

## **PREFACE**

In the curricular structure introduced by this University for students of Post Graduate degree programme, the opportunity to pursue Post Graduate course in Subjects introduced by this University is equally available to all learners. Instead of being guided by any presumption about ability level, it would perhaps stand to reason if receptivity of a learner is judged in the course of the learning process. That would be entirely in keeping with the objectives of open education which does not believe in artificial differentiation.

Keeping this in view, study materials of the Post Graduate level in different subjects are being prepared on the basis of a well laid-out syllabus. The course structure combines the best elements in the approved syllabi of Central and State Universities in respective subjects. It has been so designed as to be upgradable with the addition of new information as well as results of fresh thinking and analysis.

The accepted methodology of distance education has been followed in the preparation of these study materials. Co-operation in every form of experienced scholars is indispensable for a work of this kind. We, therefore, owe an enormous debt of gratitude to everyone whose tireless efforts went into the writing, editing and devising of a proper lay-out of the materials. Practically speaking, their role amounts to an involvement in invisible teaching. For, whoever makes use of these study materials would virtually derive the benefit of learning under their collective care without each being seen by the other.

The more a learner would seriously pursue these study materials the easier it will be for him or her to reach out to larger horizons of a subject. Care has also been taken to make the language lucid and presentation attractive so that it may be rated as quality self-learning materials. If anything remains still obscure or difficult to follow, arrangements are there to come to terms with them through the counselling sessions regularly available at the network of study centres set up by the University.

Needless to add, a great part of these efforts is still experimental-in fact, pioneering in certain areas. Naturally, there is every possibility of some lapse or deficiency here and there. However, these do admit of rectification and further improvement in due course. On the whole, therefore, these study materials are expected to evoke wider appreciation the more they receive serious attention of all concerned.

**Professor (Dr.) Subha Sankar Sarkar**  
Vice-Chancellor

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**Notification**

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## **Unit - 1 □ Taxation of Business Income**

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### *Structure*

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- 1.1 Income chargeable under the head “Profits and Gains of Business or Profession”**
  - 1.1.1 Export Incentives**
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- 1.3 Expenditure on Scientific Research (Sec. 35)**
- 1.4 Amortization of telecom licence fees (Sec. 35ABB)**
- 1.5 Deduction in respect of expenditure on specified business (Sec. 35AD)**
- 1.6 Expenditure on payment to association/institution for carrying out Rural Development Programmes (Sec. 35CCA)**
- 1.7 Deduction on expenditure for skill development (Sec. 35CCD)**
- 1.8 Amortization of Preliminary Expenditure (Sec. 35D)**
- 1.9 Exercises**

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## **1.0 Introduction**

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Sections 28 to 44D of the Income-tax Act contains provisions regarding chargeability and computation of profits and gains of business or profession. As per Section 2(13) of the Income-tax Act, business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. This definition of business is not exhaustive; it covers every facet of an occupation carried on by a person with a view to earning profits. The term “business” is a word of wide import and in fiscal statutes it must be construed in a broad rather than a restricted sense. It may be used in different connotations. Business connotes some real, substantial and systematic or organized course or activity or conduct with a set purpose. Control and profit motive are two crucial tests. Risk, uncertainty, foresightedness to visualize the imponderables and capacity to overcome the unforeseen hurdles are essential requisites for business activities.

Profession refers to those human activities the object of which is to earn a living and which are guided by one’s intellectual skill and special knowledge. Profession includes vocation as per Section 2(36). The word vocation is analogous to ‘calling’ meaning the way in which a man passes his life. Many vocations may fall within the

ordinary and accepted use of the word ‘profession’, for instances as those of tax experts, accountants, engineers and so forth. A doctor who practices independently is chargeable to tax in respect of his professional income under this head.

As profits and gains of a business, profession or vocation are chargeable to tax under the head “profits and gains of business or profession”, distinction between ‘business’, ‘profession’ and ‘vocation’ does not have any material significance while computing taxable income. What does not amount to ‘profession’ may amount to ‘business’ and what does not amount to ‘business’ may amount to ‘vocation’.

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## **1.1 Income chargeable under the Head “Profits and Gains of Business or Profession”**

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Income chargeable under the head “Profits and gains of business or profession” is dealt with in Section 28 whereby the following incomes are included :

1. Any profits and gains of any business or profession.
2. Any compensation or other payments due to or received by any person specified by sec. 28(ii).
3. Income derived by a trade or profession or similar association from specific services performed for its members [Sec. 28(iii)].
4. Profit on sale of a licence granted under Imports (Control), Order, 1955 made under the Imports & Exports (Control) Act, 1947.
5. Cash assistance (by whatever the name called) received/receivable by any person against exports under any scheme of the government. [see 28(iii)]
6. Any duty of customs/excise repaid or repayable as drawback to any person against exports under the Customs and Excise Duties Drawback Rules, 1971.
7. Any profit on transfer of Duty Entitlement Pass Book (DEPB) Scheme.
8. Any profit on the transfer of the Duty Free Replenishment Certificate.
9. Value of any benefits or perquisites arising from a business or the exercise of a profession.
10. Interest, salary, bonus, commission or remuneration due to or received by a partner of a firm from such a firm.
11. Any sum received under a Keyman Insurance Policy Including the sum by way of bonus of such policy.
12. Income from speculative transactions.

### **1.1.1 Export Incentives**

Export incentives mean

- (i) Profit on sale of import licences granted under Imports (Control) Order on account of exports.
- (ii) Cash assistance received or receivable against export.
- (iii) Duty drawbacks of Customs and Central Excise duties.
- (iv) Any profit on the transfer of the Duty Entitlement Pass Book Scheme being the Duty Remission Scheme under the export and import policy.
- (v) Any profit on the transfer of the Duty Free Replenishment Certificate.

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### **1.2 Deemed Profit**

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Deemed profit is chargeable to tax as business income [Sec. 41 and 176(3A) & (4)].

By virtue of Section 41, the receipts are chargeable to tax as business income notwithstanding that the business or profession to which the receipts related ceased to be in existence in the year in which they are received :

#### **(1) Recovery against any deduction [Section 41 (1)]**

Where any allowance or deduction has been made in the assessment of any year in respect of loss, expenditure or trading liability and subsequently, during the pervious year, any amount is received by the assessee, whether in cash or in any manner whatsoever, in respect of such loss or expenditure, or some benefit for such trading liability by way of remission or cessation thereof, the amount obtained by him or by virtue of benefit accruing to him is chargeable to tax as business income.

Recovery by the Successor in business or profession : W.e.f. the assessment year 1993-94 the section provides that where the assessee to whom the trading liability may have been allowed in his business either because of amalgamation of two companies or on account of the constitution of a new firm or the business is continued by some other person when the assessee ceases to carry on the business, then the person succeeding will be chargeable to tax on any amount received in relation to which deduction or allowance has been made. This provision has been extended (from the assessment year 2000-01 onwards) in the case of demerger in respect of resulting company.

**(2) Balancing charge [Section 41 (2)]**

Balancing charge (i.e. surplus on transfer) in the case of power unit, sub-section (2) has been inserted in section 41 to provide for the manner of calculation of the amount which shall be chargeable to income-tax as income of the business of the previous year in which the money payable for building, machinery, plant or furniture of a power unit is sold, discarded, demolished or destroyed. The money payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the money payable for the building, machinery, plant or furniture became due. Where the money payable in respect of the building, machinery, plant or furniture became due in a previous year in which the business for the purpose of which the building, machinery, plant or furniture was being used, is no longer in existence, the above provision shall apply as if the business is in existence in the previous year.

**(3) Sale of assets used for Scientific research [Section 41(3)]**

When any capital asset used in scientific research is sold without having been used for other purposes and the sale proceeds, together with the amount of deduction allowed under Sec. 35, exceeds the amount of the capital expenditure, such surplus or the amount of deduction allowed, whichever is lower, is chargeable to tax as business income in the year in which the sale took place.

**(4) Recovery of Bad Debt [Section 41 (4)]**

Where any bad debt has been allowed as deduction under section 36(1)(vii) and the amount subsequently recovered on such debt is greater than the difference between the debt and the deduction allowed, the excess realization is chargeable to tax as business income of the year in which the debt is recovered.

**(5) Amount withdrawn from special reserve (Section 41 (4A))**

Where any amount is withdrawn from any reserve created under section 36(viii), it will be chargeable to tax in the year in which the amount is withdrawn, regardless of the fact whether the business is in existence in that year or not

**(6) Recovery in case of discontinued business or profession [Section 176 (3A) & (4)]**

Another instance of deemed profit is given in section 176(3A) and (4). Under this section, where any business/profession is discontinued by reason of the

retirement or death of the person carrying on such business/profession, any sum received after discontinuance of business/profession is deemed to be the income of recipient and charged to tax in the year of receipt.

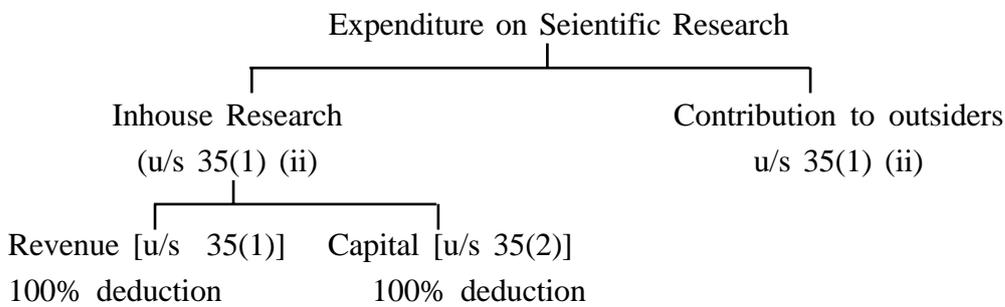
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### 1.3 Expenditure on Scientific Research [Sec. 35]

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The term “scientific research” means “any activities for the extension of knowledge in the fields of natural or applied sciences including agriculture, animal husbandry or fisheries”.

If any dispute arises as to whether any activity constitutes scientific research or any asset is being used for scientific research, the Central Board of Direct Taxes will refer the questions to the prescribed authority.



