 15% in Country M.

[Hint: (i) Total Income = ₹21,50,000; (ii) Yes, relief u/s 91; (iii) Tax liability = ₹3,03,245]

Problem 3 (Foreign Tax Credit): Mr. Vikram, a resident Indian, earned income from Country A (with which India has DTAA) of ₹10,00,000 and paid tax of ₹2,00,000 in Country A. His Indian tax liability on total income (including foreign income) is ₹3,50,000. The DTAA provides for tax credit at a rate not exceeding 15%. Compute FTC and net tax payable in India.

[Hint: FTC = Lower of (₹3,50,000 on foreign income proportion) or ₹1,50,000 (15% of ₹10,00,000) or ₹2,00,000 = ₹1,50,000. Net tax = ₹3,50,000 – ₹1,50,000 = ₹2,00,000]

Problem 4 (PE Determination): A foreign company (F Co) has a subsidiary in India (I Co). I Co provides back office support services to F Co. F Co's clients are all located outside India. F Co has no office or employees in India. I Co is compensated on cost-plus basis. Determine whether I Co constitutes a PE of F Co in India.

[Hint: Based on E-Funds IT Solution Inc (SC), outsourcing to a 100% subsidiary does not create a PE. Also, no service PE as services are not rendered "within India" to F Co's clients.]

Problem 5 (Exemption with Progression): An Indian company has income from India ₹50,00,000 and income from foreign country ₹25,00,000. DTAA with that country provides for exemption with progression. Tax rate in India is 30%. Surcharge @ 7% if income exceeds ₹1 crore. Compute tax payable.

[Hint: Total income = ₹75,00,000; Tax = ₹22,50,000 + cess; No surcharge as total income does not exceed ₹1 crore; Relief = Foreign income × Average Indian tax rate]

Problem 6 (Tax Sparing): X Ltd, an Indian company, has a branch in Country Z. Branch profit = ₹20,00,000. Country Z offers tax holiday (no tax). India has DTAA with Country Z with tax sparing provision. Tax rate in Country Z = 20%. Indian tax rate = 30%. Compute tax payable in India.

[Hint: Tax before relief = ₹6,00,000; Relief = ₹20,00,000 × 20% = ₹4,00,000; Tax payable = ₹2,00,000 + cess]

Problem 7 (Underlying Tax Credit): P Ltd (India) holds 100% shares in Q Ltd (Country Y). Q Ltd earned profit ₹50,00,000 and paid dividend ₹10,00,000 to P Ltd. Tax rate in Country Y = 25%. Withholding tax = 10%. Indian tax rate = 30%. Compute underlying tax credit.

[Hint: Withholding tax = ₹1,00,000; Underlying tax credit = ₹50,00,000 × 25% = ₹12,50,000; Total FTC = ₹13,50,000 subject to Indian tax on such income]

References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material
- ▶ OECD Model Tax Convention on Income and Capital
- ▶ UN Model Double Taxation Convention

✓ Module 12 — Complete Coverage Checklist

★ QUICK REVISION

- | | |
|---|--|
| ▶ ✓ Introduction to Double Taxation | ▶ ✓ 12.3 Interlink of DTAA with Sec. 90 |
| ▶ ✓ Juridical vs. Economic Double Taxation | ▶ ✓ 12.4 Overview of Articles in DTAAs |
| ▶ ✓ Relief Methods — Bilateral & Unilateral | ▶ ✓ Article 1 to 27 — Detailed Coverage |
| ▶ ✓ Exemption Method — Full & Progression | ▶ ✓ Tie-Breaker Rules — Article 4 |
| ▶ ✓ Credit Method — Full, Ordinary, Tax Sparing, Underlying | ▶ ✓ Permanent Establishment — Article 5 |
| ▶ ✓ Sec. 90 — Agreement with Foreign Countries | ▶ ✓ Business Profits — Article 7 |
| ▶ ✓ Sec. 90A — Specified Associations | ▶ ✓ Dividends, Interest, Royalties — Articles 10, 11, 12 |
| ▶ ✓ Sec. 91 — Unilateral Relief | ▶ ✓ Capital Gains — Article 13 |
| ▶ ✓ 12.1 Types of DTAA | ▶ ✓ Mutual Agreement Procedure — Article 25 |
| ▶ ✓ 12.2 Models of DTAA (OECD, UN, US) | ▶ ✓ Exchange of Information — Article 26 |
| ▶ ✓ Article-wise Comparison of OECD & UN Models | ▶ ✓ Foreign Tax Credit — Rule 128 |
| | ▶ ✓ Tax Residency Certificate — Rule 21AB |
| | ▶ ✓ Permanent Establishment — Detailed Analysis |
| | ▶ ✓ Solved Illustrations (1-5 + Case Study) |

CMA Knowledge — Direct Tax Laws & International Taxation

Master Revision Handbook | December 2026 Edition

Module 12: Double Taxation and Avoidance Agreements (DTAA)

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CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

13

MODULE

Transfer Pricing

COURSE

CMA Final

SECTION

Section B: International Taxation (40%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 13

Transfer Pricing

Comprehensive coverage of Transfer Pricing including Specified Domestic Transactions, Determination of Arm's Length Price (CUP, RPM, CPM, PSM, TNMM), Advance Pricing Agreement, Safe Harbour Rules, Thin Capitalisation, Secondary Adjustment, and Penalties as per the official CMA Final syllabus.

Module Structure

Section B: International Taxation — Transfer Pricing

13.1

TRANSFER PRICING & SDT

13.2

ARM'S LENGTH PRICE

13.3

ADVANCE PRICING AGREEMENT

13.4

SAFE HARBOUR & THIN CAP

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Introduction to Transfer Pricing

The increasing participation of multinational groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, thereby, leading to erosion of tax revenues.

With a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in case of such multinational enterprise, new set of special provisions relating to avoidance of tax have been introduced under **Chapter X** in the Income Tax Act. These provisions relate to:

- ▶ Computation of income from international transaction having regard to arm's length price;
- ▶ Meaning of associated enterprises;
- ▶ Meaning of international transaction;
- ▶ Determination of arm's length price;
- ▶ Keeping and maintaining of information and documents;
- ▶ Furnishing of a report from an accountant.

Tax Havens — Concept

Many fiscally sovereign territories and countries use tax and non-tax incentives to attract activities in the financial and other services sectors. These territories offer foreign investor an environment with no or only nominal taxation, coupled with reduction in regulatory or administrative constraints. These jurisdictions are known as **tax havens**.

Key Factors of a Tax Haven:

- ▶ **No or only nominal taxes:** Imposes nil or nominal taxes and offers itself as place to escape high taxes.
- ▶ **Lack of transparency:** Secret rulings, negotiated tax rates, limited regulatory supervision.
- ▶ **Lack of effective exchange of tax information:** Laws preventing effective exchange with foreign tax authorities.
- ▶ **No requirement for substantive local presence:** Attracting investment and transactions purely tax driven.

Methodology — Doing Business Through Tax Havens

METHOD	DESCRIPTION
Personal Residency	Wealthy individuals relocate to low-tax jurisdictions. Residence is primary basis of taxation in most countries.
Asset Holding	Utilizing trust or company formed in one tax haven, administered in another, to hold assets — changes ownership so they cease to be taxable in high-tax jurisdiction.
Trading & Business Activity	Businesses not requiring specific location set up in tax havens. Examples: reinsurance companies, internet based services, group finance companies.
Financial Intermediaries	Professional financial services such as mutual funds, banking, life insurance. Funds deposited with intermediary in low-tax jurisdiction and on-lent or invested.

Counteracting Harmful Tax Practices — OECD Recommendations

- ▶ Adopt Controlled Foreign Corporations (CFC) or equivalent rules;
- ▶ Consider foreign information reporting rules;
- ▶ Enter into Tax Information Exchange Agreement (TIEA);
- ▶ Application of withholding tax while making payment to offshore recipients;
- ▶ Curbing 'treaty shopping' nations of existing treaties with tax havens;
- ▶ Mutual assistance of tax authorities in recovery of cross border tax claims;
- ▶ More international co-operation by establishing Forum to avoid Harmful Tax Practices;
- ▶ Formulation and adoption of transfer pricing rules;
- ▶ Providing access to banking information for tax purposes.

13.1 Transfer Pricing including Specified Domestic Transactions

Computation of Income from International Transaction [Sec. 92]

PROVISIONS	EXAMPLE	IMPACT
Any income arising from an international transaction shall be computed having regard to the arm's length price .	X Ltd. sold goods to AE for ₹5 lacs; ALP is ₹9 lacs.	Income of X Ltd. increased by ₹4 lacs.
The allowance for any expense or interest arising from an international transaction or specified domestic transaction shall also be determined having regard to the arm's length price.	R Ltd. takes loan @20% from AE; ALP rate is 12%.	Income of R Ltd. increased by ₹1,60,000.
Where two or more AEs enter into mutual agreement for apportionment of cost in connection with benefit, service or facility, the cost apportioned shall be determined having regard to ALP.	German enterprise allocated ₹40 lacs of research cost to Indian AE.	If no proportionate benefit, income suitably increased.

TAXPOINT

Taxpoint: The provisions shall NOT apply where computation has effect of **reducing the income chargeable to tax** or **increasing the loss** based on entries in books of account. Where ALP is lower than actual price, no adjustment (protective provision for revenue).

Arm's Length Price [Sec. 92F(ii)]: A price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in **uncontrolled conditions**.

Meaning of Associated Enterprise [Sec. 92A]

Associated enterprise, in relation to another enterprise, means an enterprise:

- ▶ (a) which participates, directly or indirectly, or through one or more intermediaries, in the **management or control or capital** of the other enterprise; or
- ▶ (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the **same persons** who participate in management or control or capital of the other enterprise.

Deemed Associated Enterprises [Sec. 92A(2)]

SL.	CONDITION
(a)	One enterprise holds (directly/indirectly) shares carrying not less than 26% of voting power in the other enterprise.
(b)	Any person or enterprise holds (directly/indirectly) shares carrying not less than 26% of voting power in each of such enterprises.
(c)	Manufacture or processing of goods by one enterprise is wholly dependent on use of know-how, patents, copyrights, trade-marks, licences, franchises or similar rights of the other enterprise.
(d)	90% or more of raw materials and consumables required are supplied by the other enterprise or persons specified by it, and prices/conditions are influenced.
(e)	Goods or articles manufactured are sold to the other enterprise or persons specified by it, and prices/conditions are influenced.
(f)	One enterprise is controlled by an individual, the other is also controlled by such individual or his relative or jointly.
(g)	One enterprise is controlled by HUF, the other is controlled by a member of such HUF or relative of a member or jointly.
(h)	One enterprise is a firm/AOP/BOI, the other holds not less than 10% interest in such firm/AOP/BOI.
(i)	A loan advanced by one enterprise to the other constitutes not less than 51% of the book value of total assets of the other enterprise.
(j)	One enterprise guarantees not less than 10% of total borrowings of the other enterprise.
(k)	More than ½ of board of directors , or one or more executive directors of one enterprise are appointed by the other enterprise.
(l)	More than ½ of directors of each of two enterprises are appointed by the same person or persons.
(m)	There exists between two enterprises any relationship of mutual interest, as may be prescribed.

13.1.3 Meaning of International Transaction [Sec. 92B]

International transaction means a transaction between two or more associated enterprises, either or both of whom are **non-residents**, in the nature of:

- ▶ Purchase, sale or lease of tangible or intangible property; or
- ▶ Provision of services; or
- ▶ Lending or borrowing money; or
- ▶ Any other transaction having a bearing on the profits, income, losses or assets of such enterprises.

Shall include a mutual agreement or arrangement between two or more AEs for the allocation or apportionment of, or any contribution to, any cost or expense incurred in connection with a benefit, service or facility provided to any one or more of such enterprises.

Deemed International Transaction [Sec. 92B(2)]

A transaction entered into by an enterprise with a person other than an associated enterprise shall be deemed to be an international transaction entered into between two associated enterprises, if:

- ▶ There exists a **prior agreement** in relation to the relevant transaction between such other person and the associated enterprise; or
- ▶ The **terms of the relevant transaction are determined in substance** between such other person and the associated enterprise, where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not.

Deemed International Transaction — Specified Categories

SL.	CATEGORY
(a)	Purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
(b)	Purchase, sale, transfer, lease or use of intangible property including transfer of ownership or provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, etc.;
(c)	Capital financing , including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
(d)	Provision of services , including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
(e)	Business restructuring or reorganisation , entered into by an enterprise with an AE, irrespective of the fact that it has bearing on profit, income, losses or assets of such enterprises at the time of transaction or at any future date.

Meaning of Specified Domestic Transaction [Sec. 92BA]

"Specified Domestic Transaction" in case of an assessee means any of the following transactions, **not being an international transaction**:

- 1 Any transaction referred to in Sec. 80A;
- 2 Any transfer of goods or services referred to in Sec. 80-IA(8);
- 3 Any business transacted between the assessee and other person as referred to in Sec. 80-IA(10);
- 4 Any transaction referred to in any other section under Chapter VI-A or Sec. 10AA, to which provisions of Sec. 80-IA(8) or (10) are applicable; or
- 5 Any business transacted between the persons referred to in Sec. 115BAB(4);
- 6 Any business transacted between the assessee and other person as referred to in Sec. 115BAE(4);
- 7 Any other transaction as may be prescribed,

and where the **aggregate of such transactions** entered into by the assessee in the previous year exceeds a sum of **₹20 crore**.

ILLUSTRATION

Example: Sultan Ltd. took services of one of its group companies, an AE enjoying tax holiday. The transaction is a specified domestic transaction. Sultan Ltd. paid ₹28,40,00,000 for the said service; ALP is ₹17,00,00,000. The company claimed higher deduction and reduced profit by ₹11,40,00,000. The provisions of Sec. 92 will apply and income will be recomputed by allowing deduction of only ₹17,00,00,000 instead of ₹28,40,00,000.