**Revenue expenditure incurred by an assessee who himself carries on scientific research [Sec. 35(1)]**—Where the assessee himself carries on scientific research and incurs revenue expenditure during the previous year, deduction is allowed for such expenditure only if the research relates to the business.

**Capital expenditure incurred by an assessee who himself carries on scientific research [Sec. 35(2)]**—Where the assessee incurs any expenditure of a capital nature on scientific research related to his business, the whole of such expenditure incurred in any previous year is allowable as deduction for that previous year.

The three ingredients necessary to be satisfied for allowance under section 35 are : (i) that the expenditure has been incurred during the year; (ii) that it is of capital nature; and (iii) that it is on scientific research.

**Pre-commencement period expenses**—Where any capital expenditure has been incurred on scientific research related to business before the commencement of the business, the aggregate of such expenditure, incurred within the three years immediately preceding the commencement of the business, is deductible in the previous year in which the business is commenced [Explanation to section 35(2)(ia)] and is, accordingly, deductible during the year in which business is commenced.

**Pre-commencement period expenses**—Revenue expenses (other than expenditure on providing perquisites to employees) incurred before the commencement of business (but within three years immediately before commencement of business) on scientific research related to the business is deductible in the previous year in which business is commenced. However, the deduction is limited to the extent it is certified by the prescribed authority.

**Contribution made to outside [Sec. 35(1)]**—Where the assessee does not himself carry on scientific research but makes contributions to the following institutions for this purpose, a weighted deduction is allowed. The amount of deduction is equal to one and one-fourth times of any sum paid to a scientific research association or to a university, college or other institution—

- |   |
|---|
| <ol style="list-style-type: none"><li>a. the payment is made to an approved scientific research association which has, as its object, undertaking of scientific research related or unrelated to the business of assessee [sec. 35(1)(ii)]; Amount of deduction 150% for the assessment year 2018-19 to 2020-21</li><li>b. the payment is made to an approved university, college or institution for the use of scientific research related or unrelated to the business of assessee [sec. 35(1)(ii)]; Weighted deduction - 150% of the actual payment for the assessment year 2018-19 to 2020-21</li><li>c. the payment is made to an approved university, college or institution for the use of research in social sciences or statistical research related or unrelated to the business of the assessee [sec. 35(1)(iii)]. Deduction 100% of the actual cost for the assessment year 2018-19 to 2020-21.</li></ol> |
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**Tax treatment when asset is sold**—If the asset is sold without having been used for other purposes, sale proceeds or deduction allowed, whichever is less, is chargeable to tax as business income of the previous year in which the sale took place [section 41(3)]. The excess of sale proceeds over deduction allowed is, however, chargeable to tax as capital gains according to the provisions of section 45.

**Depreciation not admissible**—Deduction by way of depreciation is not admissible in respect of an asset used in scientific research either in the year in which capital expenditure is incurred or in a subsequent year.

**Contribution to National Laboratory [Sec. 35(2AA)]**—The provisions of section 35(2AA) are given below—

**Conditions**—The following conditions should be satisfied—

Condition one	The payment is made to— a. National Laboratory; or b. University; or c. Indian Institute of Technology; or d. Specified person as approved by the prescribed authority.
Condition two	The above payment is made under a specific direction that it should be used by the aforesaid person for undertaking a scientific research programme approved by the prescribed authority.

**Amount of deduction**— If the aforesaid conditions are satisfied the taxpayer is eligible for weighted deduction which is equal to 150% of actual payment from the assessment year 2018-19 to 2020-21.

Such contribution which is eligible for weighted deduction is not eligible for any other deduction under the Act.

**Expenditure on in-house research and development facility [Sec. 35(2AB)]**— Section 35(2AB) provides for a weighted deduction of 200% in respect of expenditure on in-house research and development facility subject to the following—

● **Conditions** : One has to satisfy the following conditions—

1. The taxpayer is a company.
2. It is engaged in the business of bio-technology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board [i.e., manufacture or production of helicopter or aircraft or computer software or automobiles (including automobiles components)].
3. It incurs an expenditure on scientific research and such expenditure is of capital nature or revenue nature (not being expenditure in the nature of cost of any land and building). The expenditure on scientific research in relation to drugs and pharmaceuticals shall include expenditure incurred on clinical drug trial, regulatory approval and filing an application for a patent.
4. On the application of the company in Form No. 3CK, the research and development facility is approved by the prescribed authority (i.e., Secretary, Department of Scientific and Industrial Research).

5. The tax payer has entered into an agreement with the prescribed authority for cooperation in such research and development facility and for audit of the accounts maintained for the facility. Amount of deduction u/s 35 (2AB) = 150% of the actual amount for the assement year 2018-19 to 2020-2021.

**Consequences in the case of amalgamation [See 35(5)]**—In pursuance of an agreement of amalgamation if the amalgamating company transfers to amalgamated company, which is an Indian company, any asset representing capital expenditure on scientific research, provisions of section 35 would apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the asset.

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## **1.4 Amortization of telecom licence fees (Sec. 35ABB)**

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Where any capital expenditure is incurred by the assessee for acquiring any right to operate telecommunication service deduction will be allowed subject to the following conditions:

- i) The expenditure is capital in nature.
- ii) It is incurred for acquiring any right to operate telecommunication Services.
- iii) The expenditure is incurred either before the commencement of business or there after at any time during any previous year.
- iv) The payment has actually been made.

If the above conditions are fulfilled, the assessee can claim deduction u/s 35 ABB as follows—

The payment will be allowed as deduction in equal instalments over the period starting from the year in which such payment has been made and ending in the year in which the licence comes to an end. The deduction will be allowed for the previous year relevant to the previous year in which the licence fee is actually paid.

Where a deduction for any previous year is claimed and allowed under section 35ABB, then no deduction of the same expenditure shall be allowed u/s 32 for the same previous year or any subsequent previous year.

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## **1.5 Deduction in respect of expenditure on specified business [Sec. 35AD]**

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Deduction under Section 35AD shall be allowed to the assessee who is carrying on any of the following specified business:

- i) setting up and operating a cold chain facility;
- ii) setting up and operating a warehousing facility for storage of agricultural produce;
- iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
- iv) the business of building and operating anywhere in India, a hotel of two-star or above category, as classified by the Central Government;
- v) building and operating anywhere in India, a hospital with at least 100 beds for patients;
- vi) developing and building a housing project under a scheme for slum development or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;
- vii) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and
- viii) production of fertiliser in India.

**Amount of deduction :** 100% deduction shall be allowed and account of any expenditure of capital in nature incurred wholly and exclusively for the purpose of the above specified business carried on by such assessee during the previous year in which such expenditure is incurred by him.

*Expenditure incurred prior to commencement of operation to be allowed in the year of commencement of operation :* The expenditure incurred, wholly and exclusively, for the purposes of any specified business, shall be allowed as deduction during the previous year in which he commences operations of his specified business, if–

- a) the expenditure is incurred prior to the commencement of its operations; and
- b) the amount is capitalized in the books of account of the assessee on the date of commencement of its operations.

**Conditions to be satisfied :** This section applies to the specified business which fulfils all the following conditions :

- i) it is not set up by splitting up, or the reconstruction, of a business already in existence;
- ii) it is not set up by the transfer to the specified business of machinery or plant previously used for any purpose;
- iii) where the business is of laying and operating a cross country natural gas or crude or petroleum oil pipelines network it should satisfy the following conditions also:
  - a) it is owned by an Indian or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;
  - b) it has been approved by the Notified Petroleum and Natural Gas Regulatory Board;
  - c) it has made such proportion of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person as prescribed by the Petroleum and Natural Gas Regulatory Board; and
  - d) any other condition as may be prescribed.

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## **1.6 Expenditure on payment to association/institution for carrying out Rural Development Programmes [Sec. 35CCA]**

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Any assessee carrying on business or profession can claim a deduction of the expenditure incurred by way of payment to:

- (i) an association or institution, which has its object of any rural development approved by the prescribed authority.
- (ii) an association or institution engaged in training of persons for implementing rural development programmes.
- (iii) National Fund for rural development set up by the Central Government.
- (iv) National Urban Poverty Eradication Fund set up and notified by the Central Government.

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## 1.7 Deduction on expenditure for skill development [Sec. 35 CCD]

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The section 35 CCD provides that where a company incurs any expenditure (not being the cost of land/ building) on any notified skill development project, such company can claim a weighted deduction of 150% of such expenditure.

If the company claims a deduction on such expenditure u/s 35 CCD, it cannot claim deduction under any other provisions of the Income Tax Act for the same expenditure.

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## 1.8 Amortization of preliminary expenditure [Sec. 35D]

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Deduction under section 35D is available in the case of Indian company or a resident non corporate assessee certain preliminary expenses. A foreign company even if it is resident in India, cannot claim any deduction under this section.

**Time and purpose of preliminary expenses**-Expenses incurred at the following two stages are qualified for deduction under this section—

<i>When expenses are incurred</i>	<i>Why expenses are incurred</i>
1. Before commencement of business	For setting up any undertaking or business
2. After commencement of business	In connection with extension of an industrial undertaking or in connection with setting up a new industrial unit.

Examples of preliminary expenditure in respect of which the deduction is available:

- i) expenditure incurred prior to the commencement of the business.
- ii) preparation of a feasibility report;
- iii) preparation of a project report;
- iv) legal charges for drafting any agreement between the assessee and other persons;
- v) preparation of Memorandum of and Articles of Association;
- vi) Fees for registration;
- vi) expenditure in connection with the issue of shares, or debentures, underwriting commission, printing of prospectus etc.

**Note :** Deduction under section 35D is not available in respect of expenditure incurred after commencement of business if such expenditure is incurred in connection with extension of or setting up a non-industrial undertaking.

**Maximum ceiling :** the aggregate expenditure cannot exceed the following :

In the case of corporate assessee                      in the case of non-corporate assessee

a. 5% of the cost of the project, or                      5% of the cost of the project

b. 5% of capital employed,

whichever is more of (a) & (b)

**Cost of the project :** It means the actual cost of fixed assets, viz land, building, leasehold property, plant & Machinery, furniture etc. Which are shown in the books of the assessee as on the last day of the previous year in which the business is commenced.

**Amount of deduction :** One-fifth of the qualifying expenditure is allowable as deduction in each of the five successive years beginning with the year in which business commences, or as the case may be, the previous year in which the extension of the industrial undertaking is completed or the new industrial unit commences production or operation.

**Consequences in the case of amalgamation or demarger :** The benefit of amortization of preliminary expenditure under this section are ordinarily available only to the assessee who incurred the expenditure. The benefit is however, not lost in a case where the undertaking of an Indian company which is entitled to amortization is transferred to another Indian company in a scheme of amalgamation or demarger within the 5-year period of amortization. In that event, the deduction in respect of previous year in which the amalgamation or demarger takes place and the following previous year within the 5-year period, will be allowed to the amalgamated company or resulting company and not the amalgamating company or demarged company.

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## 1.9 Exercises

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1. What do you mean by 'Business'?
2. What is 'Profession'?
3. What is 'Deemed profit'? Is it taxable?
4. Discuss the incomes which are taxable under the head 'Profits and Gains of business or profession,
5. Write short notes on the following :
  - a. Expenditure on 'Scientific research'
  - b. Expenditure for skill development
  - c. Amortization of 'Preliminary expenses'

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## **Unit - 2 □ Deductions from Gross Total Income**

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### *Structure*

- 2.0 Introduction**
- 2.1 Deduction in respect of Profits and Gains from Industrial Undertaking or Enterprises engaged in Infrastructure Development etc. [Sec. 80-IA]**
  - 2.1.1 Infrastructure facility**
  - 2.1.2 Telecommunication services**
  - 2.1.3 Industrial parks**
  - 2.1.4 Power generation/distribution**
- 2.2 Deduction in respect of Profits and Gains by an Undertaking or Enterprise engaged in development of Special Economic Zone (Sec. 80-IAB)**
- 2.3 Deduction in respect of Profits and Gains from certain Industrial Undertakings other than Infrastructure Development Undertakings [Sec. 80-IB]**
  - 2.3.1 Industrial Undertaking**
  - 2.3.2 Operation of ship**
  - 2.3.3 Hotel industry**
  - 2.3.4 Companies engaged in industrial research [Sec. 80-IB(8)/8A]**
  - 2.3.5 Mineral oils**
  - 2.3.6 Developing and building housing projects**
  - 2.3.7 Undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables or integrated handling, storage and transportation of food grains**
  - 2.3.8 Multiplex theatres**
  - 2.3.9 Convention centre**
  - 2.3.10 Operating and maintaining a hospital in a rural area**
  - 2.3.11 Hospital located in certain areas.**
- 2.4 Deduction in respect of certain Undertakings or Enterprises in certain Special Category States [Sec. 80-IC]**
- 2.5 Deduction in respect of profits and gains from business of hotels and convention centres in specified area (See 80-ID)**

- 2.6 Deduction in respect of Profits and Gains from the business of collecting and processing of bio-degradable waste [Sec. 80JJA]
- 2.7 Deduction in respect of employment of new workmen [Sec. 80JJAA]
- 2.8 Exercises

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## 2.0 Introduction

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Certain deductions are available under sections 80CCC to 80U for some specified assesseees. The provisions of sections 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID & 80-IE are included in the syllabus and discussed in detail as under.

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### 2.1 Deduction in respect of Profits and Gains from Industrial Undertaking or Enterprises engaged in Infrastructure Development etc. [Sec. 80-IA]

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Deduction under section 80-IA is available only to the following undertakings :

- a. provision of infrastructure facility;
- b. telecommunication services;
- c. industrial parks; and
- d. power generation, transmission and distribution.

#### 2.1.1 Infrastructure facility

The provisions of section 80-IA is applicable to an undertaking providing infrastructure facility are given below :

**Conditions**—An undertaking providing infrastructure facility must satisfy the following conditions :

- a. It should provide infrastructure facility—The enterprise must carry on the business of (a) developing, or (b) maintaining and operating, or (c) developing, operating and maintaining any infrastructure facility.

Meaning of “infrastructure facility”—The Finance Act 2001, has modified definition “infrastructure facility”. Under the modified version the term “infrastructure facility” means—

- (i) a road including toll road, a bridge or a rail system;

- (ii) a highway project including housing or other activities being an integral part of the highway project;
  - (iii) a water supply project, water treatment system, irrigation project, sanitation and sewage system or solid waste management system; and
  - (iv) a port, airport, inland waterway or inland port or navigational channel in the sea
- b. Owned by an Indian company—The enterprise is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established under any central or state Act.
  - c. Agreement—The enterprise has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing, maintaining and operating a new infrastructure facility
  - d. Commencement—the enterprise starts operating and maintaining the infrastructure facility on or after 1st April, 2017.

**Amount of deduction**—If all the aforesaid conditions are satisfied, then 100% of the profit is deductible for the first 10 consecutive assessment years out of fifteen years. The deduction commences from the initial assessment year.

However the benefit of deductions is available only for 10 consecutive assessment years falling within a period of fifteenth assessment year beginning with the assessment year in which an assessee begins operating and maintaining infrastructure facility.

*What is initial assessment year*—Initial assessment year for this purpose means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year in which the enterprise begins operating and maintaining the infrastructure facility.

**Audit report**—The deduction under section 80-IA or 80-IB is admissible only if the accounts of the undertaking have been audited by a chartered accountant and the audit report duly signed and verified by such accountant is furnished along with the return of income (Form No. 10CCB).

### **2.1.2 Telecommunication services**

An industrial undertaking which provides telecommunication services can claim deduction under section 80-IA.

**Conditions**—The following conditions should be satisfied :

Condition 1	It should be a new undertaking
Condition 2	It should not be formed by transfer of old plant and machinery
Condition 3	The activity should commence during the specified period given below

An undertaking engaged in providing telecommunication services which starts providing telecommunication services (whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broad-band network and internet services) at any time after March 31, 1995 but before March 31, 2005 is eligible for deduction under section 80-IA. “Domestic satellite” for this purpose means a satellite owned and operated by an Indian company for providing telecommunication service.

**Amount of deduction**—If all the aforesaid conditions are satisfied, then deduction is available under section 80-IA as follows—

% of profit deductible	Period of deduction commencing from the initial assessment year
100	First 5 years
30	Next 5 years

### 2.1.3 Industrial parks

An undertaking which develops and operates industrial parks or special economic zone must satisfy the following conditions in order to avail the benefit of section 80-IA—

Condition 1	It develops, develops and operates or maintains and operates an industrial park or a special economic zone (notified for this purpose in accordance with any scheme framed and notified by the Central Government).
Condition 2	The industrial park must start operating during April 1, 2006 and March 31,2011 and it should be notified under the Industrial Park Scheme, 2008 or the special economic zone must start operaring during April, 1997 March 31, 2005.

**Amount of deduction**—If all the aforesaid conditions are satisfied, 100 per cent of profit is deductible for 10 years commencing from initial assessment year.

### 2.1.4 Power generation/distribution

An industrial undertaking which generates/distributes power can claim deduction under section 80-IA.

**Condition**—The following condition should be satisfied :

Condition 1	It should be a new undertaking
Condition 2	It should not be formed by transfer of old plant and machinery
Condition 3	The activity should commence during the specified period

**It should be a new undertaking**—The industrial undertaking is not formed by splitting up, or the reconstruction, of a business already in existence.

**Exception one**—This condition will not apply where the business is re-established, reconstructed or revived by the same assessee after the business of any industrial undertaking carried on by him in India is discontinued due to extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee (and used for the purpose of such business) as a direct result of (i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or (ii) riot or civil disturbance, or (iii) accidental fire or explosion, or (iv) action by any enemy or action taken in combating an enemy (whether with or without a declaration of war).

**It should not be formed by transfer of machinery or plant previously used for any purpose**—It is not formed by a transfer to a new business of machinery and plant previously used for any purpose.

**Exceptions**—In the cases given below the aforesaid rule is not applicable—

i) 20 per cent old machinery is permitted – If the value of the old plant and machinery does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been satisfied.

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

- a) Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.
- b) Such machinery or plant is imported into India from any country outside India.
- c) No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

**Commencement**—The undertaking is set up in any part of India for the generation or generation and distribution of power and it begins the operation at any time during April 1, 1993 and March 31, 2017. Alternately, it starts transmission or distribution by laying a network of new transmission or distribution lines at any time between April 1, 1999 and March 31, 2017.

Alternatively, it undertakes substantial renovation and modernisation of the existing transmission or distribution lines at any time during the period commencing on April 1, 2004 and ending on March 31, 2017. The term “substantial renovation and modernisation” has been defined to mean an increase in the book value of plant and machinery by 50 percent as compared to book value of such plant and machinery on April 1, 2004.

**Amount of deduction**—If all the aforesaid conditions are satisfied, 100 per cent of profit is deductible for 10 consecutive assessment years commencing from initial assessment year.

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## **2.2 Deductions in respect of Profits and Gains by an Undertaking or Enterprise engaged in development of Special Economic Zone [Sec. 80-IAB]**

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The developers of special economic zone can avail deduction u/s 80-IAB from the assessment year 2006-07.

*Conditions*-The following conditions should be satisfied—

1. The taxpayer is a developer of a special economic zone.
2. The gross total income of the taxpayer includes profits and gains derived by an undertaking from any business of developing a special economic zone.
3. Such special economic zone is notified on or after April 1, 2005 and the development of special economic zone should begin on or before March 31, 2017.
4. The books of the account of the taxpayer are audited.

Deduction under section 80-IAB is not available unless it is claimed in the return of income. Moreover, return of income should be submitted on or before the due date of submission of return of income given by section 139(1).

**Amount of deduction**-If the above conditions are satisfied, the taxpayer can claim 100 per cent deduction in respect of the aforesaid profit. However, no deduction under this section will be available to a developer where the development of the special economic zone begins on or after April 1, 2017.

***Period of Deduction***-The aforesaid deduction is available for 10 consecutive assessment years. The deduction may be claimed, at the option of the taxpayer, for any 10 consecutive assessment years out of 15 years beginning from the year in which the special economic zone has been notified by the Central Government.

***Transfer of undertaking***-If a taxpayer who develops a special economic zone on or after April 1, 2005 (“transferor”) transfers the operation/ maintenance of such zone to another developer (“transferee”), then deduction shall be allowed to the transferee for the remaining period of 10 years as if the operation and maintenance were not so transferred. Similar rule will be applicable in the case of amalgamation or demerger of an Indian company which had developed a special economic zone with another Indian company.