13.1.5 Computation of Arm's Length Price [Sec. 92C]

The arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the following methods, being the **most appropriate method**, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons:

TRANSACTION BASED METHODS	PROFIT BASED METHODS
a) Comparable Uncontrolled Price (CUP) Method	d) Profit Split Method (PSM)
b) Resale Price Method (RPM)	e) Transactional Net Margin Method (TNMM)
c) Cost Plus Method (CPM)	f) Any other method as may be prescribed by the Board

Computation by Assessing Officer [Sec. 92C(3)]

Where AO is of the opinion that:

- ▶ (a) Price charged or paid has not been determined in accordance with provisions; or
- ▶ (b) Any information and document have not been kept and maintained in accordance with Sec. 92D; or
- ▶ (c) Information or data used in computation of ALP is not reliable or correct; or
- ▶ (d) Assessee has failed to furnish any information or document required u/s 92D(3),

then AO may proceed to determine the ALP on the basis of material or information or document available with him. **Opportunity of being heard** shall be given by serving a notice.

Reference to Transfer Pricing Officer [Sec. 92CA]

- ▶ Where assessee has entered into an international transaction or SDT, AO may, with previous approval of Commissioner, refer computation of ALP to TPO.
- ▶ TPO shall serve notice on assessee requiring production of evidence.
- ▶ TPO shall, by order in writing, determine ALP and send copy to AO and assessee.
- ▶ The ALP determined shall apply to similar transactions for **2 consecutive previous years** immediately following, if assessee exercises option and TPO declares valid.
- ▶ Order may be made at any time before **60 days** prior to date of limitation u/s 153.
- ▶ TPO may exercise powers specified u/s 131(1) or 133(6) or 133A.

Maintenance of Information & Documents [Sec. 92D]

Every person:

- ▶ (a) Who has entered into an international transaction or SDT shall keep and maintain such information and document as may be prescribed;
- ▶ (b) Being a constituent entity of an international group, shall keep and maintain such information and document in respect of international group as may be prescribed.

Time Limit: Information and documents to be kept for a period of **8 years** from end of relevant assessment year.

Report from an Accountant [Sec. 92E]

Every person who has entered into an international transaction or SDT during a previous year shall obtain a report from an accountant and furnish such report on or before the **specified date** (31st October) in **Form 3CEB** duly signed and verified by such accountant.

Special Measures — Notified Jurisdictional Area [Sec. 94A]

Central Government may specify any country or territory as a notified jurisdictional area (NJA) having regard to lack of effective exchange of information. If an assessee enters into a transaction where one of the parties is a person located in an NJA:

- ▶ All parties to the transaction shall be deemed to be associated enterprises;
- ▶ Any transaction shall be deemed to be an international transaction;
- ▶ No deduction allowed for payment to financial institution unless authorization furnished;
- ▶ No deduction for other expenditure unless documents maintained;
- ▶ Any sum received/credited without satisfactory explanation deemed to be income;
- ▶ TDS at **highest of 30%, rate in force, or rate specified**.

13.2 Determination of Arm's Length Price

Comparable Uncontrolled Price (CUP) Method [Rule 10B(1)(a)]

The price charged or paid for property transferred or services provided in a **comparable uncontrolled transaction**, or a number of such transactions, is identified. Such price is adjusted to account for differences, if any, between the international transaction and comparable uncontrolled transactions, which could materially affect the price in the open market. The adjusted price is taken to be the arm's length price.

Internal CUP vs. External CUP

INTERNAL CUP	EXTERNAL CUP
Available if taxpayer (or one of its group entities) enters into a comparable transaction with an unrelated party where goods or services are same or similar.	Applicable if a transaction between two independent enterprises involves comparable goods or services under comparable conditions.
Examples: Taxpayer sells similar goods to independent enterprise; Taxpayer buys similar goods from independent enterprise.	Examples: An independent enterprise sells the particular product to another independent enterprise; Commodity/Stock Exchanges; Customs Data.

ILLUSTRATION

Illustration 1: CUP Method

Facts: AE1 Ltd., an Indian company, is a manufacturer of compact disc (CD) writers. It supplied 10,000 units to AE2 Ltd. at ₹2,000 per unit and 200 units to AE3 Ltd. at ₹2,750 per unit. It sold 100 units to M Ltd. (unrelated) at ₹3,000 per unit. Differences:

FEATURE	INTERNATIONAL TRANSACTION (AE2 LTD.)	COMPARABLE UNCONTROLLED (M LTD.)
Price	FOB	CIF — Freight and insurance ₹550
Quantity discount	Yes — One CD of ₹10 each for every CD writer plus ₹20 per CD writer	No
Credit	One month — Cost of credit 1.25% per month	Cash and carry
Warranty	No warranty	Six months warranty — Cost ₹250 per unit

✓ SOLUTION

Computation of ALP:

PARTICULARS	AMOUNT (₹)
Price charged to M Ltd. (Comparable Uncontrolled Transaction)	3,000
Less: Freight and insurance (CIF to FOB)	(550)
Less: Estimated warranty cost	(250)
Less: Cost of CD gift (₹10)	(10)
Less: Quantity discount (₹20)	(20)
Add: Cost of credit (1.25% of ₹3,000 × 1 month)	37.50
Arm's Length Price	2,207.50

Comparison: Actual price to AE2 Ltd. = ₹2,000; ALP = ₹2,207.50. Since actual price is lower, adjustment required.

TAXPOINT

Typical transactions: Transfer of goods, provision of services, intangibles, interest on loans. CUP requires **very high product comparability**. Where prices fluctuate regularly, timing of transaction is also relevant.

Resale Price Method (RPM) [Rule 10B(1)(b)]

The price at which property purchased or services obtained by the enterprise from an associated enterprise is **resold or provided to an unrelated enterprise** is identified. Such resale price is reduced by the amount of a **normal gross profit margin** accruing to the enterprise from the purchase and resale of same or similar property in a comparable uncontrolled transaction. The price so arrived at is further reduced by expenses incurred in connection with purchase of property. The price is adjusted to take into account functional and other differences. The adjusted price is taken to be the arm's length price.

RULE / CONCEPT

Steps in RPM:

- 1 Identify the international transaction of purchase of property or services;
- 2 Identify the price at which such property or services are resold to an unrelated party (resale price);
- 3 Identify the normal gross profit margin in a comparable uncontrolled transaction (internal or external);
- 4 Deduct the normal gross profit from the resale price;
- 5 Deduct expenses incurred in connection with purchase of goods;
- 6 Adjust for differences between uncontrolled and international transaction;
- 7 The price arrived at is the arm's length price.

ILLUSTRATION

Illustration 2: Resale Price Method

Facts: AE1 Ltd. trades in CD writers. It purchased 100 CD writers from AE2 Ltd. at ₹2,900 per unit and resold to A Ltd. at ₹3,000 per unit. It also purchased similar products from K Ltd. (unrelated) and resold to M Ltd. (unrelated) earning gross profit of 15% on sales. Differences:

FEATURE	SALES TO A LTD. (AE2 PURCHASE)	SALES TO M LTD. (K LTD. PURCHASE)
Price	Ex-shop	FOR destination — Freight & insurance 2% of GP
Quantity discount	Yes — 1% of GP	No
Free gifts	No	One CD pack for every CD writer
Warranty	No	6 months — Cost ₹250 per unit

Purchase-related differences: Purchase from AE2 Ltd. — customs duty ₹25/unit, freight ₹10/unit, quantity discount ₹15/unit. Purchase from K Ltd. — customs duty ₹25/unit, no freight, no quantity discount.

✓ SOLUTION

Determination of ALP:

PARTICULARS	₹/UNIT
Price charged to A Ltd.	3,000
Less: Normal GP margin (15% – 2% – 1% = 12%)	(360)
Balance	2,640
Less: Expenses connected with purchase (freight & customs duty paid)	(35)
Price before adjustment	2,605
Add: Freight incurred in case of purchase from AE2 Ltd.	10
Less: Quantity discount allowed by AE2 Ltd.	(15)
Arm's Length Price	2,600

Actual purchase price from AE2 Ltd. = ₹2,900; **ALP** = ₹2,600. Income increases by ₹300 × 100 units = ₹30,000.

TAXPOINT

Typical transactions: Purchase of goods from AE for resale to unrelated party; Distribution of finished products. RPM is applicable only where goods are purchased from AE and resold to unrelated party.

Cost Plus Method (CPM) [Rule 10B(1)(c)]

The direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise are determined. The amount of a **normal gross profit mark-up** to such costs arising from transfer or provision of same or similar property or services by the enterprise, or by an unrelated enterprise, in a comparable uncontrolled transaction is determined. The normal gross profit mark-up is adjusted to take into account functional and other differences. The costs are increased by the adjusted profit mark-up. The sum so arrived at is taken to be the arm's length price.

RULE / CONCEPT

Steps in CPM:

- 1 Determine direct and indirect cost of production in respect of property transferred or service provided to AE;
- 2 Identify one or more comparable uncontrolled transactions for same or similar property or service;
- 3 Determine normal gross profit mark-up on costs in comparable uncontrolled transaction;
- 4 Adjust the gross profit mark-up for functional and other differences;
- 5 Increase the direct and indirect cost by such adjusted gross profit mark-up;
- 6 The resultant figure is the arm's length price.

ILLUSTRATION

Illustration 3: Cost Plus Method

Facts: AE1 Ltd. develops software for various customers, including AE2 Ltd. and M Ltd. During the year, AE1 Ltd. billed AE2 Ltd. ₹2,00,000. Total cost (direct and indirect) for executing this work was ₹1,75,000. AE1 Ltd. provided similar services to M Ltd. and earned a gross profit (GP) of 50% on costs. Differences:

FEATURE	TRANSACTION WITH AE2 LTD.	TRANSACTION WITH M LTD.
Technology support	Yes — value ₹17,500 (10% of cost)	No
Discount	Yes — ₹8,750 (5% of cost)	No
Business risks & marketing	No — AE2 assumes risks	Yes — value ₹13,125 (7.5% of cost)
Credit	Yes — cost ₹2,625 (1.5% of cost)	No

✓ SOLUTION

Determination of Arm's Length Gross Profit Mark-up:

PARTICULARS	%
Gross profit mark-up in case of M Ltd.	50.00
Less: Technology support from AE2 Ltd.	(10.00)
Less: Quantity discount to AE2 Ltd. not to M Ltd.	(5.00)
Less: Marketing functions performed by AE1 Ltd. for M Ltd.	(7.50)
Add: Cost of credit to AE2 Ltd.	1.50
Arm's Length Gross Profit Mark-up	29.00

Determination of ALP:

PARTICULARS	₹
Direct and indirect costs incurred	1,75,000
Arm's length gross profit mark-up @ 29%	50,750
Arm's Length Income	2,25,750
Actual price charged to AE2 Ltd.	2,00,000
Income increases by	25,750

TAXPOINT

Typical transactions: Provision of services; joint facility arrangements; transfer of semi-finished goods; long-term buying and selling arrangements. CPM is to be adopted only in cases of supply of property or services to an AE, not when receiving from AE.

Profit Split Method (PSM) [Rule 10B(1)(d)]

Applicable mainly in international transactions involving **transfer of unique intangibles** or in multiple international transactions which are so interrelated that they cannot be evaluated separately. The combined net profit of the AEs arising from the international transaction is determined. The relative contribution made by each AE is evaluated on the basis of functions performed, assets employed and risks assumed. The combined net profit is split amongst the enterprises in proportion to their relative contributions. The profit apportioned to the assessee is taken to arrive at the arm's length price.

Two Approaches

TOTAL PROFIT SPLIT METHOD	RESIDUAL PROFIT SPLIT METHOD
Combined net profit determined; split in proportion to relative contribution.	Two-tier allocation: First, basic return allocated to each enterprise; then residual net profit split in proportion to relative contribution.
Single-step allocation.	Two-step allocation: (i) Basic return; (ii) Residual profit.

ILLUSTRATION

Illustration 4: Profit Split Method

Facts: AE1 Ltd. (India) and AE3 Ltd. (USA) assist clients with foreign acquisitions. For a transaction, AE1 received consideration of US\$50,000. Financials:

PARTICULARS	AE1 LTD. (US\$)	AE3 LTD. (US\$)
Revenue	30,000	20,000
Cost	20,000	8,000
Profit	10,000	12,000

Basic return: AE1 = 15% of cost, AE3 = 10% of cost. Relative contribution: AE1 = 70%, AE3 = 30%.

✓ SOLUTION

Approach 1: Total Profit Split Method

PARTICULARS	US\$
Price charged by AE3 Ltd. from M Ltd.	50,000
Combined total profits (10,000 + 12,000)	22,000
AE1 Ltd. share (70%)	15,400
AE3 Ltd. share (30%)	6,600
Total return for AE1 Ltd.	15,400
Total cost of AE1 Ltd.	20,000
Income of AE1 Ltd. on ALP	35,400
Actual revenue	30,000
Increased income	5,400

Approach 2: Residual Profit Split Method

PARTICULARS	US\$
Combined total profits	22,000
Basic return — AE1 (15% of 20,000)	3,000
Basic return — AE3 (10% of 8,000)	800
Residual net profit	18,200
AE1 Ltd. share (70%)	12,740
AE3 Ltd. share (30%)	5,460
Total return for AE1 Ltd. (12,740 + 3,000)	15,740
Total cost of AE1 Ltd.	20,000
Income of AE1 Ltd. on ALP	35,740
Actual revenue	30,000
Increased income	5,740

TAXPOINT

Typical transactions: Integrated services provided by more than one enterprise; transfer of unique intangibles. PSM is used when transactions are inter-related and it is not possible to evaluate separately.

Transactional Net Margin Method (TNMM) [Rule 10B(1)(e)]

The net profit margin realised by the enterprise from an international transaction entered into with an AE is computed in relation to costs incurred or sales effected or assets employed or to be employed. The net profit margin realised from a comparable uncontrolled transaction is computed having regard to the same base. The net profit margin arising in comparable uncontrolled transactions is adjusted to take into account differences. The net profit margin realised by the enterprise is established to be the same as the adjusted net profit margin. The net profit margin thus established is taken into account to arrive at an arm's length price.

RULE / CONCEPT

Steps in TNMM:

- 1 Identify the net profit margin realised by the enterprise from an international transaction (PLI — Profit Level Indicator);
- 2 Identify the net profit margin from a comparable uncontrolled transaction having regard to the same base;
- 3 Adjust the net profit margin for transaction level and enterprise level differences;
- 4 The adjusted net profit margin is taken into account to arrive at ALP.