Where any amount of profits and gains is claimed and allowed as deduction under section 80-IAB for any assessment year, deduction to the extent of such profits and gains shall not be allowed under section 80HH to 80RRB and shall in no case exceeds profits and gains of such eligible business.

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### **2.3 Deduction in respect of Profits and Gains from certain Industrial Undertakings other than Infrastructure Development Undertakings [Sec. 80-IB]**

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Deduction under section 80-IB is available to different industrial undertakings as follows :-

- a. business of an industrial undertaking;
- b. operation of ship;
- c. hotels;
- d. industrial research;
- e. production of mineral oil;
- f. developing and building housing project;
- g. undertaking engaged in the integrated handling, storage and transportation of food grains;
- h. multiplex theatres;
- i. convention centre;
- j. Operating & maintaining a hospital in rural area (w.e.f. Ay 2005-06);
- k. Hospital located in certain areas.

### 2.3.1 Industrial Undertaking

The provisions of a section 80-IB as applicable to an industrial undertaking is certain condition are.

**Conditions**—To claim deduction under section 80-IB an industrial undertaking (i.e. an undertaking which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining) must satisfy the following conditions :

1. **It should be a new undertaking** : The industrial undertaking is not formed by splitting up or the reconstruction of a business already in existence. However, if new industrial undertaking is set up in an old building deduction shall be admissible as this section provides for new undertaking and does not provide for new building.

**Exception** : The aforesaid condition of new undertaking is not applicable where the business is re-established, reconstructed or revived by the same assessee after the business of any industrial undertaking carried on by him in India is discontinued due to expensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee (and used for the purpose of such business) as a direct result of flood, typhoon, hurricane, cyclone, earthquake or other convulsion or action by any enemy or action taken in combating an enemy (where with or without a declaration of war.

2. **It should not be formed by transfer of machinery or plant previously used for any purpose** : It is not formed by a transfer to a new business of machinery and plant previously used for any purpose.

**Two exceptions**—In the two cases given below, the aforesaid rule is not applicable.

- (i) 20% old machinery is permitted—If the value of the transferred assets does not exceed 20% of the total value of the machinery or plant used in the business of machinery and plant previously used for any purpose.
- (ii) Second hand imported machinery is treated as new : Any machinery or plant which was used outside India by any person other than the assessee, if the following conditions are fulfilled :
  - (a) Such machinery or plant was not at any time used in India.
  - (b) No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

3. **It should not manufacture or produce articles specified in the eleventh schedule :** It manufactures or produces any articles or things (not being an article or thing specified in the list in the Eleventh schedule) or operates cold storage plant in any part of India.
4. **It must start manufacturing within the time period :** It begins to manufacture or produce articles or thing or to operate cold storage plant or plants within a specified time limit as prescribed by the Central Government.
5. **It should employ 10/20 workers :** In case where the industrial undertaking manufactures or produces articles or thing the undertaking employs 10 or more workers in a manufacturing process carried on with the aid of power or employs 20 or more workers in a manufacturing process carried on without the aid of power.
6. **Amount of Deduction:** An industrial undertaking can claim deduction at the rates given below

	Small scale industrial undertaking	Industrial undertaking (including cold storage) set up in an industrial backward State [Eighth Shedule]	Industrial undertaking (including cold storage) set up in Category A notified backward district	Industrial undertaking (including cold storage) set up in Category B notified backward district	Cold chain facility for agricultural produce [see Note 1]	Any other
1. Nature of article to be produced	Any	Any [see Note 2]	other than those given in Eleventh Schedule	other than those given in Eleventh Schedule	Cold chain facility for agricultural produce	Other than those given in Eleventh schedule]
2. Time limit for commencement of production or operation	Between April 1, 1991 and March 31, 2002	Between April 1, 1993 and March 31, 2004 (March 31, 2012 for an industrial undertaking in the State of Jammu and Kashmir)	Between October 1, 1994 and March 31, 2004	Between October 1, 1994 and March 31, 2004	April 1, 1999 and March 31, 2004	Between April 1 1991 and March 31, 1995
3. Amount of deduction (period of deduction commences from initial assessment year)						
3.1 Owned by a company	30% for first 10 years	100% for first 5 years and 30% for next 5 years	100% for first 5 years and 30% for next 5 years	100% for first 3 years and 30% for next 5 years	100% for first 3 years and 30% for next 5 years	30% for first 10 years
3.2 Owned by a cooperative society	25% for first 12 years	100% for first 5 years and 25% for next 7 years	100% for first 5 years and 25% for next 7 years	100% for first 3 years and 25% for next 7 years	100% for first 5 years and 25% for next 7 years	25% for first 12 years
3.3 Owned by and other person	25% for first 10 years	100% for first 5 years and 25% for next 5 years	100% for first 5 years and 25% for next 5 years	100% for first 3 years and 25% for next 5 years	100% for first 5 years and 25% for next 5 years	25% for first 10 years

### 2.3.2 Operation of ship

No deduction is available.

### 2.3.3 Hotel industry

No deduction is available w.e.f. the assessment year 2011-12.

### 2.3.4 Companies engaged in industrial research [Sec. 80-IB(8)/8A]

Section 80-IB is applicable if the following conditions are fulfilled—

Condition 1	The taxpayer is a company registered in India.
Condition 2	Such company has scientific and industrial research and development as its main object.
Condition 3	It is for the time being approved by the prescribed authority (i.e., Secretary, Department of Scientific and Industrial Research).

**Amount of deduction**—If all the aforesaid conditions are satisfied, the following is deductible—

	If the company is approved by the prescribed authority at any time before April 1, 1999	If the company is approved by the prescribed authority after March 31, 2000 but before April 1, 2007
Amount of deduction	100 per cent of profit from such business	100 per cent of profit from such business
Period of deduction	5 years beginning with the initial assessment year	10 years beginning with the initial assessment year

### 2.3.5 Mineral oils

One should satisfy the following conditions—

- i) It should be a new undertaking.
- ii) It should not be formed by transfer of machinery or plant previously used for any purpose.
- iii) It should commence commercial production as follows—

	Commencing production of mineral oil	Refining of mineral oil
Undertaking located in North-Eastern Region	Before April 1, 1997	—
Undertaking located any where in India	After March 31, 1997 but before April 2, 2017	After September 30, 1998 but before April 1, 2012

iv) It should employ 10/20 workers.

North-Eastern Region comprises of the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.

**Amount of deduction**—100 per cent of the profit is deductible for the first 7 years commencing with the year in which the undertaking commences commercial production of mineral oil or refining of mineral oil.

### 2.3.6 Developing and building housing projects

An undertaking engaged in developing and building housing projects shall be eligible to claim deduction under section 80-IB subject to the following :

Condition 1	The project should be approved by the local authority before March 31, 2008.
Condition 2	The size of the plot of land is a minimum of one acre.
Condition 3	The undertaking commences development and construction of the housing project after September 30, 1998 and it should complete construction within 4 years from the end of the financial year in which the housing project is first approved or before April 1, 2008, whichever is later.
Condition 4	The built-up area of the shops and other commercial establishments included in the housing project shall not exceed 5 per cent of the aggregate built-up area of the housing project or 2,000 sq. ft., whichever is less.
Condition 5	The built-up area of each residential unit should be subject to the following maximum limit—

Place where residential unit is situated	Minimum size of the plot of land should be one acre and the maximum built-up area of each residential unit should be as given below—
Within the cities of Delhi and Mumbai	1,000 sq. ft.
Within 25 kilometers from the local limits of Delhi and Mumbai	1,000 sq. ft.
At any other place	1,500 sq. ft.

**Amount of deduction**—If all the aforesaid conditions are satisfied 100 per cent of the profit derived in any previous year relevant to any assessment year from such housing project is deductible.

### **2.3.7 Undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables or integrated handling, storage and transportation of food grains**

Under section 80-IB(11A) deduction is available in the case of an undertaking deriving profit from the integrated business of handling, storage and transportation of food grains, if the undertaking begins to operate such business after March 31, 2001. The tax incentive has been extended to an undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables. The business of processing, preservation and packaging of meat and meat poultry or portty or marine or dairy products should commence on or after 31.3.2009.

**Amount of deduction**—The amount of deduction is given below :

Enterprises	% of profit	Period of deduction commencing from the initial assessment year (i.e., the year in which the undertaking begins the business)
Owned by a company	100	First 5 years
	30	Next 5 years
Owned by any other person	100	First 5 years
	25	Next 5 years

### 2.3.8 Multiplex theatres

Presently, no deduction is available

### 2.3.9 Convention centre

Presently, no deduction is available

### 2.3.10 Operating and maintaining a hospital in a rural area

To claim the deduction the following conditions should be satisfied—

Condition 1	The assessee owns an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area.
Condition 2	Such hospital is constructed at any time during October 1, 2004 and ending on March 31, 2008. For this purpose a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the concerned local authority.
Condition 3	The hospital has at least 100 beds for patients.
Condition 4	The construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority.
Condition 5	The assessee furnishes audit report along with the return of income.

**Amount of deduction**—If the above conditions are satisfied, 100 per cent of the profits and gains of such business is deductible for a period of 5 consecutive assessment years, beginning with the initial assessment year (i.e., the assessment year relevant to the previous year in which the undertaking begins to provide medical services).

### 2.3.11 Hospitals located in certain areas [Sec. 80-IB (11C)]

With a view to encouraging investment in hospitals in non-metrocities, sub-section (11C) has been inserted in section 80-IB with effect from the assessment year 2009-10.

Condition—The benefit of deduction is available, if the following conditions are satisfied—

1. Location	The hospital is located anywhere in India, other than excluded area. The excluded area shall mean (or in other words, the hospital should not be located in) an area comprising the urban agglomerations of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore and Ahmedabad, the districts of Faridabad, Gurgaon, Gaziabad, Gautam Budh Nagar and Gandhinagar and the city of Secunderabad, The area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census.
2. Construction	The hospital is constructed at any time during April 1, 2008 and March 31, 2013, For this purpose, a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the local authority concerned.
3. Commencement	The hospital should start functioning at any time during April 1, 2008 and March 31, 2013.
4. Number of beds	The hospital has at least 100 beds for patients.
5. Municipal bye-laws	The construction of the hospital is in accordance with the regulation or bye-laws of the local authority.

**Deduction**—If the above conditions are satisfied, 100 per cent of the profits and gains derived from the business of hospital shall be deductible for a period of 5 assessment years, beginning with the initial assessment year. Deduction should be claimed in the return of income and return of income should be submitted on or before the due date of submission of return of income.

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### **2.3 Deduction in respect of certain Undertakings or Enterprises in certain Special Category States [Sec. 80-IC]**

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**Conditions**—The assessee has to satisfy the following conditions to claim deduction under section 80-IC—

1. **Not formed by splitting up or reconstruction of existing business**—The industrial undertaking is not formed by splitting up, or the reconstruction, of a business already in existence.

**Exception**—The aforesaid condition of “new undertaking” is not applicable where the business is re-established, reconstructed or revived by the same assessee after the business of any industrial of, any building, machinery, plant or furniture owned by the assessee after the business of any industrial

undertaking carried on by him in India is discontinued due to extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee (and used for the purpose of such business) as a direct result of (i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or (ii) riot or civil disturbance, or (iii) accidental fire or explosion, or (iv) action by any enemy or action taken in combating an enemy (where with or without a declaration of war).

2. **Not formed by transfer of old plant and machines—**
3. **Industrial undertaking should be set up in certain special category of states—**The industrial undertaking should be set up in states given in column 1 of the table given in below. Moreover, it should be in a specified area [see column 3 of the table.
4. **Manufacture/production of specified goods—**The industrial undertaking should manufacture/produce specified goods/articles [see columns (3) and (4) of the table given below].
5. **Commencement—**The industrial undertaking must begin to manufacture or produce article or thing within the time-limit given in column (2) of the table given hereunder. In case of an existing unit, substantial expansion should take place during the time-limit given in column (2) of the table.
6. **Audit—**The books of account of the taxpayer should be audited and the audit report in Form 10CCB should be submitted along with the return of income.

**Amount of deduction—**If the aforesaid conditions are satisfied, the deduction is available under section 80-IC as follows—

State in Which the industrial undertaking is set up	Time limit for commencement of production or substantial expansion	Nature of articles to be produced if industrial undertaking is set up (or completes substantial expansion) in the industrial zone of the relevant State given in section 80-IC2 (a)	Nature of article to be produced if industrial undertaking is set up (or completes substantial expansion) in any area of the relevant State	Amount deductible
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(1)	(2)	(3)	(4)	(5)
Sikkim	December 23, 2002 to March 31, 2012	Any article but other than those given in the Thirteenth Schedule [part A]	Any article given in Fourteenth Schedule [part B]	100% of profit and gains of the industrial undertaking for 10 years commencing from the initial assessment year
Himachal Pradesh or Uttaranchal	January 7, 2003 to March 31, 2012	Any article but other than those given in the Thirteenth Schedule [part B]	Any article given in Fourteenth Schedule [part C]	100% of the profit and gains of the industrial undertaking for the first 5 years commencing with the initial assessment year and 25% (30% in the case of a company) for the next 5 years
North-Eastern States [i.e., Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura]	December 24, 1997 to March 31, 2007	Any article but other than those given in the Thirteenth Schedule	Any article given in Fourteenth Schedule [part A]	100% of profit and gain of industrial undertaking for 10 years commencing from the initial assessment year

Any article can be produced as Thirteenth Schedule has not provided negative list for North-Eastern Status.

**What is substantial expansion**—For the aforesaid purpose substantial expansion is calculated as under—

1. Find out the book value of plant and machinery (before depreciation) as on the first day of the previous year in which substantial expansion is taken.
2. Find out the amount of investment in plant and machinery during the previous year.
3. Find out  $(2) \div (1)$

If the proportion computed under (3) (supra) is 50 per cent or more, then it is taken as substantial expansion.

**Industrial zones given under section 80-IC(2)**— If an industrial undertaking has begun or begins to manufacture or produce any article or thing (not being any article or thing specified in the Thirteenth Schedule), or manufactures or produces any article or thing (not being any article or thing specified in the Thirteenth Schedule) and undertakes substantial expansion during the period given in column 2 of the table (supra), then such industrial undertaking should be in the following industrial zones notified by the Board for the relevant State—

- a. Export Processing Zone; or
- b. Integrated Infrastructure Development Centre; or
- c. Industrial Growth Centre; or
- d. Industrial Estate; or
- e. Industrial Park; or
- f. Software Technology Park; or
- g. Industrial Area; or
- h. Theme Park

These areas shall be notified by the Board in accordance with the notified scheme of the Central Government.

**Period of deduction not to exceed 10 years**—No deduction shall be allowed to any undertaking or enterprise under section 80-IC, where the total period of deduction inclusive of the period of deduction under this section or under section 80-IB(4) or under section 10C, as the case may, exceeds 10 assessment years.

**Initial assessment year**—“Initial assessment year” means the assessment year relevant to the previous year, in which the undertaking or the enterprise begins to manufacture to produce articles or things, or commences operation or completes substantial expansion.

**Double deduction not allowed**—In computing the total income of the assessee, no deduction shall be allowed under sections 80CCC to 80U or section 10A or 10B, in relation to the profits and gains of the undertaking or enterprise.

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## **2.4 Deduction in respect of profits and gains from business of hotels and convention centres in specified area (Sec. 80-ID)**

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Deduction under this section is allowed to an assessee whose gross total income includes any profit or gain derived from—

- a) the business of hotel located in the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad, if such hotel is constructed and has started or starts functioning at any time during the period beginning on 1.4.2007 and ending on 31.7.2010; or
- b) the business of building, owning and operating a convention centre, located in the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad, if such convention centre is constructed at any time during the period beginning on 1.4.2007 and ending on 31.7.2010.
- c) the business of hotel located in the specified district having a World Heritage Site, if such hotel is constructed and has started or starts or starts functioning at any time during the period beginning on 1.4.2008 and ending on 31.3.2013.

The above business is hereinafter referred to as the eligible business.

**Condition :** To claim deduction under Section 80-ID, an assessee must fulfil the following conditions—

- (i) It should be a new undertaking. The business is not formed by splitting up or the reconstruction of a business already in existence.
- (ii) The business is not formed by the transfer to a new business of a building previously used as a hotel or a convention centre as the case may be.
- (iii) The business is not formed by the transfer to a new business of plant or machinery previously used for any purpose.

However, there is an exception. (See page 23)

- (iv) Audit report in prescribed form is required.

**Amount of deduction :** 100% of the profit derived from such business for 5 consecutive assessment years beginning from the initial assessment year.

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## **2.6 Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste [Section 80JJA]**

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Where the gross total income of an assessee includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste for :

- i) generating power, or
- ii) producing, bio-fertilizers, bio-pesticides or other biological agents, or
- iii) producing bio-gas, or
- iv) making pellets or briquettes for fuel, or
- v) organic manure,

a deduction under section 80JJA shall be allowed.

**Quantum of deduction :** The whole of such profits or gains shall be allowed as a deduction for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences.

Subsidary received by the assessee from the Agriculture Department of the State against sale of biofertilizer manufactured by the assessee is an income derived from the assessee's business and shall be included in business means for the purpose allowing deduction u/s 80JJA.

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## **2.7 Deduction in respect of employment of new workmen [Sec. 80JJAA]**

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Deduction under this section is allowed only to an Indian company.

Where the Gross Total Income of an Indian company includes any profits and gains derived from any industrial undertaking engaged in the manufacture or production of article or thing, a deduction under this section shall be allowed in respect of employment of new workmen if certain conditions are satisfied.

**Conditions :**

- i) The industrial undertaking is not formed by splitting up or reconstruction of an existing industrial undertaking or amalgamation with another industrial undertaking
- ii) The company employs new regular workmen in the previous year.

- iii) The company should furnish, alongwith the return of income, the report of a Chartered Accountant in Form No. 10DA giving such particulars in the report as may be prescribed.

**Quantum of deduction :** Deduction shall be allowed of an amount equal to 30% of the additional wages / employee cost of the new regular workmen employed by the assessee in the previous year.

**Period of deduction :** Deduction shall be allowed for 3 assessment years, including the assessment year relevant to the the previous year in which such employment is provided.

“Additional employee” means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include—

- i) an employee whose total emoluments are more than Rs. 25,000 per month; or
- ii) an employee for whom the entire contribution is paid by the Government under the Employees’ Pension Scheme notified in accordance with the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952;
- iii) an employee employed for a period of less than 240 days [150 days, if the assessee is engaged in the business of manufacturing of apparel or footwear or leather products from the assessment year 2019-20] during the previous year; or
- iv) an employee who does not participate in the recognised provident fund.

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## 2.8 Exercises

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1. What are the provisions for deduction under section 80-IA in respect of profits and gains from industrial undertakings or enterprises engaged in the infrastructure development ?
2. What do you mean by industrial undertakings other than infrastructure development undertakings ? Who are eligible for deduction under section 80-IB? What conditions are to be fulfilled for claiming deduction under this section ?
3. What are the conditions to be fulfilled by the following industrial undertaking or enterprises to avail deduction u/s 80-IA? Also state the amount of deduction available for each of them.

- (a) Telecommunication services
  - (b) Industrial parks
  - (c) Power generation, transmission and distribution or substantial renovation and moderation of existing distribution lines.
4. State the conditions to be fulfilled by specified hotels in specified areas and also by non-specified hotels to avail deduction u/s 80-IB.
  5. When can developing and building housing projects claim deduction u/s 80-IB?
  6. State the conditions to be satisfied of the following to avail deduction u/s 80-IB? Also state the amount of deduction available in each case.
    - (a) Industrial research.
    - (b) Operating and maintaining of hospital in rural area.
  7. What do you understand by 'Initial Assessment Year in connection with deduction u/s 80-IA and 80-IB?
  8. What are the provisions for deduction u/s 80-IC in respect of profits and gains of certain undertakings in certain special category of states ?
  9. What do you understand by substantial expansion and what are industrial zone given u/s 80-IC ?
  10. State the provisions of section 80JAA.