Illustration 5: TNMM

ILLUSTRATION

Facts: AE1 Ltd. manufactures CD writers and sells to AE2 Ltd. (AE). No internal CUT available. Search carried out using databases in public domain. Company selected — Z Ltd. Comparison:

FINANCIALS	AE1 LTD. (₹ CRORES)	Z LTD. (₹ CRORES)
Sales	130	200
Operating expenses	85	120
Interest	5	7
Depreciation	10	12
Net profits	24	58

✓ SOLUTION

Computation of Operating Margin:

PARTICULARS	AE1 LTD.	Z LTD.
Sales	130	200
Operating expenses	85	120
Interest	5	7
Depreciation	10	12
Total operating cost	100	139
Operating profit	30	61
Operating margin (on cost)	30.00%	43.88%
Operating margin (before interest, after depreciation)	36.84%	51.52%

Computation of ALP:

PARTICULARS	₹ CRORES
Operating costs before interest and after depreciation	95.00
Arm's length net profit margin (51.52%)	48.94
Arm's length sale revenue	143.94
Actual sales	130.00
Income increases by	13.94

Other Method [Rule 10AB]

Any method which takes into account the **price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances**, considering all the relevant facts.

Examples: Independent valuation report for unique transactions (sale of patents, buyback of shares); cost allocation arrangements where third party comparables not available.

Most Appropriate Method [Rule 10C]

The most appropriate method shall be the method which is **best suited to the facts and circumstances** of each particular international transaction and which provides the **most reliable measure** of an arm's length price. Factors to be considered:

- ▶ (a) Nature and class of the international transaction;
- ▶ (b) Class or classes of associated enterprises and functions performed;
- ▶ (c) Availability, coverage and reliability of data;
- ▶ (d) Degree of comparability existing between transactions;
- ▶ (e) Extent to which reliable and accurate adjustments can be made;
- ▶ (f) Nature, extent and reliability of assumptions required.

Comparison of Methods

METHOD	PRODUCT COMPARABILITY	FUNCTIONAL COMPARABILITY	APPROACH	REMARKS
CUP	Very High	Medium	Prices benchmarked	Very difficult to apply
RPM	High	Medium	GPM (on sales)	Difficult to apply
CPM	High	High	GPM (on costs)	Difficult to apply
PSM	Medium	Very High	Profit Margins	Complex, sparingly used
TNMM	Medium	Very High	Net Profit Margins	Most commonly used

13.3 Advance Pricing Agreement [Sec. 92CC]

APA is a contract, usually for multiple years, between a taxpayer and at least one tax authority, mainly to prospectively resolve real or potential transfer pricing issues involving transactions between related parties. APA is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future.

Applicability	The Board, with approval of Central Government, may enter into an advance pricing agreement with any person, determining: (a) arm's length price or specifying manner of determination in relation to international transaction; (b) income referred to in Sec. 9(1)(i) or specifying manner of determination.
Validity	The agreement shall be valid for such period not exceeding 5 consecutive previous years as may be specified.
Binding Nature	Binding on: (a) the person in whose case agreement has been entered; and (b) the Commissioner and income-tax authorities subordinate to him.
Not Binding	The agreement shall not be binding if there is a change in law or facts having bearing on the agreement.
Void Ab Initio	Board may, with approval of Central Government, declare an agreement to be void ab initio if obtained by fraud or misrepresentation of facts.
Rollback	Agreement may provide for determining ALP in relation to international transaction entered into during any period not exceeding 4 previous years preceding the first of the previous years.

Types of APA

Unilateral APA

Between taxpayer and tax administration of country where subject to taxation.

Bilateral APA

Between taxpayer, host country tax administration, and foreign tax administration.

Multilateral APA

Between taxpayer, host country, and more than one foreign tax administration.

Process of APA

Step 1: Pre-filing Consultation [Rule 10H]

Any person proposing to enter into agreement may make request in writing in **Form No. 3CEC** to Director General of Income Tax (International Taxation). Team shall hold pre-filing consultation to determine scope, identify TP issues, determine suitability, discuss broad terms. Not binding on Board or person.

Step 2: Application for APA [Rule 10-I]

Application in **Form No. 3CED** along with requisite fee. Filed to DGIT (International Taxation) for unilateral; to competent authority in India for bilateral/multilateral. Fee structure:

AMOUNT OF INTERNATIONAL TRANSACTION	FEE (₹)
Not exceeding ₹100 crores	10 lacs
Not exceeding ₹200 crores	15 lacs
Exceeding ₹200 crores	20 lacs

Step 3: Withdrawal [Rule 10J]

Applicant may withdraw application at any time before finalisation of terms. Withdrawal in **Form No. 3CEE**. Fee paid shall **not be refunded**.

Step 4: Preliminary Processing [Rule 10K]

Deficiency letter served within 1 month. Applicant to remove deficiency within 15 days (extendable to 30 days). If not removed, application not proceeded with; fee refunded.

Step 5: Procedure [Rule 10L]

Team holds meetings, calls for additional documents, visits business premises, makes inquiries. Draft agreement prepared. Agreement entered by Board with approval of Central Government.

Step 6: Terms of Agreement [Rule 10M]

Includes: international transactions covered, agreed TP methodology, determination of ALP, definition of relevant terms, critical assumptions, rollback provision, conditions. Not binding if change in critical assumptions or failure to meet conditions.

Step 7: Rollback [Rule 10MA]

Agreement may provide for determining ALP in relation to international transaction entered into during **rollback year** (not exceeding 4 preceding PYs). Request in **Form No. 3CEDA** with additional fee of **₹5 lakh**. Conditions: same transaction, return filed before due date, report u/s 92E furnished, rollback requested for all rollback years, no appeal pending before Tribunal.

Step 8: Annual Compliance Report [Rule 10-O]

Assessee shall furnish annual compliance report in **Form 3CEF** for each year covered in agreement within 30 days of due date of filing income tax return, or within 90 days of entering into agreement, whichever is later.

Step 9: Compliance Audit [Rule 10P]

TPO shall carry out compliance audit for each year covered. Report submitted within 6 months from end of month in which Annual Compliance Report received.

Step 10: Revision & Cancellation [Rules 10Q, 10R]

Agreement may be revised if change in critical assumptions, change in law, or request from competent authority. Agreement shall be cancelled for failure to comply with terms, failure to file annual compliance report, material errors, etc.

Effect to APA [Sec. 92CD]

- ▶ Where person has entered into agreement and prior to date of entering, any return of income has been furnished, such person shall furnish a **modified return** within **3 months** from end of month in which agreement was entered.
- ▶ If assessment proceedings completed before expiry of period allowed — AO shall pass order modifying total income in accordance with agreement.
- ▶ If assessment proceedings pending — AO shall proceed to complete in accordance with agreement taking into consideration modified return.
- ▶ Order shall be passed within **1 year** from end of financial year in which modified return is furnished.

13.4 Safe Harbour Rules, Thin Capitalisation and Secondary Adjustment

Safe Harbour Rules [Sec. 92CB]

"**Safe harbour**" means circumstances in which the income-tax authorities shall accept the transfer price or income declared by the assessee. The Board may make rules for safe harbour. Determination of income u/s 9(1)(i) or ALP u/s 92C or 92CA shall be subject to safe harbour rules.

ELIGIBLE INTERNATIONAL TRANSACTION	CIRCUMSTANCES
Provision of software development services	Operating profit margin declared in relation to operating expense: 17% if transaction value ≤ ₹100 crore; 18% if > ₹100 crore but ≤ ₹300 crore.
Provision of IT-enabled services	Operating profit margin: 17% if transaction value ≤ ₹100 crore; 18% if > ₹100 crore but ≤ ₹300 crore.
Provision of knowledge process outsourcing services	Value ≤ ₹200 crore; Operating profit margin: 24% if employee cost ≥ 60% of operating expense; 21% if 40%–60%; 18% if ≤ 40%.
Advancing intra-group loans (INR)	Interest rate not less than 1-year marginal cost of funds lending rate of SBI + credit rating spread: 1.75% (AAA–A); 3.25% (BBB–BBB+); 4.75% (BB–B); 6.25% (C–D); 4.25% (rating not available, loan ≤ ₹100 crore).
Advancing intra-group loans (Foreign Currency) — ≤ ₹250 crore	Interest rate not less than reference rate + spread: 1.50% (AAA–A–); 3.00% (BBB–BBB+); 4.00% (other/not available).
Advancing intra-group loans (Foreign Currency) — > ₹250 crore	Interest rate not less than reference rate + spread: 1.50% (AAA–A–); 3.00% (BBB–BBB+); 4.50% (BB–B); 6.00% (other/not available).
Providing corporate guarantee	Commission or fee not less than 1% p.a. on amount guaranteed.
Contract R&D — software development	Operating profit margin not less than 24% , where value ≤ ₹300 crore.
Contract R&D — generic pharmaceutical drugs	Operating profit margin not less than 24% , where value ≤ ₹300 crore.
Manufacture & export of core auto components	Operating profit margin not less than 12% .
Manufacture & export of non-core auto components	Operating profit margin not less than 8.5% .
Receipt of low value-adding intra-group services	Entire value including mark-up not exceeding 5% ≤ ₹10 crore. Cost pooling certified by accountant.

TAXPOINT

Taxpoint: Safe harbour rules not applicable where international transactions entered into with AE located in country notified u/s 94A or in a no tax or low tax country (maximum rate < 15%). Provisions of Sec. 92D (Maintenance of documents) and 92E (Report) apply irrespective of exercise of option for safe harbour.

Thin Capitalisation [Sec. 94B]

A company is typically financed through a mixture of debt and equity. Debt is often a more tax efficient method of finance than equity. Country's tax administrations introduce rules limiting amount of interest that can be deducted. Sec. 94B was inserted in line with OECD BEPS Action Plan 4.

Applicable To	Indian company, or permanent establishment of foreign company in India, being the borrower.
Conditions	(a) Borrower has debt issued by a non-resident, being an associated enterprise; (b) Incurs expenditure by way of interest or similar nature exceeding ₹1 crore ; (c) Such expenditure is deductible in computing income under PGBP.
Effect	Excess interest shall not be deductible. Excess interest = Lower of: (a) Total interest paid/payable in excess of 30% of EBITDA of borrower in PY; or (b) Interest paid/payable to associated enterprises for that PY.
Guarantee	Where debt issued by lender not associated but AE provides implicit/explicit guarantee or deposits corresponding funds, such debt deemed to have been issued by AE.
Exception	Not applicable to banking or insurance business, Finance Company in IFSC, notified NBFC; interest paid in respect of debt issued by PE in India of non-resident engaged in banking.
Carry Forward	Interest not wholly deducted shall be carried forward to following AYs. No carry forward for more than 8 assessment years .

Example — Thin Capitalisation:

PARTICULARS	CASE 1 (₹ CR)	CASE 2 (₹ CR)	CASE 3 (₹ CR)
EBITDA of Indian Borrower	100	100	100
30% of EBITDA [A]	30	30	30
Interest payable to AE [B]	35	Nil	15
Interest payable to non-AE [C]	Nil	35	20
Total Interest [D = B + C]	35	35	35
Excess of 30% EBITDA [E = D – A]	5	5	5
Interest disallowed u/s 94B [lower of E and B]	5	Nil	5

Secondary Adjustment [Sec. 92CE]

Secondary adjustment means an adjustment in the books of account of the assessee and its associated enterprise to reflect that actual allocation of profits between them are consistent with transfer price determined as a result of primary adjustment, thereby removing imbalance between cash account and actual profit.

When Applicable	Where primary adjustment to transfer price: (i) made suo motu by assessee in return; (ii) made by AO and accepted by assessee; (iii) determined by APA u/s 92CC on or after 01-04-2017; (iv) made as per safe harbour rules u/s 92CB; or (v) arising as result of resolution by MAP u/s 90/90A.
Exception	Not applicable if: (i) amount of primary adjustment does not exceed ₹1 crore ; or (ii) primary adjustment is made in respect of AY commencing on or before 01-04-2016.
Effect	Excess money (or part) available with AE, if not repatriated to India within prescribed time, shall be deemed to be an advance made by assessee to AE and interest on such advance computed in prescribed manner.
Excess Money	Difference between arm's length price determined in primary adjustment and price at which international transaction has actually been undertaken.
Optional Scheme	Where excess money not repatriated within prescribed time, assessee may, at his option, pay additional income-tax @ 18% (plus surcharge @ 12% + cess) on such excess money. Tax so paid treated as final payment.

ILLUSTRATION

Example — Secondary Adjustment: An Indian company sells products to its AE for ₹100 crores; ALP is ₹150 crores. TPO confirms upward adjustment of ₹50 crores (primary adjustment). For secondary adjustment, it is deemed that AE owes ₹50 crores to Indian company — deemed to be a loan/advance. Interest imputed on such loan and secondary adjustment carried out in hands of Indian company.

Computation of Interest Income [Rule 10CB]

- ▶ Time limit for repatriation: on or before **90 days** from due date of filing return/date of order/date of APA/date of giving effect to MAP.
- ▶ Imputed interest: (i) 1-year marginal cost of funds lending rate of SBI as on 1st April + **325 basis points** (INR); or (ii) 6 months LIBOR as on 30th September + **300 basis points** (foreign currency).
- ▶ Interest chargeable from due date of filing return/date of order/end of month of APA/date of giving effect.

Penalties under Transfer Pricing Provisions

SECTION	NATURE OF DEFAULT	PENALTY
271AA	Failure to keep and maintain information and documents u/s 92D; failure to report transaction; maintains/furnishes incorrect information	2% of value of each international transaction or specified domestic transaction
271BA	Failure to furnish report from accountant u/s 92E	₹1,00,000
271G	Failure to furnish information or document u/s 92D(3)	2% of value of international transaction or SDT for each such failure

TAXPOINT

Taxpoint: Where assessee shows reasonable cause, no penalty u/s 271AA, 271BA or 271G shall be levied [Sec. 273B].