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## **Unit - 3 □ Set-off and Carry Forward of Losses**

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### *Structure*

#### **3.0 Introduction**

#### **3.1 Inter-Source Adjustment [Sec. 70]**

#### **3.2 Inter-Head Adjustment [Sec. 71]**

#### **3.3 Carry forward of loss**

##### **3.3.1 Carry forward and set-off of losses other than speculation loss [Sec. 72]**

##### **3.3.2 Carry forward and set-off of speculation loss [Sec. 73]**

##### **3.3.3 Carry forward and set-off of capital loss [Sec. 74]**

##### **3.3.4 Carry forward and set-off of loss from activity of owning and maintaining race horses [Sec. 74A]**

##### **3.3.5 Carry forward and set-off loss from house property [Sec. 71B]**

##### **3.3.6 Period of carry forward of losses**

##### **3.3.7 Loss from purchase and sale of securities [Sec. 94(7)]**

##### **3.3.8 Carry forward and set-off of loss and depreciation [Sec. 72A]**

#### **3.4 Exercises**

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### **3.0 Introduction**

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Simple way of computation of total income is to lump together all the various sources of income falling under one head and then all heads are pooled. Where the net result of any source is loss, it can be set off against profits from another source of income under the same head. In case the net result after pooling all heads of income is a loss it can be carried forward to next year. The provisions regarding set off etc. are discussed in this unit.

The process of setting off losses and their carry forward may be covered in the following steps :

Step 1 : Inter-source adjustment under the same head of income.

Step 2 : Inter-head adjustment in the same assessment year if a loss cannot be set off fully or partly under Step 1.

Step 3 : Carry forward of loss only if a loss cannot be set-off fully or partly under step 1 & 2.

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### 3.1 Inter-Source Adjustment [Sec. 70]

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If an assessee has loss from one source falling under a head, he is entitled to have the amount of such loss set off against the profits of another source under the same head of income.

For example, if there is a loss from business A, it can be set off against the profits of business B. However, to the aforesaid, the following are exceptions :

- a. Loss from one speculation business can be set off against the profits of another speculation business only.
- b. Loss incurred in the business of owning and maintaining race horses cannot be set off against any income except the profit from such business.
- c. By virtue of section 58(4) a loss can not be set off against the income from winning from lotteries, crossword puzzles, races including horse races, card game and other games of any sort, from gambling, or betting of any form or nature. Any losses other than the above can be set off against any other income within the same head of income.

Again, any loss can be set-off against any other income within the same head of income, e.g.—

- a. Loss from house property can be set off against income from any other house property;
- b. Non-speculative business loss can be set off both from speculative and non-speculative business profits;
- c. Short-term capital loss can be set off against any capital gain (whether long-term or short-term);
- d. Under the head “Income from other sources” loss from any activity (other than the business of owning and maintaining race horses) can be set off against any income but other than winning form lottery, crossword puzzles, etc.

**Speculative business** : According to section 43(5), “speculative transaction” means a transaction in which a contract for the purchase or sale of any commodity, including stock and shares, is periodically (or ultimately) settled, otherwise than by the actual delivery or transfer of the commodity or scrips.

In other words, if there is a contract for purchase/sale of an article (not being share, stock or commodity) it would not be a speculative transaction.

If a contract for purchase/ sale of share, stock or commodity is ultimately settled otherwise than by actual delivery or transfer of commodity, it would be speculative

transaction, even if at the time of entering into the contract there was no intention to gamble. On the other hand, if actual delivery of commodity takes place, the transaction would be a nonspeculative transaction, even if it is highly speculative otherwise.

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### **3.2 Inter-Head Adjustment [Sec. 71]**

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Where the net result from one head of income is a loss, it can be set off against the income from any other head. For instance, a business loss which can not be set off against the profit under the same head, can be set off against the income from any other head of income. To the above rule the following are the exceptions :

- a. Speculative business loss cannot be set off against any other income;
- b. Losses from the business of owning and maintaining race horses can not be set off against any other income.
- c. Losses under the head “capital gains” cannot be set off against the income of any other head;
- d. Profits from winnings from lottery, crossword puzzles, horse races, gambling, betting etc. will never be available to set off losses from any head [Sec. 58(4)].
- e. With effect from the assessment year 2018-19, the section 71(3A) provides that set-off of losses under the head income from house property against any other head of income shall be restricted to Rs. 2 lakh for any assessment year.

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### **3.3 Carry Forward of Loss**

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If a loss cannot be set off either under the same head or under different heads because of absence or inadequacy of income of the same year, it can be carried forward and set off against the income of the subsequent year.

Under the Act, the following unabsorbed losses can be carried forward up to 8 assessment year :

1. Loss under the head “Income from house property”
2. Loss under the head “profits and gains from business or profession”— (speculative or non-speculative).
3. Loss under the head “capital gains” (both long-term and short-term).
4. Loss under the head “income from other sources” representing loss from the activity of owning and maintaining race horses can only be carried forward for 4 assessment years. Other losses cannot be carried forward.

### 3.3.1 Carry Forward and set-off of Losses other than Speculation Loss [Sec. 72]

The following are the provisions regarding the carry forward and set off of business losses :

Such loss can be set off only against business income – Loss under the head “Profits and gains from business or profession” can be carried forward and set off against the income of any business or profession (including speculative business profits) in a subsequent year (not necessarily the same business in which loss has been incurred). For this purpose, business profits would include such business profits which are assessable under the heads other than “profits and gains from business or profession”. e.g. where shares are held by an assessee as part of his trading assets, dividends on such shares would form a part of business income and consequently the current dividend will be available to set off his brought forward business losses from earlier years. Secondly, the interest on short term deposits, Debentures etc., would also form a part of business profits for the purpose of setting off brought forward business losses provided they are maintained as stock-in-trade.

Continuity—from the assessment year 2000-01 brought forward business loss can be carried forward even if there is no continuity of the business in which the loss occurred.

The loss can be carried forward and set off against the profits of the assessee who incurred the loss.

This rule has the following exceptions :

- a. Accumulated business loss of an amalgamating company u/s 72A.
- b. Accumulated business loss of demerged company.
- c. Accumulated business loss of a proprietary concern or a firm when its business is taken over by a company by satisfying the conditions of section 47(xiii)/(xiv).
- d. Loss of business acquired by inheritance u/s 78.

The business loss can be carried forward for 8 assessment years :

**Exception : 1.** Sec. 33B—The unabsorbed loss of the undertaking which is discontinued in the circumstances stated in Sec. 33B, including the past business losses of the undertaking brought forward from earlier years, is eligible for being carried forward and set off against profits of re-established, re-constructed or revived business up to a period of 8 years, reckoned from the year in which the business was re-established, re-constructed or revived by the assessee.

**Exception : 2.** Sec. 41(5)—The second exception to the rule that business or profession loss can be carried forward only for 8 years is given by Sec. 41(5). This exception is applicable if the following conditions are fulfilled :

- a. Loss of such business or profession pertaining to the year in which it is discontinued could not be set off against any other income of that year;
- b. The business is discontinued;
- c. Such business is not speculative business; and
- d. After discontinuation of such business or profession, there is a receipt which is deemed as business income u/s 41(1), (3), (4), or (5).

Return of loss should be filed under Sec. 139(3)[S. 80]; A loss cannot be carried forward unless it is determined in pursuance of a return filed within the time limit allowed u/s, 139(3), i.e., the time allowed u/s 139(1). In other words, if an assessee fails to file his return of loss on or before the due date of furnishing return as per section 139(1), then by virtue of section 80 the following losses (of the year in which the default is made) cannot be carried forward.

- a. Loss of speculative or non-speculative business (not being unabsorbed depreciation).
- b. Short or long term capital loss; and
- c. Loss (not being unabsorbed depreciation) from activity of owning or maintaining race horses.

In case where profits are not sufficient to absorb brought forward losses, current depreciation and current business losses, the same should be deducted in the following order :

- (i) Current depreciation [32(1)]
- (ii) Current scientific research expenditure [Sec. 35(1)]
- (iii) Brought forward business losses [72(1)]
- (iv) Unabsorbed family planning expenditure [36(1)(ix)]
- (v) Unabsorbed depreciation [32(2)]
- (vi) Unabsorbed scientific research capital expenditure [35(4)]
- (vii) Unabsorbed development allowance [Sec. 33A(2) (ii)]

Loss from a source which is not taxable cannot be carried forward.

### **3.3.2 Carry forward and set-off of speculation loss [Sec. 73]**

Loss of any speculation business can be set off only against the profits of another speculative business in the year in which it is incurred. However, if such loss cannot be set off for insufficiency of the said profit, it can be carried forward for 4 assessment years to be set off against speculative income only. There is no necessity of the continuity of the business.

### **3.3.3 Carry forward and set-off of capital loss [Sec. 74]**

Where the net result of computation under the head 'capital gains' is a loss, such loss shall be carried forward to the following assessment year. The short term capital loss can be set off against any income under the head capital gain (long-term or short-term). But long-term capital loss can be set off only against long-term capital gain. Both the long term and short term capital loss can be carried forward for 8 assessment years.

### **3.3.4 Carry forward and set off of loss from activity of owning and maintaining of race horses [Sec. 74A]**

Losses incurred by owner of race horses in the activity of owning and maintaining race horses can be set off only against income, if any, from the activity of owning and maintaining race horses in the same assessment year, such unabsorbed loss can be carried forward for four subsequent assessment years and set off only against income from activity of owning and maintaining race horses.

### **3.3.5 Carry forward and set off of loss from house property [Sec. 71B]**

This section provides that where the assessee incurs any loss under the head 'income from house property' and such loss is not fully adjusted under other heads of income in the same assessment year, then the balance loss shall be allowed to be carried forward and set off in subsequent years only for 8 assessment years against income from house property only.

### **3.3.6 Period of carry forward of losses**

- (i) Business loss → 8 assessment years.
- (ii) Speculation loss → 4 assessment years.
- (iii) Capital loss → 8 assessment years.
- (iv) Loss from owning & maintaining race horses → 4 assessment years.
- (v) House property loss → 8 assessment years.