Information & Documents to be Kept and Maintained [Rule 10D]

Every person who has entered into an international transaction or SDT shall keep and maintain the following information and documents:

- ▶ (a) Description of ownership structure of assessee enterprise;
- ▶ (b) Profile of multinational group — name, address, legal status, country of tax residence of each enterprise, ownership linkages;
- ▶ (c) Broad description of business of assessee and industry; business of AEs;
- ▶ (d) Nature and terms (including prices) of international transactions/SDTs — details of property transferred, services provided, quantum and value;
- ▶ (e) Description of functions performed, risks assumed, assets employed by assessee and AEs;
- ▶ (f) Record of economic and market analyses, forecasts, budgets;
- ▶ (g) Record of uncontrolled transactions taken into account for comparability;
- ▶ (h) Record of analysis performed to evaluate comparability;
- ▶ (i) Description of methods considered, method selected as most appropriate, and why;
- ▶ (j) Record of actual working carried out for determining ALP;
- ▶ (k) Assumptions, policies and price negotiations;
- ▶ (l) Details of adjustments made to transfer prices;
- ▶ (m) Any other information, data or document relevant for determination of ALP.

Threshold Limit	Nothing contained in Rule 10D(1) shall apply where aggregate value of international transactions entered into by assessee does not exceed ₹1 crore . However, assessee shall substantiate that income has been computed in accordance with Sec. 92.
Eligible Assessee — Safe Harbour (SDT)	Government company engaged in electricity or co-operative society in milk business shall keep and maintain specified information as per Rule 10D(3).
Supporting Documents	Official publications, reports, studies, databases; market research studies; price publications; published accounts and financial statements; agreements and contracts; letters and correspondence; documents normally issued in connection with transactions.
Contemporaneous Documentation	Information and documents should, as far as possible, be contemporaneous and should exist latest by the specified date (due date u/s 139(1)).
Period of Retention	Information and documents shall be kept and maintained for a period of 8 years from end of relevant assessment year.

Solved Illustrations — Step by Step

ILLUSTRATION

Illustration 6: Cost Plus Method — Software Development

Facts: Brain Inc. London has 35% equity in Salem Ltd. Salem Ltd. is engaged in development of software and maintenance of customers across globe, which includes Brain Inc. During PY 2025-26, Salem Ltd. spent 2000 man hours for developing and maintaining a software for Brain Inc. and billed at ₹1,000 per hour. The cost incurred for executing maintenance work to Brain Inc. was ₹15,00,000. Similar work was done for unrelated party Try Ltd. in which profit was at 50%. Brain Inc. gives technical support to Salem Ltd. valued at 8% of gross profit. There is no such functional relationship with Try Ltd. Salem Ltd. gives credit period of 90 days, cost of which is 3% of normal billing rate which is not given to other parties.

✓ SOLUTION

A. Computation of Arm's Length Gross Profit Mark-up

PARTICULARS	%
Normal Gross Profit Mark up	50.00
Less: Technical support from Brain Inc. (8% of 50%)	(4.00)
Add: Cost of Credit to Brain Inc. (3% × 50%)	1.50
Arm's Length Gross Profit mark-up	47.50

B. Computation of Increase in Total Income of Brain Inc.

PARTICULARS	AMOUNT (₹)
Cost of services	15,00,000
Arm's length Billed Value [Cost / (100 – 47.50%)]	28,57,143
Less: Billed amount (2,000 hours × ₹1,000)	(20,00,000)
Increase in Total Income	8,57,143

ILLUSTRATION

Illustration 7: CUP Method — Warranty Adjustment

Facts: A Co. Ltd. of Chennai and Sky Inc. of Singapore are AEs. A Co. Ltd. imported 1000 television sets at ₹16,000 per set without any warranty period. A Co. Ltd. also imports similar TV sets from unrelated party Sign Inc. of Japan at ₹15,000 per set with warranty time of 2 years. Cost of warranty in respect of goods imported from Sky Inc. for 2 years would cost ₹2,000.

✓ SOLUTION

A. Computation of Arm's Length Price

PARTICULARS	AMOUNT (₹)
Cost of TV Set acquired from Sign Inc.	15,000
Less: Cost of Warranty	(2,000)
Arm's Length Price	13,000

B. Computation of Increase in Total Income

PARTICULARS	AMOUNT (₹)
Cost of TV Set acquired from Sky Inc. (₹16,000 × 1,000)	1,60,00,000
Less: Arm's length Value (₹13,000 × 1,000)	(1,30,00,000)
Increase in Total Income	30,00,000

Illustration 8: CUP Method — Freight, Warranty & Discount

Facts: J Inc. of Korea and CD Ltd, an Indian Company are AEs. CD Ltd manufactures Cell Phones and sells them to J.K. & F Inc., a Company based in Nepal. During the year CD Ltd. supplied 2,50,000 Cellular Phones to J Inc. Korea at ₹3,000 per unit and 35,000 units to JK & F Inc. at ₹5,800 per unit. Sales to J Inc. are on FOB basis, sales to JK & F Inc. are CIF basis. Freight and insurance paid by J Inc. for each unit @ ₹700. Sales to JK & F Inc. are under a free warranty for Two Years whereas sales to J Inc. are without any such warranty. Estimated cost of executing such warranty is ₹500. Quantity discount of ₹200 per unit was offered to J Inc.

✓ SOLUTION

Computation of ALP:

PARTICULARS	₹
Price per Unit in Comparable Uncontrolled Transaction	5,800
Less: Freight and Insurance Charges	(700)
Less: Estimated Warranty Costs	(500)
Less: Discount for Voluminous Purchase	(200)
Arm's Length Price	4,400

Computation of Increase in Total Income:

PARTICULARS	₹
Arm's Length Price per Unit	4,400
Less: Price actually sold to J Inc. Korea	(3,000)
Increase in Price per Unit	1,400
No. of Units sold to J Inc. Korea	2,50,000
Increase in Total Income	₹35 Crores

ILLUSTRATION

Illustration 12: Resale Price Method — Compressors

Facts: Megabyte Inc. of France and R Ltd. of India are AEs. R Ltd. imports 3,000 compressors for Air Conditioners from Megabyte Inc. at ₹7,500 per unit and these are sold to Pleasure Cooling Solutions Ltd at a price of ₹11,000 per unit. R Ltd. had also imported similar products from Cold Inc. Poland and sold outside at a Gross Profit of 20% on Sales. Megabyte Inc. offered a quantity discount of ₹1,500 per unit. Cold Inc. could offer only ₹500 per unit as Quantity Discount. Freight and customs duty paid for imports from Cold Inc. Poland had cost R Ltd. ₹1,200 per piece. In respect of purchase from Terabyte Inc., R Ltd. had to pay ₹200 only as freight charges.

✓ SOLUTION

Computation of ALP:

PARTICULARS	₹
Resale Price of Goods Purchased from Megabyte Inc.	11,000
Less: Normal Gross Profit Margin at 20% of Sale Price	(2,200)
Less: Incremental Quantity Discount (₹1,500 – ₹500)	(1,000)
Less: Difference in Purchase related expenses (₹1,200 – ₹200)	(1,000)
Arm's Length Price	6,800

Computation of Increase in Total Income:

PARTICULARS	₹
Price actually bought from Megabyte Inc.	7,500
Less: Arm's Length Price per unit	(6,800)
Decrease in Purchase Price per unit	700
No. of units purchased	3,000
Increase in Total Income	₹21,00,000

ILLUSTRATION

Illustration 13: Profit Split Method — Medical Equipment

Facts: NBR Medical Equipments Inc. of Canada received an order from UK based Hospital for development of hi-tech medical equipment for 3,00,000 Euros. NBR joined hands with subsidiary Precision Components Inc. (PCI) of USA and Bioinformatics India Ltd (BIL), an Indian Company. PCI holds 30% of BIL. NBR paid PCI and BIL Euro 90,000 and Euro 1,00,000 respectively. Total profit earned is Euro 1,00,000. BIL incurred Total Cost of Euro 80,000. Relative contribution: NBR 30%, PCI 30%, BIL 40%.

✓ SOLUTION

Computation of ALP:

PARTICULARS	AMOUNT (EURO)
A. Share in Value of Order	
Total order value	3,00,000
BIL share	1,00,000
PCI share	90,000
NBR share (balance)	1,10,000
B. Share in Profit	
Combined Total Profits	1,00,000
BIL share (40%)	40,000
PCI share (30%)	30,000
NBR share (30%)	30,000
C. Incremental Total Income of BIL	
Total Cost to BIL Ltd	80,000
Add: Share in Profit	40,000
Revenue of BIL on ALP	1,20,000
Less: Revenue Actually received	(1,00,000)
Increase in Total Income of BIL	20,000

★ Quick Revision Summary

★ QUICK REVISION

Key Sections — Module 13

SECTION / RULE	PARTICULARS
Sec. 92	Computation of income from international transaction having regard to ALP
Sec. 92A	Meaning of Associated Enterprise
Sec. 92B	Meaning of International Transaction
Sec. 92BA	Specified Domestic Transaction
Sec. 92C	Computation of Arm's Length Price
Sec. 92CA	Reference to Transfer Pricing Officer
Sec. 92CB	Safe Harbour Rules
Sec. 92CC	Advance Pricing Agreement
Sec. 92CD	Effect to Advance Pricing Agreement
Sec. 92CE	Secondary Adjustment
Sec. 92D	Maintenance of information and documents
Sec. 92E	Report from an accountant — Form 3CEB
Sec. 94A	Notified Jurisdictional Area
Sec. 94B	Thin Capitalisation — Limitation on interest deduction
Rule 10B	Determination of ALP — CUP, RPM, CPM, PSM, TNMM
Rule 10AB	Other Method
Rule 10C	Most Appropriate Method
Rule 10D	Information and documents to be kept
Rule 10TD	Safe Harbour Rules

★ QUICK REVISION

Key Thresholds & Timelines

PARTICULARS	THRESHOLD / TIMELINE
Associated Enterprise — Voting power	≥ 26%
Associated Enterprise — Raw material supply	≥ 90%
Associated Enterprise — Loan to total assets	≥ 51%
Associated Enterprise — Guarantee	≥ 10% of borrowings
Associated Enterprise — Interest in firm	≥ 10%
Specified Domestic Transaction — Threshold	₹20 crore
Documentation — Threshold (international transaction)	₹1 crore
Documentation — Retention period	8 years
Form 3CEB — Due date	31st October
APA — Validity	5 consecutive previous years
APA — Rollback period	4 previous years
APA — Modified return filing	3 months from end of month of agreement
Thin Capitalisation — Interest deduction limit	30% of EBITDA
Thin Capitalisation — Interest threshold	₹1 crore
Thin Capitalisation — Carry forward	8 assessment years
Secondary Adjustment — Threshold	₹1 crore
Secondary Adjustment — Optional tax rate	18% + surcharge + cess
Safe Harbour — Software/IT services margin	17%–18%
Safe Harbour — KPO margin	18%–24%
Safe Harbour — Corporate guarantee	1% p.a.
Safe Harbour — Core auto components	12%
Safe Harbour — Non-core auto components	8.5%

Key Case Laws — Module 13

- ▶ **CIT v. Thyssen Krupp Industries (2015)(Bom)** — TP adjustment confined to transactions with AEs, not unrelated third parties.
- ▶ **Tooltech Global Engineering v. ACIT (2015)(Bom)** — Chapter X is anti-avoidance, not anti-evasion. Object is to stop capital erosion and transfer of profits.
- ▶ **Renault Nissan Automotive v. DRP (2018)(Mad)** — Cryptic order of DRP without application of mind liable to be set aside.
- ▶ **SAP Labs India v. ITO (2023)(SC)** — High Court can examine ALP determination; perversity is substantial question of law.
- ▶ **PCIT v. Open Solutions Software Services (2020)(Del)** — TNMM requires functional similarity between tested party and comparables.

★ QUICK REVISION

Comparison of Methods

METHOD	PRODUCT COMPARABILITY	FUNCTIONAL COMPARABILITY	APPROACH
CUP	Very High	Medium	Prices benchmarked
RPM	High	Medium	GPM on sales
CPM	High	High	GPM on costs
PSM	Medium	Very High	Profit margins
TNMM	Medium	Very High	Net profit margins

★ QUICK REVISION

Important Forms

FORM	PURPOSE
3CEB	Report from accountant u/s 92E
3CEF	Annual Compliance Report for APA
3CEC	Pre-filing consultation for APA
3CED	Application for APA
3CEE	Withdrawal of APA application
3CEDA	Request for rollback
3CEFA	Option for Safe Harbour
3CEFB	Option for Safe Harbour (SDT)

Multiple Choice Questions

1. The provisions of Sec. 92 apply only if the aggregate value of specified domestic transactions exceeds: a) ₹100 crore b) ₹5 crore c) ₹10 crore d) ₹20 crore [Ans: d]
2. As per Sec. ____, when any specified domestic transaction is carried out between AEs, it should be carried out at arm's length price: a) 90 b) 91 c) 92 d) 90A [Ans: c]
3. Section ____ deals with methods of computation of arm's length price: a) 94 b) 93 c) 92C d) 91 [Ans: c]
4. Arm's length price is to be determined by applying: a) Resale Price Method b) Fair Market Value Method c) Stamp Duty Value Method d) Indexed Cost of Acquisition Method [Ans: a]
5. Advance Pricing Agreement shall be valid for such period not exceeding ____ consecutive previous years: a) 5 b) 3 c) 10 d) 2 [Ans: a]
6. As per Sec. 94B, interest expenses claimed shall be restricted to ____ of EBITDA: a) 30% b) 25% c) 20% d) 50% [Ans: a]
7. If any person fails to keep and maintain information u/s 92D, penalty is: a) ₹5,00,000 b) 2% of value of each international transaction c) ₹1,00,000 d) 1% of value [Ans: b]
8. Uncontrolled transaction means a transaction between: a) Enterprises other than AEs b) AEs c) Any enterprises d) None [Ans: a]
9. Information and documents required to be maintained u/s 92D shall be kept for: a) 8 years b) 5 years c) 10 years d) 16 years [Ans: a]
10. When an assessee fails to furnish information relating to SDT, penalty is: a) 2% b) 1% c) 5% d) 3% [Ans: a]

Short Essay Type Questions

- 1 What do you mean by advance pricing agreement?
- 2 What is thin capitalisation?
- 3 State the provisions relating to secondary adjustments.
- 4 Explain the concept of Associated Enterprise u/s 92A.
- 5 What is a Specified Domestic Transaction? State the threshold limit.
- 6 Explain the CUP Method with suitable example.
- 7 What are Safe Harbour Rules? State the key margins.
- 8 Explain the provisions of Sec. 94B relating to thin capitalisation.
- 9 What is the procedure for obtaining an Advance Pricing Agreement?
- 10 State the penalties for non-compliance with transfer pricing provisions.

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Comprehensive Numerical Problems

Problem 1 (Thin Capitalisation — Sec. 94B): Compute disallowance u/s 94B from the following:

PARTICULARS	CASE I (₹ LAKHS)	CASE II (₹ LAKHS)	CASE III (₹ LAKHS)
Net Profit after deduction of following items	1,000	1,000	1,000
Interest to SBI	70	50	200
Interest to associated enterprise	200	110	320
Interest to unrelated parties	500	190	300
Depreciation	90	80	110
Provision for taxation	340	170	70
Proposed dividend	300	150	100

[Hint: Compute EBITDA first — Net Profit + Interest + Depreciation + Provision for tax + Proposed dividend. Compare 30% of EBITDA with interest to AE. Disallowance = lower of excess over 30% EBITDA and interest to AE. Ans: Nil for all cases]

Problem 2 (Resale Price Method): Bharat Cellphones Ltd. (BCL) of Mumbai and Japan Mobiles Ltd. (JML) of Tokyo are AEs. BCL imported 10,000 mobile handsets from JML for ₹15,000 per handset which are sold to unrelated parties in India for ₹20,000 per handset. BCL also imported similar mobile sets from Europe Ltd. (EL) of London which was sold with a gross profit margin of 25% on cost. JML offered quantity discount @ ₹2,000 per unit and whereas EL offered discount @ ₹800 per unit. Freight and customs duty paid for imports from EL had cost BCL ₹1,500 per unit. In respect of purchases from EL, expenditure towards freight and customs duty was ₹500 per unit.

[Hint: (i) Most appropriate method = Resale Price Method; (ii) ALP = ₹13,800; (iii) Increase in Total Income = ₹120 lakhs]

Problem 3 (CUP Method — Exports): S Limited, an Indian Company supplied billets to its holding company, G Limited, Germany during PY 2025-26. S Limited also supplied the same product to another German-based company, Z Limited, an unrelated entity. Transactions with G Limited are priced at Euro 500 per MT (FOB), whereas transactions with Z Limited are priced at Euro 900 per MT (CIF). Insurance and Freight amounts to Euro 300 per MT. During the year, 10,000 MT were supplied to G Limited. Assume exchange rate 1 Euro = 90 INR.

[Hint: (i) CUP Method; (ii) ALP = Euro 600; (iii) Total income increased by ₹9 crore; (iv) No increase in exemption u/s 10AA]

Problem 4 (Thin Capitalisation — Sec. 94B): X Ltd., a resident Indian Company, on 01-04-2025 borrowed ₹100 crores from M/s. A Inc, a Company incorporated in US, at interest rate of 9% p.a. The loan is repayable over 10 years. Further, loan is guaranteed by M/s B Inc incorporated in US. M/s. K Inc, a non-resident, holds shares carrying 30% voting power both in X Ltd. and B Inc. M/s K Inc has also deposited ₹100 crores with M/s A Inc. Net profit of X Ltd. was ₹10 crores after debiting interest, depreciation of ₹5 crores and income-tax of ₹3.40 crores.

[Hint: (i) Addition u/s 94B = ₹78 lakhs; (ii) Taxable income = ₹1,418 lakhs]

Problem 5 (CUP Method — Computer Monitors): U Ltd., a US company has a subsidiary, B Ltd., in India. U Ltd. sells computer monitors to B Ltd. for resale in India. U Ltd. also sells computer monitors to K Ltd., another computer reseller. It sells 50,000 computer monitors to B Ltd. at ₹11,000 per unit. The price fixed for K Ltd. is ₹10,000 per unit. The warranty in case of sale of monitors by B Ltd. is handled by B Ltd. However, for sale of monitors by K Ltd., U Ltd. is responsible for warranty for 3 months. Both U Ltd. and B Ltd. offer extended warranty at standard rate of ₹1,000 per annum.

[Hint: (i) ALP = ₹9,750; (ii) Increase in Total Income = ₹625 lakhs]

Problem 6 (Multiple Transactions): I Ltd. is an Indian Company in which Z Inc., a US company, has 28% shareholding and voting power. Transactions during FY 2025-26:

- ▶ (a) I Ltd. sold 1,00,000 T-shirts at \$2 per T-shirt to Z Inc. Identical T-Shirts were sold to unrelated Kennedy Inc. at \$3 per T-shirt.
- ▶ (b) I Ltd. borrowed \$2,00,000 from foreign lender based on guarantee of Z Inc. Paid \$10,000 as guarantee fee to Z Inc. To unrelated party for same loan, Z Inc. collected \$7,000.
- ▶ (c) I Ltd. paid \$15,000 to Z Inc. for customer details. Z Inc. provided same service to unrelated parties for \$10,000.

Exchange rate: 1 \$ = ₹82. I Ltd. is located in SEZ; income before TP adjustments = ₹1,200 lakhs.

[Hint: (i) Increment = ₹88,56,000; (ii) No incremental deduction u/s 10AA]

Problem 7 (Safe Harbour): ABC Ltd., an Indian company, provides software development services to its AE in USA. The value of international transaction is ₹80 crores and operating profit margin declared is 16%. Determine whether the company is eligible for safe harbour and what adjustment is required if any.

[Hint: Safe harbour margin for software development services where transaction value ≤ ₹100 crore is 17%. Declared margin of 16% is below safe harbour. Either increase margin to 17% or face TP adjustment.]



References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material
- ▶ OECD Transfer Pricing Guidelines
- ▶ CBDT Circulars and Notifications on Transfer Pricing



Module 13 — Complete Coverage Checklist

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- | | |
|--|--|
| ▶ ☒ Introduction to Transfer Pricing | ▶ ☒ Sec. 92D — Maintenance of Information |
| ▶ ☒ Tax Havens — Concept & Key Factors | ▶ ☒ Sec. 92E — Report from Accountant |
| ▶ ☒ Methodology — Personal Residency, Asset Holding, Trading, Financial Intermediaries | ▶ ☒ Sec. 94A — Notified Jurisdictional Area |
| ▶ ☒ OECD Recommendations — Counteracting Harmful Tax Practices | ▶ ☒ 13.2 Rule 10B — CUP Method |
| ▶ ☒ 13.1 Sec. 92 — Computation of Income | ▶ ☒ Rule 10B — Resale Price Method |
| ▶ ☒ Arm's Length Price — Definition | ▶ ☒ Rule 10B — Cost Plus Method |
| ▶ ☒ Sec. 92A — Associated Enterprise | ▶ ☒ Rule 10B — Profit Split Method |
| ▶ ☒ Deemed Associated Enterprise — 13 Conditions | ▶ ☒ Rule 10B — TNMM |
| ▶ ☒ Sec. 92B — International Transaction | ▶ ☒ Rule 10AB — Other Method |
| ▶ ☒ Deemed International Transaction — 5 Categories | ▶ ☒ Rule 10C — Most Appropriate Method |
| ▶ ☒ Sec. 92BA — Specified Domestic Transaction | ▶ ☒ 13.3 Sec. 92CC — Advance Pricing Agreement |
| ▶ ☒ Sec. 92C — Computation of ALP | ▶ ☒ APA — Types, Process, Rollback, Compliance |
| ▶ ☒ Sec. 92CA — Reference to TPO | ▶ ☒ 13.4 Sec. 92CB — Safe Harbour Rules |
| | ▶ ☒ Sec. 94B — Thin Capitalisation |
| | ▶ ☒ Sec. 92CE — Secondary Adjustment |
| | ▶ ☒ Rule 10CB — Interest Computation |
| | ▶ ☒ Penalties — Sec. 271AA, 271BA, 271G |
| | ▶ ☒ Rule 10D — Documentation |
| | ▶ ☒ Solved Illustrations (1-15+) |
| | ▶ ☒ Quick Revision Summary |
| | ▶ ☒ MCQ & Problems |

CMA Knowledge — Direct Tax Laws & International Taxation

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Module 13: Transfer Pricing

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CMA KNOWLEDGE SERIES

Direct Tax Laws & International Taxation

Master Revision Handbook

DECEMBER 2026 EDITION

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MODULE

GAAR — General Anti-Avoidance Rule

COURSE

CMA Final

SECTION

Section B: International Taxation (40%)

PAPER

Direct Tax Laws & International Taxation

SUITABLE FOR

Self Study | Grand Revision | Exam Ready

MODULE 14

GAAR — General Anti-Avoidance Rule

Comprehensive coverage of Chapter X-A: Applicability of GAAR, Impermissible Avoidance Arrangement, Arrangement Lacking Commercial Substance, Consequences of Impermissible Avoidance Arrangement, Connected Persons, Accommodating Party, Rules 10U to 10UC, and Circular 07/2017 clarifications as per the official CMA Final syllabus.

 Module Structure**Section B: International Taxation — GAAR****14.1**

APPLICABILITY [SEC. 95]

14.2IMPERMISSIBLE ARRANGEMENT
[SEC. 96]**Sec. 97**

LACK OF COMMERCIAL SUBSTANCE

Sec. 98

CONSEQUENCES

Sec. 99

CONNECTED PERSON

Sec. 100

APPLICATION

Sec. 101

GUIDELINES

144BA

PROCEDURE

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Introduction — Chapter X-A: General Anti-Avoidance Rule

The question of substance over form has consistently arisen in the implementation of taxation laws. In the Indian context, judicial decisions have varied. While some courts in certain circumstances had held that legal form of transactions can be dispensed with and the real substance of transaction can be considered, others have held that the form is to be given sanctity.

In an environment of moderate rates of tax, it is necessary that the correct tax base be subject to tax in the face of aggressive tax planning and use of opaque low tax jurisdictions. Most countries have codified the "substance over form" doctrine in the form of **General Anti Avoidance Rule (GAAR)**.

Need for GAAR — Key Considerations

Aggressive Tax Planning	Use of sophisticated structures to avoid tax. Need for statutory provisions to codify doctrine of "substance over form" where real intention of parties and effect of transactions is taken into account.
Statutory GAAR	Internationally several countries have introduced and are administering statutory General Anti Avoidance Provisions.
Criticism of GAAR	Provides wide discretion and authority to tax administration which is prone to misuse. This vital aspect needs to be kept in mind while formulating GAAR regime.
SAAR vs GAAR	SAAR (Specific Anti-Avoidance Rules): Specifically aim at certain arrangements. More certain, no discretion, provides certainty. Provisions exist in Chapter X and other chapters of Income Tax Act. GAAR (General Anti-Avoidance Rules): General in nature, provides discretion to tax authorities. Codified in Chapter X-A w.e.f. 01-04-2018.

TAXPOINT

Taxpoint: GAAR was introduced by Finance Act, 2013 to provide General Anti Avoidance Rule in Income Tax Act to deal with aggressive tax planning w.e.f. **01-04-2018**.

Difference between SAAR and GAAR

BASIS	SAAR (SPECIFIC ANTI-AVOIDANCE RULES)	GAAR (GENERAL ANTI-AVOIDANCE RULES)
Nature	Specific to certain arrangements/transactions	General in nature, applies to all impermissible avoidance arrangements
Certainty	No scope of confusion; provides certainty	Provides discretion to tax authorities
Discretion	Does not provide discretion to tax authorities	Provides wide discretion to tax administration
Location	Chapter X and various other chapters of Income Tax Act	Chapter X-A of Income Tax Act
Examples	Transfer Pricing, CFC rules, Thin Capitalisation, etc.	Impermissible avoidance arrangement, lack of commercial substance

Key Definitions

Arrangement	Any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes alienation of any property in such transaction, operation, scheme, agreement or understanding.
Step	Includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement.
Tax Benefit	Includes: (a) reduction or avoidance or deferral of tax or other amount payable; (b) increase in refund of tax; (c) reduction or avoidance or deferral of tax as result of tax treaty; (d) increase in refund as result of tax treaty; (e) reduction in total income; or (f) increase in loss — in relevant PY or any other PY.
Tax Treaty	An agreement referred to in Sec. 90(1) or 90A(1).

14.1 Applicability of General Anti-Avoidance Rule [Sec. 95]

An arrangement entered into by an assessee may be declared to be an **impermissible avoidance arrangement** and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.

The provisions of this Chapter may be applied to **any step in, or a part of, the arrangement** as they are applicable to the arrangement.

Non-Application of General Anti Avoidance Rule [Rule 10U]

The provisions of Chapter X-A (GAAR Provisions) shall **NOT apply** to:

- 1 An arrangement where the **tax benefit** in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of **₹3 crore**;
- 2 **A Foreign Institutional Investor:**
 - 3 (i) Who is an assessee under the Act;
 - 4 (ii) Who has not taken benefit of an agreement referred to in Sec. 90 or 90A; and
 - 5 (iii) Who has invested in listed securities, or unlisted securities, with prior permission of competent authority, in accordance with SEBI (FII) Regulations, 1995;
- 6 A person, being a **non-resident**, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor;
- 7 Any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from **transfer of investments made before 01-04-2017** by such person.

Taxpoint: The provisions shall apply to any arrangement, irrespective of date on which it has been entered into, in respect of tax benefit obtained from the arrangement **on or after 01-04-2017**.

△ IMPORTANT

Important: "Tax benefit" includes reduction/avoidance/deferral of tax, increase in refund, reduction in total income, or increase in loss — in relevant PY or any other PY. The limit of ₹3 crore is applicable to the aggregate tax benefit to all parties to the arrangement.

Applicability of GAAR — Summary

₹3 Cr

TAX BENEFIT THRESHOLD

01-04-2017

TAX BENEFIT ON/AFTER

01-04-2017

INVESTMENTS BEFORE
(GRANDFATHERED)

FII/FPI

EXCLUDED

📍 TAXPOINT

Grandfathering: Investments made before 01-04-2017 are grandfathered. Grandfathering available to investments made before 01-04-2017 in respect of instruments compulsorily convertible from one form to another, at terms finalized at time of issue. Shares brought into existence by way of split or consolidation of holdings, or by bonus issuances in respect of shares acquired prior to 01-04-2017 in hands of same investor also eligible for grandfathering.