### **3.3.7 Loss from purchase and sale of securities [Sec. 94(7)]**

This section inserted from assessment year 2002-03, is applicable if the following conditions are satisfied :

1. Any person buys or acquires any securities, shares, or units within a period of 3 months before the record date as may be fixed by concerned authority/ company, Unit Trust, etc.

2. Such person sells or transfers such securities, shares or units within a period of 3 months after such date.
3. The dividend or income on such securities, shares or units received or receivable by such person is exempt.

Record date : Record date means such a date as may be fixed by a company / a mutual fund /UTI for the purpose of entitlement of the holder of the securities/ share/ units to receive dividend.

### **3.3.8 Carry forward and set-off of accumulated loss and unabsorbed depreciation in amalgamated or demerger etc. [Sec. 72A]**

If the following conditions are satisfied, then the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be loss/ depreciation of the amalgamated company for the previous year in which the amalgamation is effected—

1. *Condition one* – There is an amalgamation of a company owning industrial undertaking, ship or a hotel with another company; or a banking company with SBI or any subsidiary of SBI. For this purpose, an industrial undertaking is an undertaking engaged in the manufacture or processing of goods, or the manufacture of computer software or the business of generation or distribution of electricity or any other form of power or mining or the construction of ships, aircrafts or rail systems, the business of providing telecommunication services whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services.
2. *Condition two* – The amalgamating company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for 3 or more years.
3. *Condition three* – The amalgamating company has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation.
4. *Condition four* – The amalgamated company continues to hold at least three-fourths in the book value of fixed assets of the amalgamating company which is acquired as a result of amalgamation for five years from the effective date of amalgamation.
5. *Condition five* – The amalgamated company continues the business of the amalgamating company.
6. *Condition six* – The amalgamated company, which has acquired an industrial undertaking of the amalgamating company by way of amalgamation, shall achieve the level of production of at least 50 per cent of the installed capacity

of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation.

However, the Central Government, on an application made by the amalgamated company may relax this condition.

7. *Condition seven* – The amalgamated company shall furnish to the Assessing Officer a certificate in Form No. 62, duly verified by an accountant, with reference to the books of account and other documents showing particulars of production, along with the return of income for the assessment year relevant to the previous year during which the prescribed level of production is achieved and for subsequent assessment years relevant to the previous years falling within 5 years from the date of amalgamation.

**Consequences when the above conditions are satisfied**—If the above conditions are satisfied, then accumulated business loss and unabsorbed depreciation of the amalgamating company shall be deemed to be loss and depreciation of the amalgamated company for the previous year in which amalgamation is effected.

**Consequences when the above conditions are not satisfied after adjusting loss/depreciation**—In case the above specified conditions are not fulfilled, then that part of brought forward of loss and unabsorbed depreciation which has been set off by the amalgamated company shall be treated as the income of the amalgamated company for the year in which the failure to fulfil the conditions occurs.

**Example 1 :**

XY Ltd. wants to amalgamate with PQ Ltd. on June 30, 2018. You are required to find out the tax implication in respect of the following losses/allowances of XY Ltd. in the assessments of XY Ltd. (i.e., amalgamating company) and PQ Ltd. (i.e., amalgamated company).

Unabsorbed depreciation allowance of the previous year 2012-13 : Rs. 36,000; brought forward business loss of the previous year 2014-15 : Rs. 10,00,000; unabsorbed scientific research expenditure : Rs. 11,000; bad debts : Rs. 15,000; capital gain arising on transfer of assets to PQ Ltd. : Rs. 2,50,000 and brought forward capital loss Rs. 40,000. Also discuss whether PQ Ltd. can claim deduction under section 80-IA or 80-IB in respect of industrial undertaking taken over from XY Ltd.

The following table highlights the tax implications in respect of various items given in the problem on the assumption that assets are transferred in a scheme of amalgamation which satisfies the provisions of section 2(IB).

### AMALGAMATIONS CO.

Losses/allowances of XY Ltd. before amalgamation	Tax implication in the hands of	
	PQ Ltd.	XY Ltd.
Unabsorbed depreciation of 2012-13 : Rs. 36,000	If amalgamation satisfies the conditions of section 72A it is deductible, otherwise it is not deductible	As XY Ltd. ceased to exist after amalgamation, it is not entitled for deduction.
Brought forward business loss of 2014-15 : Rs. 10,00,000	If amalgamation satisfies conditions of section 72A it can be set-off and carried forward by PQ Ltd.; otherwise such right is not available.	XY Ltd., cannot carry it forward, as it has ceased to exist after amalgamation.
Unabsorbed scientific research expenses : Rs. 11,000	Allowed subject to conditions of section 35	It cannot be carried forward, as XY Ltd. has ceased to exist.
Bad debts. : Rs. 15,000	Allowed	It is not allowed as deduction as XY Ltd. ceased to exist after amalgamation.
Capital gain : Rs. 2,50,000	It is not taxable in the hands of PQ Ltd. It, however, assets acquired in the scheme of amalgamation are sold by PQ Ltd, of computing capital gain would be cost to XY Ltd. (indirectly Rs. 2,50,000 will merge in capital gain arising at the time of sale of assets by PQ Ltd.)	It is not taxable, as transfer of assets in a scheme of amalgamation to an Indian company does not amount to 'transfer' for the purpose of charging tax on capital gains.
Brought forward capital loss : Rs. 40,000	It cannot be set-off and carried forward by PQ Ltd.	It cannot be carried forward by XY Ltd., as it ceased to exist after amalgamation.

**Note :** As benefit of deduction under section 80-IA or 80-IB is attached to the undertaking (and not to the assessee), deduction under these sections would be available to PQ Ltd. even if the industrial undertakings are taken over from XY Ltd.

**Example 2 :**

X a resident individual, submits the following information for the assessment year 2017-18.

	Rs.
Business A	
Loss of the year 2016-17	(–) 48,000
Brought forward loss of the year 2015-16	(–) 39,000
Business B	
Profit of year 2016-17	1,56,000
Business C (previous year ends on March 31 business discontinued on April 10, 2016)	
Profit of the period from April, 2016 to April 10, 2016	Nil
Brought forward loss of 2016-17	(–) 39,700
Business D (previous year ends on March 31, business discontinued on March 31, 2016)	
Brought forward loss of 2016-17	(–) 40,000
Income from other sources	
Loss from the activity of owning and maintaining Camels for races	(–) 9,000
Dividend on units of UTI held as investment	75,000
Interest on debentures held as investments	90,000
Long-term capital loss on sale of shares	(–) 1,49,000
Income from house property	57,600

Determine the net income of X for the assessment year 2017-18

Also calculate the amount of loss which can be carried forward for being set off in the next assessment year.

**Answer :**

Business income/loss of the assessment year 2017-18	
Loss of business A for the year 2016-17	(–) 48,000
Profit of business B for the year 2016-17	1,56,000
Profit of Business C for the period April 1, 2016 to April 10, 2016	Nil
Loss from the activity of owning and maintaining Camels for races	(–) 9,000
Current business profit	<u>99,000</u>
Less, Brought forward loss of Business A, Business C and Business D [i.e., (Rs. 39,000 + Rs. 39,700 + Rs. 40,000) subject to the maximum or Rs. 99,000]	<u>99,000</u>
Business income	<u>Nil</u>

Computation of net income for the assessment year 2017-18	
Income for house property	57,600
Profit and gains of business or profession	Nil
Income from other sources	
Interest on debentures	90,000
Dividend on units of UTI	<u>Nil</u>
Gross total income	<u>1,47,600</u>
Less deduction under section 80L	<u>Nil</u>
Net income	<u>1,47,600</u>

- Notes :**
1. Though business D was not in existence at any time during the previous year 2016-17, yet the brought forward of business loss of year 2016-17 can be set off against the income of the assessment year 2017-18.
  2. Loss under the head “capital gains” can be carried forward to the next year for set off against long-term capital gain.
  3. The unadjusted brought forward business loss and depreciation (i.e., Rs. 19,700) can be carried forward.

**Example 3 :**

X Ltd. is proposed to be merged with Y Ltd. The following are the particulars of the former company.

	Rs.
Unabsorbed business losses (Non speculative)	2,40,00,000
Unabsorbed depreciation	5,00,00,000
Unabsorbed Investment allowance	90,00,000

Discuss which of the benefits can be availed of by Y Ltd. and also advise the latter on the condition to be fulfilled to claim such benefit.

**Answer :**

As there is no clear indication in the given problem whether the merger of the two companies satisfies the conditions as laid down u/s 2(1A) and 72A, the answer to the said question can be made under the following three situations :

- (a) If the merger is not ‘amalgamation’ within the meaning of Sec. 2(1B); or
- (b) If the merger is ‘amalgamation’ within the meaning of Sec. 2(1B) but it does not satisfy the conditions of Sec. 72A; or
- (c) If the merger satisfies conditions of Sec. 2(1B) as well as Sec. 72A.

Under the aforesaid situations, the position regarding the set off of the unabsorbed losses and allowances by Y Ltd. will be as under :

<b>Whether Y Ltd. can set-off unabsorbed loss/allowance of X Ltd.</b>			
	Situation (a)	Situation (b)	Situation (c)
Unabsorbed Business loss of Rs. 2,40,00,000	No	No	Yes
Unabsorbed depreciation of Rs. 5,00,00,000	No	No	Yes
Unabsorbed Investment allowance of Rs. 9,00,00,000 (It is allowed before the expiry of 8 years from the end of the previous year in which asset in acquired/installed)	No	Yes	Yes

From the above chart, it is clear that all unabsorbed losses/allowances can be set off if the merger satisfies requirement of section 72A. In other words, in order to enjoy the benefit of set off unabsorbed losses and allowance the business of Y Ltd. may be taken over by X Ltd. In that case all unabsorbed losses and allowance can be set off by X Ltd. even if the merger does not satisfy the conditions of section 2(IB) & 72A.

**Example 4 :**

A Ltd. which has accumulated loss of Rs. 8,00,000 and unabsorbed depreciation of Rs. 5,00,000 wants to reorganize its business by way of amalgamating with B Ltd. which is engaged in the same line of production but having a smaller capital and has an efficient management setup and more modern machinery. B Ltd. is agreeable to alternative courses available to the companies for effecting the merger. Advise them as to the best course of action.