14.2 Impermissible Avoidance Arrangement [Sec. 96]

An **impermissible avoidance arrangement** means an arrangement, the **main purpose of which is to obtain a tax benefit**, and it:

- 1 (a) Creates rights, or obligations, which are **not ordinarily created between persons dealing at arm's length**;
- 2 (b) Results, directly or indirectly, in the **misuse, or abuse, of the provisions of this Act**;
- 3 (c) **Lacks commercial substance** or is deemed to lack commercial substance u/s 97, in whole or in part; or
- 4 (d) Is entered into, or carried out, by means, or in a manner, which are **not ordinarily employed for bona fide purposes**.

△ IMPORTANT

Presumption: An arrangement shall be **presumed, unless it is proved to the contrary by the assessee**, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

Four Tainted Elements — Visual Summary

TAINTED ELEMENT	EXPLANATION
1. Non-Arm's Length Rights/Obligations	Creates rights or obligations which are not ordinarily created between persons dealing at arm's length. E.g., Unusual arrangements between related parties that would not exist between independent parties.
2. Misuse or Abuse of Act	Results, directly or indirectly, in misuse or abuse of provisions of the Act. E.g., Using loopholes in the law to gain unintended tax benefits.
3. Lack of Commercial Substance	Lacks commercial substance or is deemed to lack commercial substance u/s 97. E.g., Round trip financing, accommodating party, offsetting elements.
4. Not Bona Fide	Entered into, or carried out, by means or in a manner which are not ordinarily employed for bona fide purposes. E.g., Sham transactions.

Two-Part Test for GAAR Application

■ RULE / CONCEPT

Part 1: Main Purpose Test — The main purpose of the arrangement must be to obtain a tax benefit.

Part 2: Tainted Element Test — The arrangement must satisfy at least ONE of the four tainted elements (non-arm's length, misuse/abuse, lack of commercial substance, not bona fide).

Both conditions must be satisfied for an arrangement to be declared an impermissible avoidance arrangement.

📍 TAXPOINT

Taxpoint: The burden of proof is on the assessee to prove that the arrangement is not for the main purpose of obtaining a tax benefit. If the main purpose of a step or part of the arrangement is to obtain a tax benefit, the whole arrangement is presumed to be for that purpose.

14.3 Arrangement to Lack Commercial Substance [Sec. 97]

An arrangement shall be **deemed to lack commercial substance**, if:

- 1 (a) The substance or effect of the arrangement as a whole, is **inconsistent with, or differs significantly from, the form** of its individual steps or a part; or
- 2 (b) It involves or includes:
 - 3 (i) **Round trip financing**;
 - 4 (ii) An **accommodating party**;
 - 5 (iii) Elements that have effect of **offsetting or cancelling each other**; or
 - 6 (iv) A transaction which is conducted through one or more persons and **disguises the value, location, source, ownership or control of funds**;
- 7 (c) It involves the **location of an asset or of a transaction or of the place of residence** of any party which is without any substantial commercial purpose other than obtaining a tax benefit; or
- 8 (d) It does **not have a significant effect upon the business risks or net cash flows** of any party to the arrangement apart from any effect attributable to the tax benefit.

Round Trip Financing — Explanation

Round trip financing includes any arrangement in which, through a series of transactions:

- ▶ (a) Funds are transferred among the parties to the arrangement; and
- ▶ (b) Such transactions do not have any substantial commercial purpose other than obtaining the tax benefit,

Without having any regard to:

- ▶ A. Whether or not funds involved can be traced to any funds transferred to, or received by, any party in connection with the arrangement;
- ▶ B. The time, or sequence, in which funds are transferred or received;
- ▶ C. The means by, or manner in, or mode through, which funds are transferred or received.

Accommodating Party — Definition

A party to an arrangement shall be an **accommodating party**, if the main purpose of the direct or indirect participation of that party in the arrangement, in whole or in part, is to **obtain, directly or indirectly, a tax benefit** for the assessee whether or not the party is a connected person in relation to any party to the arrangement.

Relevant But Not Sufficient Factors

TAXPOINT

The following may be **relevant but shall not be sufficient** for determining whether an arrangement lacks commercial substance:

- ▶ (i) The period or time for which the arrangement (including operations therein) exists;
- ▶ (ii) The fact of payment of taxes, directly or indirectly, under the arrangement;
- ▶ (iii) The fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

Key Definitions — Sec. 97

Asset	Includes property, or right, of any kind.
Fund	Includes: (a) any cash; (b) cash equivalents; and (c) any right, or obligation, to receive or pay, the cash or cash equivalent.
Party	Includes a person or a permanent establishment which participates or takes part in an arrangement.
Connected Person	Any person who is connected directly or indirectly to another person and includes: (a) any relative; (b) any director or relative of director; (c) any partner or member of firm/AOP/BOI or relative; (d) any member of HUF or relative; (e) any individual having substantial interest; (f) a company/firm/AOP/BOI/HUF having substantial interest; (g) a company whose director/partner/member has substantial interest; (h) any other person who carries on business if person/relative has substantial interest.

Substantial Interest — Definition

A person shall be deemed to have a **substantial interest** in the business, if:

- ▶ (a) In case where business is carried on by a company — such person is, at any time during the financial year, the beneficial owner of equity shares carrying **20% or more of the voting power**; or
- ▶ (b) In any other case — such person is, at any time during the financial year, beneficially entitled to **20% or more of the profits** of such business.

14.4 Consequences of Impermissible Avoidance Arrangement [Sec. 98]

If an arrangement is declared to be an impermissible avoidance arrangement, then the consequences, in relation to tax, of the arrangement, including **denial of tax benefit or a benefit under a tax treaty**, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following:

SL.	CONSEQUENCE
(a)	Disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;
(b)	Treating the impermissible avoidance arrangement as if it had not been entered into or carried out ;
(c)	Disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;
(d)	Deeming persons who are connected persons in relation to each other to be one and the same person for purposes of determining tax treatment of any amount;
(e)	Reallocating amongst the parties to the arrangement: (i) any accrual, or receipt, of a capital nature or revenue nature; or (ii) any expenditure, deduction, relief or rebate;
(f)	Treating: (i) the place of residence of any party to the arrangement; or (ii) the situs of an asset or of a transaction , at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or
(g)	Considering or looking through any arrangement by disregarding any corporate structure .

TAXPOINT

For this purpose: (i) Any equity may be treated as debt or vice versa; (ii) Any accrual or receipt of a capital nature may be treated as of revenue nature or vice versa; or (iii) Any expenditure, deduction, relief or rebate may be recharacterised.

14.5 Treatment of Connected Person and Accommodating Party [Sec. 99]

For the purposes of this Chapter, in determining whether a tax benefit exists:

- ▶ (i) The parties who are connected persons in relation to each other may be treated as **one and the same person**;
- ▶ (ii) Any accommodating party may be **disregarded**;
- ▶ (iii) The accommodating party and any other party may be treated as **one and the same person**;
- ▶ (iv) The arrangement may be considered or looked through by **disregarding any corporate structure**.

14.6 Application of Chapter [Sec. 100] & Framing of Guidelines [Sec. 101]

Sec. 100 — Application	The provisions of this Chapter shall apply in addition to, or in lieu of, any other basis for determination of tax liability.
Sec. 101 — Framing of Guidelines	The provisions of this Chapter shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed . The following scheme has been framed: Rules 10UA, 10UB, 10UC.

IMPORTANT

Important: GAAR applies in addition to, or in lieu of, any other basis for determination of tax liability. This means GAAR can be invoked even if other provisions (like transfer pricing) are applicable, or GAAR can be applied instead of other provisions.

14.7 Reference to Principal Commissioner or Commissioner in Certain Cases [Sec. 144BA]

Step 1: AO's Reference to PCIT/CIT

If the Assessing Officer, at any stage of assessment or reassessment proceedings, having regard to material and evidence available, considers it necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such arrangement within GAAR, he may make a **reference to the Principal Commissioner or Commissioner**.

Step 2: PCIT/CIT's Notice to Assessee

The PCIT/CIT shall, on receipt of reference, if of opinion that GAAR provisions are required to be invoked, issue a **notice to the assessee**, setting out the reasons and basis of such opinion, for submitting objections, if any, and providing an **opportunity of being heard** to the assessee within such period, not exceeding **60 days**, as specified in the notice.

Step 3: If No Objection

If assessee does not furnish any objection to the notice within the time specified, the PCIT/CIT shall issue such **directions as he deems fit** in respect of declaration of the arrangement to be an impermissible avoidance arrangement.

Step 4: Reference to Approving Panel

In case assessee objects to the proposed action, and PCIT/CIT after hearing is not satisfied by explanation, he shall make a **reference to the Approving Panel** for the purpose of declaration of arrangement as impermissible avoidance arrangement.

Step 5: If PCIT/CIT Satisfied

If PCIT/CIT is satisfied, after having heard assessee, that provisions of GAAR are not to be invoked, he shall by an order in writing, **communicate the same to AO with a copy to assessee**.

Step 6: Approving Panel's Directions

The Approving Panel, on receipt of reference from PCIT/CIT, shall issue such **directions as it deems fit**, in respect of declaration of arrangement as impermissible avoidance arrangement in accordance with provisions of GAAR including specifying previous year or years to which such declaration shall apply.

Approving Panel — Composition

MEMBER	QUALIFICATION
Chairperson	A person who is or has been a Judge of a High Court
Member 1	A member of Indian Revenue Service not below rank of Principal Chief Commissioner or Chief Commissioner of Income-tax
Member 2	An academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices

Time Limits under Sec. 144BA

PARTICULARS	TIME LIMIT
Assessee to submit objections to notice	Not exceeding 60 days
Approving Panel to issue directions	6 months from end of month in which reference received
PCIT/CIT to issue directions u/s 144BA(3) (where no objection)	Within 1 month from end of month of compliance of notice
PCIT/CIT to make reference to Approving Panel	Within 2 months from end of month of final submission

TAXPOINT

Taxpoint: No order of assessment or reassessment shall be passed by AO without the **prior approval of PCIT/CIT**, if any tax consequences have been determined in the order under provisions of GAAR.

Binding Nature: The directions issued by the Approving Panel shall be binding on: (i) the assessee; and (ii) the PCIT/CIT and income-tax authorities subordinate to him. **No appeal** under the Act shall lie against such directions.

Rules 10UA to 10UC — Procedural Framework

Rule 10UA — Determination of Consequences of Impermissible Avoidance Arrangement

For the purposes of Sec. 98(1), where a **part of an arrangement** is declared to be an impermissible avoidance arrangement, the consequences in relation to tax shall be determined with reference to **such part only**.

Rule 10UB — Notice, Forms for Reference under Sec. 144BA

1. Notice to Assessee: For purposes of Sec. 144BA(1), the AO shall, before making a reference to the Commissioner, issue a **notice in writing** to the assessee seeking objections, if any, to the applicability of provisions of Chapter X-A.

2. Contents of Notice: The notice shall contain:

- ▶ (i) Details of the arrangement to which provisions of Chapter X-A are proposed to be applied;
- ▶ (ii) The tax benefit arising under the arrangement;
- ▶ (iii) The basis and reason for considering that the main purpose of identified arrangement is to obtain tax benefit;
- ▶ (iv) The basis and reasons why the arrangement satisfies the condition provided in Sec. 96; and
- ▶ (v) The list of documents and evidence relied upon in respect of (iii) and (iv) above.

3. Form for Reference: The reference by AO to Commissioner u/s 144BA(1) shall be in **Form No. 3CEG**.

4. Direction by Commissioner: Where Commissioner is satisfied that GAAR provisions are not required to be invoked, he shall issue directions to AO in **Form No. 3CEH**.

5. Reference to Approving Panel: Before a reference is made by Commissioner to Approving Panel u/s 144BA(4), he shall record his satisfaction regarding applicability of GAAR in **Form No. 3CEI** and enclose the same with the reference.

Rule 10UC — Time Limits

SL.	PARTICULARS	TIME LIMIT
(i)	No directions u/s 144BA(3) shall be issued by Commissioner	After expiry of 1 month from end of month in which date of compliance of notice u/s 144BA(2) falls
(ii)	No reference shall be made by Commissioner to Approving Panel u/s 144BA(4)	After expiry of 2 months from end of month in which final submission of assessee in response to notice u/s 144BA(2) is received
(iii)	Commissioner shall issue directions to AO in Form No. 3CEH — where reference received	Within 1 month from end of month in which reference is received
(iv)	Commissioner shall issue directions to AO in Form No. 3CEH — where final submission received	Within 2 months from end of month in which final submission of assessee is received

Forms under GAAR

FORM	PURPOSE
3CEG	Reference by AO to Commissioner u/s 144BA(1)
3CEH	Directions by Commissioner to AO (where GAAR not to be invoked)
3CEI	Recording satisfaction by Commissioner before reference to Approving Panel u/s 144BA(4)

TAXPOINT

Taxpoint: Adequate procedural safeguards are in place to ensure GAAR is invoked only in deserving cases. The proposal to declare an arrangement as impermissible avoidance arrangement is vetted first by the PCIT/CIT and at the second stage by an Approving Panel headed by a Judge of a High Court.

Examples — GAAR Application Scenarios

EXAMPLE

Example 1: SEZ Unit — Tax Mitigation (GAAR Not Applicable)

Facts: M/s India Chem Ltd. is a company incorporated in India. It sets up a unit in a Special Economic Zone (SEZ) in F.Y. 2017-18 for manufacturing of chemicals. It claims 100% deduction of profits earned from that unit in F.Y. 2018-19 and subsequent years.

✓ SOLUTION

Interpretation: There is an arrangement of setting up of a unit in SEZ which results into a tax benefit. However, this is a case of **tax mitigation** where the taxpayer is taking advantage of a fiscal incentive offered to him by submitting to the conditions and economic consequences of the provisions in the legislation. Hence, the Revenue would **not invoke GAAR** as regards this arrangement.

EXAMPLE

Example 1A: SEZ Unit — Misrepresentation (Tax Evasion, Not GAAR)

Facts: In above example, M/s India Chem Ltd. has another unit for manufacturing chemicals in non-SEZ area. It then diverts its production from such manufacturing unit and shows the same as manufactured in tax exempt SEZ unit, while doing only process of packaging there.

✓ SOLUTION

Interpretation: This is a case of **misrepresentation of facts** by showing production of non-SEZ unit as production of SEZ unit. Hence, this is an arrangement of **tax evasion** and not tax avoidance. Tax evasion, being unlawful, can be dealt with directly by establishing correct facts. **GAAR provisions will not be invoked** in such a case.

EXAMPLE

Example 1B: SEZ Unit — Transfer Pricing (GAAR Not Applicable)

Facts: In above example 1A, M/s India Chem Ltd. does not show production of non-SEZ unit as production of SEZ unit but transfers the product of non-SEZ unit at a price lower than fair market value and does only some insignificant activity in SEZ unit. Thus, it is able to show higher profits in SEZ unit than in non-SEZ unit, and consequently claims higher deduction.

✓ SOLUTION

Interpretation: As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit to SEZ unit. This is not the intention of SEZ legislation. However, such tax avoidance is **specifically dealt with through transfer pricing regulations** that deny tax benefits. Hence, the Revenue would **not invoke GAAR** in such a case.

EXAMPLE

Example 1C: SEZ Unit — Shifting of Business (GAAR Not Applicable)

Facts: In above example 1B, both units in SEZ area (A) and non-SEZ area (B) work independently. M/s India Chem Ltd. started taking new export orders from existing as well as new clients for unit A and gradually, export from unit B declined. There has not been any shifting of equipment from unit B to unit A. The company offered lower profits from unit B in computation of income.

✓ SOLUTION

Interpretation: The issue of tax avoidance through shifting/reconstruction of existing business from one unit to another has been **specifically dealt with in the relevant section of deduction** of the Act. Hence, the Revenue would **not invoke GAAR** in such a case.

EXAMPLE

Example 2: Holding Company in No Tax Jurisdiction (GAAR Not Applicable)

Facts: An Indian company (Indco) has set up a holding company (Holdco) in a no tax jurisdiction outside India (NTJ) which has set up further subsidiary companies (Subco A and Subco B) which pay dividends to Holdco. Such dividends are not repatriated to Indco.

✓ SOLUTION

Interpretation: Declaration/repatriation of dividend is a **business choice** of a company. India does not have anti-deferral provisions in the form of Controlled Foreign Company (CFC) rules in the I.T. Act. Accordingly, **GAAR would not be invoked** in such a case.

EXAMPLE

Example 2A: Cross-Border Merger (GAAR Not Applicable)

Facts: In above example 2, dividend is accumulated in Holdco for a number of years and subsequently, Holdco is merged into Indco through a cross-border merger.

✓ SOLUTION

Interpretation: It is true that if Holdco declares dividends to Indco before merger, then such dividend would have been taxable in India. But the **timing or sequencing of an activity is a business choice** available to the taxpayer. Moreover, Sec. 47 of the Act specifically exempts capital gains on cross border merger of a foreign company into an Indian company. Hence, GAAR cannot be invoked when taxpayer makes a choice about timing or sequencing of an activity to deny a tax benefit granted by the statute.

EXAMPLE

Example 3: Merger of Loss-Making Company (GAAR Not Applicable — SAAR Applies)

Facts: The merger of a loss-making company into a profit making one results in losses setting off profits, a lower net profit and lower tax liability for the merged company. Would the losses be disallowed under GAAR?

✓ SOLUTION

Interpretation: As regards setting off of losses, the provisions relating to merger and amalgamation **already contain specific anti-avoidance safeguards (SAAR)**. Therefore, **GAAR would not be invoked when SAAR is applicable**.

EXAMPLE

Example 4: Lease vs. Purchase (GAAR Not Applicable — Circular Leasing Examined)

Facts: A choice is made by a company by acquiring an asset on lease over outright purchase. The company claims deduction for lease rentals rather than depreciation. Would the lease rent payment, being higher than depreciation, be disallowed as expense under GAAR?

✓ SOLUTION

Interpretation: GAAR provisions would **not, prima facie, apply** to a decision of leasing (as against purchase of an asset). However, if it is a case of **circular leasing**, i.e., the taxpayer leases out an asset and through various sub-leases, takes it back on lease, thus creating a tax benefit without any change in economic substance, Revenue would examine the matter for invoking GAAR provisions.

EXAMPLE

Example 5: Back-to-Back Loan Through Bank (GAAR Applicable)

Facts:

- ▶ X Ltd. is a banking institution in LTJ (low tax jurisdiction);
- ▶ There is a closely held company Subco in LTJ which is a wholly owned subsidiary of another closely held Indian company Indco;
- ▶ Subco has reserves and, if it provides a loan to Indco, it may be treated as deemed dividend u/s 2(22)(e);
- ▶ Subco makes a term deposit with X Bank Ltd. and X Bank Ltd. based on this security provides a back to back loan to Indco;
- ▶ India-LTJ tax treaty provides that interest payment to a LTJ banking company is not taxable in India.

✓ SOLUTION

Interpretation: This is an arrangement whose main purpose is to bring money out of reserves in Subco to India without payment of due taxes. The tax benefit is saving of taxes on income to be received from Subco by way of dividend or deemed dividend. The arrangement **disguises the source of funds** by routing it through X Bank Ltd. X Bank Ltd. may also be treated as an **accommodating party**. Hence the arrangement shall be deemed to **lack commercial substance**. Consequently, in case of Indco, the loan amount would be treated as **dividend income** received from Subco to the extent reserves are available in Subco; and no expense by way of interest would be allowed.

EXAMPLE

Example 6: Round Tripping — Equity Investment (GAAR Applicable)

Facts: Indco incorporates a Subco in a NTJ with equity of US\$100. Subco has no reserves; it gives a loan of US\$100 to Indco at the rate of 10% p.a. which is utilized for business purposes. Indco claims deduction of interest payable to Subco from the profit of business. There is no other activity in Subco.

✓ SOLUTION

Interpretation: The main purpose of the arrangement is to obtain **interest deduction** in the hands of Indco and thereby tax benefit. There is **no commercial substance** in establishing Subco since without it there is no effect on the business risk of Indco or any change in the cash flow (apart from the tax benefit). Moreover, it is a case of **round tripping** which means a case of deemed lack of commercial substance. Hence, it would be treated as an **impermissible avoidance arrangement**. Consequently, in case of Indco, **interest payment would be disallowed** by disregarding Subco. No corresponding relief would be allowed in case of Subco by way of refund of taxes withheld, if any.

EXAMPLE

Example 7: Service Company — Cost Plus (GAAR Not Applicable — SAAR Applies)

Facts: A large corporate group has created a service company to manage all its non-core activities. The service company then charges each company for services rendered on a cost plus basis. Can the mark up in the cost of services be questioned using GAAR?

✓ SOLUTION

Interpretation: There are **specific anti avoidance provisions through transfer pricing regulations** as regards transactions among related parties. **GAAR will not be invoked** in this case.

EXAMPLE

Example 8: Treaty Shopping Through F1 (GAAR Applicable)

Facts:

- ▶ Y Ltd. is a company incorporated in country C1. It is a non-resident in India.
- ▶ Z Ltd. is a company resident in India.
- ▶ A Ltd. is a company incorporated in country F1 and it is a 100% subsidiary of Y Ltd.
- ▶ A Ltd. and Z Ltd. form a joint venture company X Ltd. in India. There is no other activity in A Ltd.
- ▶ The India-F1 tax treaty provides for non-taxation of capital gains in source country and country F1 charges no capital gains tax in its domestic law.
- ▶ A Ltd. is also designated as a "permitted transferee" of Y Ltd. — all rights of voting, management, right to sell etc., are vested in Y Ltd.
- ▶ As per joint venture agreement, 49% of X Ltd's equity is allotted to A Ltd. and 51% to Z Ltd.
- ▶ Thereafter, shares of X Ltd. held by A Ltd. are sold to C Ltd., a company connected to Z Ltd. group.
- ▶ As per tax treaty with country F1, capital gains arising to A Ltd. are not taxable in India.

✓ SOLUTION

Interpretation: The arrangement of routing investment through country F1 results into a tax benefit. Since there is **no business purpose** in incorporating company A Ltd. in country F1 which is a LTJ, it can be said that the main purpose of the arrangement is to obtain a tax benefit. The alternate course available is direct investment in X Ltd. joint venture by Y Ltd. The tax benefit would be the difference in tax liabilities between the two available courses.

The next question is, does the arrangement have any tainted element? It is evident that there is **no commercial substance** in incorporating A Ltd. as it does not have any effect on the business risk of Y Ltd. or cash flow of Y Ltd. As the twin conditions of main purpose being tax benefit and existence of a tainted element are satisfied, **GAAR may be invoked**.

Additionally, as all rights of shareholders of X Ltd. are being exercised by Y Ltd. instead of A Ltd, it again shows that A Ltd **lacks commercial substance**. Unless it is a case where Circular 789 relating Tax Residence Certificate in case of Mauritius, or Limitation of Benefits clause in India-Singapore treaty is applicable, GAAR can be invoked.

EXAMPLE

Example 9: Treaty Shopping — F1 Company (GAAR Applicable)

Facts: A Ltd. is incorporated in country F1 as a wholly owned subsidiary of company Y Ltd. which is not a resident of F1 or of India. The India-F1 tax treaty provides for non-taxation of capital gains in India and country F1 charges no capital gains tax in its domestic law. Some shares of X Ltd., an Indian company, are acquired by A Ltd in the year after date of coming into force of GAAR provisions. The entire funding for investment by A Ltd. in X Ltd. was done by Y Ltd. These shares are subsequently disposed of by A Ltd after 5 years. This results in capital gains which A Ltd. claims as not being taxable in India by virtue of the India-F1 tax treaty. A Ltd. has not made any other transaction during this period.

✓ SOLUTION

Interpretation: This is an arrangement which has been created with the **main purpose of avoiding capital gains tax** in India by routing investments through a favourable jurisdiction. There is neither a commercial purpose nor commercial substance in terms of business risks or cash flow to Y Ltd in setting up A Ltd. It should be immaterial here whether A Ltd has office, employee etc in country F1. Both the **purpose test** and **tainted element tests** are satisfied for the purpose of invoking GAAR. Unless it is a case where Circular 789 relating Tax Residence Certificate in case of Mauritius, or Limitation of Benefits clause in India-Singapore treaty is applicable, the Revenue may invoke GAAR and consequently deny treaty benefit.

Example 10: Liquidation & Transfer — Business Sequencing (GAAR Not Applicable)

Facts: The shares of V Ltd., an asset owning Indian company, were held by another Indian company X Ltd. X Ltd. was in turn held by two companies G Ltd. and H Ltd., incorporated in country F2, a NTJ. The India-F2 tax treaty provides for non-taxation of capital gains in the source country and country F2 charges no capital gains tax in its domestic law. X Ltd. was liquidated by consent and without any Court Decree. This resulted in transfer of asset/shares from X Ltd., to G Ltd. and H Ltd. Subsequently, companies G Ltd and H Ltd sold the shares of V Ltd to A Ltd. which was incorporated in F2. The companies G Ltd and H Ltd claimed benefit of tax treaty and the resultant gains from the transaction are claimed to be not taxable.

✓ SOLUTION

Interpretation: The alternative courses available to taxpayer to achieve the same result (with or without the tax benefit) are:

- ▶ **Option 1:** X Ltd. liquidated; G Ltd. and H Ltd. become shareholders of V Ltd.; A Ltd. acquires shares from G Ltd. and H Ltd.; becomes shareholder of V Ltd.
- ▶ **Option 2:** A Ltd. acquires shares of X Ltd. from G Ltd. and H Ltd.; X Ltd. is liquidated; A Ltd. becomes shareholder of V Ltd.
- ▶ **Option 3:** X Ltd. sells its entire shareholding in V Ltd. to A Ltd. and subsequently, X Ltd is liquidated.

In Options 1 & 2, there is no tax liability in India except the deemed dividend taxation to extent reserves are available in X Ltd. This is because of the treaty between India and country F1. In option 3, tax liability arises to X Ltd., an Indian company, on sale of shares of V Ltd. Subsequently, when X Ltd. is liquidated, tax liability arises on account of deemed dividend to extent reserves are available in X Ltd. The taxpayer exercises the **most tax efficient manner** in disposal of its assets through proper sequencing of transactions. The Revenue **cannot invoke GAAR** as regards this arrangement.

Clarifications on Implementation of GAAR [Circular 07/2017 dated 27/01/2017]

Q1. Will GAAR be invoked if SAAR (Specific Anti-Avoidance Rules) applies?

Ans: It is internationally accepted that specific anti avoidance provisions may not address all situations of abuse and there is need for general anti-abuse provisions in domestic legislation. The provisions of GAAR and SAAR **can coexist** and are applicable, as may be necessary, in the facts and circumstances of the case.

Q2. Will GAAR be applied to deny treaty eligibility in a case where there is compliance with Limitation of Benefits (LOB) test of the treaty?

Ans: Adoption of anti-abuse rules in tax treaties may not be sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. If a case of avoidance is **sufficiently addressed by LOB in the treaty**, there shall not be an occasion to invoke GAAR.

Q3. Will GAAR interplay with the right of the taxpayer to select or choose method of implementing a transaction?

Ans: GAAR will **not interplay** with the right of the taxpayer to select or choose method of implementing a transaction.

Q4. Will GAAR provisions apply where jurisdiction of FPI is finalised based on non-tax commercial considerations and such FPI has issued P-notes referencing Indian securities? Further, will GAAR be invoked with a view to denying treaty eligibility to a Special Purpose Vehicle (SPV), either on the ground that it is located in a tax friendly jurisdiction or on the ground that it does not have its own premises or skilled professional on its own roll as employees?

Ans: For GAAR application, the issue, as may be arising regarding the choice of entity, location etc., has to be resolved on the basis of the **main purpose and other conditions provided u/s 96**. GAAR shall **not be invoked merely on the ground that the entity is located in a tax efficient jurisdiction**. If the jurisdiction of FPI is finalized based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR will not apply.

Q5. Will GAAR provisions apply to (i) securities issued by way of bonus issuances so long as original securities are acquired prior to 01 April 2017; (ii) shares issued post 31 March 2017, on conversion of Compulsorily Convertible Debentures, Compulsorily Convertible Preference Shares (CCPS), Foreign Currency Convertible Bonds (FCCBs), Global Depository Receipts (GDRs), acquired prior to 01 April 2017; (iii) shares issued consequent to split up or consolidation of such grandfathered shareholding?

Ans: Grandfathering under Rule 10U(1)(d) will be available to investments made before 1st April 2017 in respect of instruments compulsorily convertible from one form to another, at terms finalized at time of issue of such instruments. Shares brought into existence by way of **split or consolidation of holdings, or by bonus issuances** in respect of shares acquired prior to 1st April 2017 in hands of same investor would also be eligible for grandfathering under Rule 10U(1)(d).

Q6. Expression "investments" can cover investment in all forms of instrument — whether in an Indian Company or in a foreign company, so long as disposal thereof may give rise to income chargeable to tax. Grandfathering should extend to all forms of investments including lease contracts (say, aircraft leases) and loan arrangements, etc.

Ans: Grandfathering is available in respect of income from transfer of **investments** made before 1st April, 2017. As per Accounting Standards, 'investments' are assets held by an enterprise for earning income by way of dividends, interest, rentals and for capital appreciation. **Lease contracts and loan arrangements are, by themselves, not 'investments'** and hence grandfathering is not available.

Q7. Will GAAR apply if arrangement held as permissible by Authority for Advance Ruling?

Ans: No. The AAR ruling is binding on the PCIT/CIT and the Income Tax Authorities subordinate to him in respect of the applicant.

Q8. Will GAAR be invoked if arrangement is sanctioned by an authority such as the Court, National Company Law Tribunal or is in accordance with judicial precedents etc.?

Ans: Where the Court has **explicitly and adequately considered the tax implication** while sanctioning an arrangement, GAAR will **not apply** to such arrangement.

Q9. Will a Fund claiming tax treaty benefits in one year and opting to be governed by provisions of the Act in another year attract GAAR provisions? An example would be where a Fund claims treaty benefits in respect of gains from derivatives in one year and in another year sets-off losses from derivatives transactions against gains from shares under the Act.

Ans: GAAR provisions are applicable to impermissible avoidance arrangements as under section 96. In so far as the admissibility of claim under treaty or domestic law in different years is concerned, it is **not a matter to be decided through GAAR provisions**.

Q10. How will it be ensured that GAAR will be invoked in rare cases to deal with highly aggressive and artificially pre-ordained schemes and based on cogent evidence and not on the basis of interpretation difference?

Ans: The proposal to declare an arrangement as an impermissible avoidance arrangement under GAAR will be vetted **first by the Principal Commissioner/Commissioner** and at the **second stage by an Approving Panel headed by a Judge of a High Court**. Thus, adequate safeguards are in place to ensure that GAAR is invoked only in deserving cases.

Q11. Can GAAR lead to assessment of notional income or disallowance of real expenditure? Will GAAR provisions expand the scope of charging provisions or scope of taxable base and/or disallow the expenditure which is actually incurred and which otherwise is admissible having regard to diverse provisions of the Act?

Ans: If the arrangement is covered under section 96, then the arrangement will be **disregarded by application of GAAR** and necessary consequences will follow.

Q12. A definite timeline may be provided such as 5 to 10 years of existence of the arrangement where GAAR provisions will not apply in terms of the provisions in this regard in section 97(4).

Ans: **Period of time** for which an arrangement exists is **only a relevant factor and not a sufficient factor** under section 97(4) to determine whether an arrangement lacks commercial substance.

Q13. It may be ensured that in practice, consequences of a transaction being treated as an 'impermissible avoidance arrangement' are determined in a uniform, fair and rational basis. Compensating adjustments u/s 98 should be done in a consistent and fair manner. It should be clarified that if a particular consequence is applied in the hands of one of the participants, there would be corresponding adjustment in the hands of another participant.

Ans: Adequate procedural safeguards are in place to ensure that GAAR is invoked in a uniform, fair and rational manner. In the event of a particular consequence being applied in the hands of one of the participants as a result of GAAR, **corresponding adjustment in the hands of another participant will not be made**. GAAR is an anti-avoidance provision with deterrent consequences and corresponding tax adjustments across different taxpayers could militate against deterrence.

Q14. Tax benefit of ₹3 crores as defined in section 102(10) may be calculated in respect of each arrangement and each taxpayer and for each relevant assessment year separately. For evaluating the main purpose to be obtaining of tax benefit, the review should extend to tax consequences across territories. The tax impact of ₹3 crores should be considered after taking into account impact to all parties to the arrangement i.e., on a net basis and not on a gross basis (i.e., impact in the hands of one or few parties selectively).

Ans: The application of tax laws is jurisdiction specific and hence what can be seen and examined is the 'Tax Benefit' enjoyed in **Indian jurisdiction** due to the 'arrangement or part of the arrangement'. Further, such benefit is **assessment year specific**. Further, GAAR is with respect to an arrangement or part of the arrangement and therefore limit of ₹3 crores cannot be read in respect of a single taxpayer only.

Q15. Will a contrary view be taken in subsequent years if arrangement held to be permissible in an earlier year?

Ans: If the PCIT/Approving Panel has held the arrangement to be permissible in one year and **facts and circumstances remain the same**, as per the principle of consistency, **GAAR will not be invoked** for that arrangement in a subsequent year.

Q16. No penalty proceedings should be initiated pursuant to additions made under GAAR at least for the initial 5 years.

Ans: Levy of penalty depends on facts and circumstances of the case and is **not automatic**. No blanket exemption for a period of five years from penalty provisions is available under law. The assessee may, at his option, apply for benefit u/s 273A if he satisfies conditions prescribed therein.

★ Quick Revision Summary

★ QUICK REVISION

Key Sections — Module 14 (GAAR)

SECTION / RULE	PARTICULARS
Sec. 95	Applicability of General Anti-Avoidance Rule
Sec. 96	Impermissible Avoidance Arrangement — main purpose + tainted element
Sec. 97	Arrangement to Lack Commercial Substance — round trip financing, accommodating party, etc.
Sec. 98	Consequences of Impermissible Avoidance Arrangement
Sec. 99	Treatment of Connected Person and Accommodating Party
Sec. 100	Application of Chapter — in addition to or in lieu of any other basis
Sec. 101	Framing of Guidelines — Rules 10UA, 10UB, 10UC
Sec. 144BA	Reference to PCIT/CIT — Procedure before Approving Panel
Rule 10U	Non-Application of GAAR — ₹3 crore threshold, FII, grandfathering
Rule 10UA	Determination of consequences — part of arrangement only
Rule 10UB	Notice, Forms for reference under Sec. 144BA
Rule 10UC	Time limits for reference and directions

★ QUICK REVISION

Two-Part Test for GAAR

TEST	REQUIREMENT
Part 1: Main Purpose Test	The main purpose of the arrangement must be to obtain a tax benefit.
Part 2: Tainted Element Test	The arrangement must satisfy at least ONE of the four tainted elements: (i) Non-arm's length rights/obligations; (ii) Misuse or abuse of Act; (iii) Lack of commercial substance; (iv) Not bona fide.
Both conditions must be satisfied for GAAR to apply.	

★ QUICK REVISION

Key Thresholds & Timelines

PARTICULARS	THRESHOLD / TIMELINE
Tax benefit threshold for GAAR applicability	₹3 crore (aggregate to all parties)
GAAR applicability date	Tax benefit on or after 01-04-2017
Grandfathering for investments	Investments made before 01-04-2017
Substantial interest in company	≥ 20% of voting power
Substantial interest in other business	≥ 20% of profits
Assessee to submit objections to notice	Not exceeding 60 days
Approving Panel to issue directions	6 months from end of month of reference
PCIT/CIT to issue directions (no objection)	1 month from end of month of compliance
PCIT/CIT to make reference to Approving Panel	2 months from end of month of final submission
Approving Panel term	Ordinarily 1 year; extendable up to 3 years

★ QUICK REVISION

Key Forms under GAAR

FORM	PURPOSE
3CEG	Reference by AO to Commissioner u/s 144BA(1)
3CEH	Directions by Commissioner to AO (GAAR not to be invoked)
3CEI	Recording satisfaction by Commissioner before reference to Approving Panel

★ QUICK REVISION

Key Takeaways — GAAR

- ✓ GAAR applies from 01-04-2018 (for tax benefit on or after 01-04-2017).
- ✓ Two-part test: Main purpose test + Tainted element test.
- ✓ Four tainted elements: Non-arm's length, Misuse/abuse, Lack of commercial substance, Not bona fide.
- ✓ Non-applicability: Tax benefit ≤ ₹3 crore; FII/FPI; Grandfathered investments; Non-resident with ODI.
- ✓ GAAR and SAAR can coexist — GAAR not invoked where SAAR specifically addresses the issue.
- ✓ Procedural safeguards: PCIT/CIT vetting + Approving Panel headed by High Court Judge.
- ✓ Burden of proof on assessee to prove arrangement not for main purpose of tax benefit.
- ✓ GAAR applies in addition to, or in lieu of, any other basis for determination of tax liability.

Multiple Choice Questions

1. General Anti Avoidance Rule (GAAR) is applicable from: a) 01-04-2018 b) 01-04-2017 c) 01-07-2017 d) 01-07-2018 [Ans: a]
2. GAAR provisions shall not apply to an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed: a) ₹3 crore b) ₹5 crore c) ₹1 crore d) None of the above [Ans: a]
3. Chapter X-A of the Income Tax Act deals with: a) Transfer Pricing b) GAAR c) DTAA d) ICDS [Ans: b]
4. The main purpose of an arrangement must be to obtain a tax benefit and it must satisfy at least ____ of the four tainted elements: a) One b) Two c) Three d) All four [Ans: a]
5. An arrangement shall be deemed to lack commercial substance if it involves: a) Round trip financing b) Accommodating party c) Offsetting elements d) All of the above [Ans: d]
6. The Approving Panel under GAAR is headed by: a) Chief Commissioner b) Judge of High Court c) Academic/Scholar d) Member of IRS [Ans: b]
7. The reference by AO to Commissioner u/s 144BA(1) shall be in Form No.: a) 3CEG b) 3CEH c) 3CEI d) 3CEB [Ans: a]
8. Substantial interest in a company means beneficial ownership of equity shares carrying: a) 10% or more voting power b) 20% or more voting power c) 26% or more voting power d) 51% or more voting power [Ans: b]
9. GAAR provisions apply in addition to, or in lieu of, any other basis for determination of tax liability as per: a) Sec. 95 b) Sec. 96 c) Sec. 100 d) Sec. 101 [Ans: c]
10. Assessee may submit objections to notice issued by PCIT/CIT within: a) 30 days b) 45 days c) 60 days d) 90 days [Ans: c]

Short Essay Type Questions

- 1 State the cases when provisions relating to GAAR are not applicable.
- 2 Define impermissible avoidance arrangement.
- 3 Explain the concept of "lack of commercial substance" u/s 97.
- 4 What are the consequences of an arrangement being declared as impermissible avoidance arrangement?
- 5 Explain the procedure under Sec. 144BA for invoking GAAR.
- 6 What is the significance of ₹3 crore threshold under Rule 10U?
- 7 Explain the concept of "accommodating party" and "connected person" under GAAR.
- 8 Discuss the role of the Approving Panel under GAAR.
- 9 Write a note on the difference between SAAR and GAAR.
- 10 What is the grandfathering provision under GAAR? Explain with examples.
- 11 State the key clarifications issued by CBDT Circular 07/2017 on GAAR implementation.

Practical Case Scenarios

Case 1: A Ltd. set up a unit in SEZ and claims 100% deduction of profits. Is GAAR applicable? [Ans: No — Tax mitigation, not tax avoidance]

Case 2: Indco incorporates Subco in a NTJ with equity of US\$100. Subco gives a loan of US\$100 to Indco at 10% p.a. Indco claims deduction of interest. Is GAAR applicable? [Ans: Yes — Round tripping, lack of commercial substance]

Case 3: An Indian company sets up Holdco in a no tax jurisdiction which receives dividends from Subcos and does not repatriate to India. Is GAAR applicable? [Ans: No — Declaration of dividend is a business choice; no CFC rules in India]

Case 4: A foreign company holds investments in India through a subsidiary in a low tax jurisdiction to avoid capital gains tax. Is GAAR applicable? [Ans: Yes — Treaty shopping, no commercial substance]

References

- ▶ <https://www.incometaxindia.gov.in/>
- ▶ <https://www.incometax.gov.in/>
- ▶ <https://www.indiabudget.gov.in/>
- ▶ The Institute of Cost Accountants of India — Study Material
- ▶ CBDT Circular No. 07/2017 dated 27-01-2017
- ▶ Finance Act, 2013 — Chapter X-A (Sec. 95 to 102)

✓ Module 14 — Complete Coverage Checklist

★ QUICK REVISION

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|--|--|
| ▶ ✓ Introduction — Need for GAAR | ▶ ✓ 14.3 Sec. 97 — Lack of Commercial Substance |
| ▶ ✓ SAAR vs GAAR — Difference | ▶ ✓ Round Trip Financing |
| ▶ ✓ Key Definitions — Arrangement, Step, Tax Benefit, Tax Treaty | ▶ ✓ Accommodating Party |
| ▶ ✓ 14.1 Sec. 95 — Applicability of GAAR | ▶ ✓ Connected Person & Substantial Interest |
| ▶ ✓ 14.1.1 Rule 10U — Non-Application of GAAR | ▶ ✓ 14.4 Sec. 98 — Consequences |
| ▶ ✓ ₹3 Crore Threshold | ▶ ✓ 14.5 Sec. 99 — Treatment of Connected Person |
| ▶ ✓ Grandfathering — Investments before 01-04-2017 | ▶ ✓ 14.6 Sec. 100 & 101 — Application & Guidelines |
| ▶ ✓ FII/FPI Exclusion | ▶ ✓ 14.7 Sec. 144BA — Procedure & Approving Panel |
| ▶ ✓ 14.2 Sec. 96 — Impermissible Avoidance Arrangement | ▶ ✓ Rules 10UA, 10UB, 10UC — Procedural Rules |
| ▶ ✓ Four Tainted Elements | ▶ ✓ Forms — 3CEG, 3CEH, 3CEI |
| ▶ ✓ Two-Part Test for GAAR | ▶ ✓ Examples 1-10 — GAAR Application Scenarios |
| | ▶ ✓ Circular 07/2017 — 16 Clarifications |
| | ▶ ✓ Quick Revision Summary |
| | ▶ ✓ MCQ & Short Essay Questions |
| | ▶ ✓ Practical Case Scenarios |

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Module 14: GAAR — General Anti-Avoidance Rule

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