**Solution :**

There are three alternative for merger available to A Ltd. and B Ltd. which are :  
 (i) Merger of A Ltd. into B Ltd. whereby A Ltd. goes out of existence; (ii) Merger of B Ltd. in A Ltd., whereby B Ltd. goes out of existence; and (iii) Merger of A Ltd. and B Ltd. into a new company, say, C Ltd. is formed and both A Ltd., B Ltd. go out of existence.

All the above mentioned three mergers can take place under one of the following situations—

- (a) If the merger is not amalgamation within the meaning of section 2(IB).
- (b) If the merger is an amalgamation within the meaning of section 2(IB), though it does not satisfy the provisions of section 72A.
- (c) If the merger satisfies conditions of section 2(IB) and 72A.

Under the aforesaid situations the set off of accumulated loss of Rs. 5,00,000 and unabsorbed depreciation of Rs. 3,00,000 possible in the following cases :

	Whether set-off of unabsorbed loss/depreciation allowance possible		
	Situation (a)	Situation (b)	Situation (c)
(i) Merger of A Ltd. into B Ltd. (A Ltd. goes out of existence after merger)	No	No	Yes
(ii) Merge of B Ltd. into A Ltd. (B Ltd. goes out of existence)	Yes	Yes	Yes
(iii) Merger of A Ltd. and B Ltd. into C Ltd. (A Ltd. and B Ltd. go out of existence. C Ltd. is formed as a new company)	No	No	Yes

To conclude it can be said that if the conditions of section 72A are satisfied any of the three alternatives for merger can be adopted, as in all the cases the loss can be set off by the amalgamated company. If, however, conditions of section 72A are not satisfied alternative (ii) (i.e., merger of B Ltd. into A Ltd.) should be adopted as in this case A Ltd. would be able to carry forward and set off loss/depreciation even the merger does not fulfil the requirement of section 2(IB).

**Example 5 :**

From the following information, compute the taxable income :

	Case I	Case II
Long term capital gain/loss	1,70,000	(-) 3,00,000
Short term capital gain/loss	- 50,000	1,10,000
Business income/loss	(-) 80,000	(-) 90,000

<b>Solution :</b>	<b>Case I</b>	<b>Case II</b>
Capital gain :		
Longterm Cap gain/loss (not possible to set off)	1,70,000	(-) 3,00,000
Short term Cap gain/loss	<u>(-) 50,000</u>	<u>1,10,000</u>
Cap gain after set off	1,20,000	1,10,000
Set off of business loss	<u>(-) 80,000</u>	<u>(-) 90,000</u>
Total Income	<u>40,000</u>	<u>20,000</u>

In case II, long term capital loss will be carried forwarded for 8 assessment years.

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### **3.4 Exercises**

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1. What is understood by inter-source and inter-head adjustments ?
2. Discuss the provisions of the Income-tax Act relating to set off of loss against income under the same source and same heads in the same assessment year.
3. What is meant by loss on transfer of short-term capital asset and long-term capital asset? Can a loss arising on transfer of long-term capital asset be set off against income on transfer of short-term capital asset ?
4. Is it permissible to set off and carry forward the business loss ? If yes, what are the provisions in this respect ? Explain.
5. State the circumstances under which a loss under the head 'income from other sources' can be carried forward and set off.
6. State the conditions which an amalgamated company is required to fulfil u/s 72A for set off and carry forward of losses of an industrial undertaking acquired in a scheme of amalgamation.

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## **Unit - 4 □ Minimum Alternative Tax**

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### *Structure*

- 4.0 Introduction**
- 4.1 Book Profit : How to Determine ?**
  - 4.1.1 Assessing Officer's Power to alter net Profit**
  - 4.1.2 Adjustments to Net Profit to convert it into Book Profit**
- 4.2 Minimum Income and Tax Rate**
- 4.3 Calculation for MAT and tax liability**
- 4.4 Credit in respect of MAT**
- 4.5 Report from a Chartered Accountant**
  - 4.4.1 Scheme of Tax Credit**
  - 4.4.2 Carry Forward and set off of Tax Credit**
- 4.6. Loss which can be Carried Forward**
- 4.7 Exercises**

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### **4.0 Introduction**

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In order to boost up corporate tax collection and to prevent the prosperous companies from converting themselves into zero-tax companies, the then Union Government inserted Sec. 115JA to Income Tax Act, 1961 through the Finance Bill (No. 2), 1996. The section came into effect from 1st April, 1997 (i.e., Assessment year 1997-98). The said tax is termed as Minimum Alternate Tax (MAT).

Minimum Alternate Tax (MAT) was introduced for those companies that make huge profits and pay dividend to their shareholders but pay no/minimal tax under the normal provision of the Income Tax Act, by taking advantage of the various deductions, allowances and incentives allowed under the Act. But with the introduction of MAT provision, the companies have to pay a fixed percentage of their profit as minimum alternate tax, the MAT provision is applicable u/s 115JB to all companies including foreign companies.

The introduction of MAT provision u/s 115JB ensures that no company can avoid paying taxes for their income. As they have different provision for allowable expenses and deductions under both the Companies Act and Income Tax Act, the primary

objective behind the introduction of MAT is to collect taxes from the zero tax companies.

Zero tax companies are companies who show higher profit computed under the Companies Act and pay dividend to their shareholders but do not pay taxes.

Presently, a company shall be liable to pay higher of tax computed under general provision of Income Tax Act and tax computed u/s 115JB.

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## **4.1 Book Profit—How to Determine [Sec. 115JB]**

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Net profit as per profit and loss account (after adjustment) is book profit.

### **4.1.1 Assessing Officer's power to alter net profit**

Only in the following two cases, the Assessing Officer can rewrite the profit and loss account—

**If profit and loss account is not prepared according to the Companies Act—** If it is discovered that the profit and loss account is not drawn up in accordance with the provisions of Parts II and III of the Sixth Schedule to the Companies Act, the Assessing Officer can recalculate the net profit. In a case where there is not allegation of fraud or misrepresentation but only a difference of opinion as to the question whether a particular amount should be properly shown in the profit and loss account or in the balance sheet, the provisions of section 115JB do not empower the Assessing Officer to disturb the profit as shown by the assessee.

**If accounting policies, accounting standards or rates or method of depreciation are different—** According to the first provision to section 115JB(2) the accounting policies, the accounting standards adopted for preparing such accounts, the method and rates of depreciation which have been adopted for preparation of the profit and loss account laid before the annual general meeting, should be followed while preparing profit and loss account for the purpose of computing book profit under section 115JB.

Some companies follow an accounting year under the Companies Act which is different from financial year (i.e., previous year ending March 31) under the Income tax Act. These companies generally prepare two sets of accounts—one for the Companies Act and another for the Income-tax Act. Different accounting policies/ standards, and method or rate of depreciation are adopted in two sets of account so that higher profit is reported to shareholders and lower profit if disclosed to tax authorities.

To curb the aforesaid practice, it has been provided that accounting policies, accounting standards, depreciation method and rates of depreciation for two sets of account shall be the same. In case it is not so, the Assessing Officer can recalculate net profit after adopting the same accounting policies, accounting standards and depreciation method and rates which have been adopted for reporting profit to shareholders.

#### **4.1.2 Adjustments to net profit to convert it into Book Profit**

Net profit as shown in profit and loss account shall be adjusted as follows—

##### **(a) Positive adjustments :**

Net profit as shown in profit and loss account (prepared in accordance with the provisions of Parts II and III of the Sixth Schedule to the Companies Act) is to be increased by the following amounts if debited to the profit and loss account :

- a. The amount of income-tax paid or payable, and the provisions therefor; or
- b. The amounts carried to any reserves, by whatever name called (but other than reserve created under section 33AC); or
- c. The amount set aside to provisions made for meeting liabilities, other than ascertained liabilities; or
- d. The amount by way of provision for losses of subsidiary companies; or
- e. The amount of dividends paid or proposed; or
- f. The amount of expenditure relatable to any income to which section 10 or 10A or 10B or 11 or 12 apply.
- g. Amount of depreciation.
- h. Amount of deferred tax and provisions therefor and the amount set aside as provision for diminution in the value of the assets.
- i. Amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset.

##### **(b) Negative adjustments :**

Net profit as shown in the profit and loss statement (prepared in accordance with the provisions of Part II of the Schedule III to the Companies Act) is to be reduced by the following amounts :

- a. The amount withdrawn from reserves or provisions, if any such amount is credited to the profit and loss statement; or
- b. The amount of income to which any of the provisions of section 10 or 10A, 10B or 11 or 12 apply, if any such amount is credited to the profit and loss statement; or
- c. Depreciation (other than of revaluation of assets) debited to profit and loss statement.
- d. Amount withdrawn from revaluation reserve credited to statement of profit & loss to the extent it does not exceed the amount of depreciation on account of revaluation of assets.
- e. The amount of (i) loss brought forward before depreciation or (ii) unabsorbed depreciation, whichever is less, as per books of account [“loss” for this purpose does not include depreciation and, therefore, in a case where an assessee has shown profit in a year, but after adjustment of depreciation, it results in loss, no adjustment in book profit is allowed]; or
- f. The amount of profit of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the assessment year during which the entire net worth (i.e., paid-up capital plus free reserves) of such company becomes equal to or exceeds the accumulated losses.

● **Reserves credited to profit and loss statement—**

The amount withdrawn from reserves and credited to profit and loss account shall be reduced as follows :

- a. The amount withdrawn from any reserve created before April 1, 1997 otherwise than by way of a debit to the profit and loss statement, shall not be reduced from the book profits; and
- b. The amount withdrawn from any reserves or provisions created on or after April 1, 1997, which are credited to the profit and loss statement, shall not be reduced from the book profits, unless the book profits were increased by the amount transferred to such reserves or provisions in the year of creation of such reserves (out of which the said amount was withdrawn).

- **Brought forward loss/depreciation**

Section 115JB provides that in computing book profit, the amount of loss, brought-forward or unabsorbed depreciation, whichever is less as per books of account, shall be reduced from net profit. Where a company does not have both brought one of the two figures is nil. However, recently, in the case of **CIT v. Kartar Bus Services Ltd.** [2002] 74IIT 324 the Tribunal (Amritsar bench) has held that if there is no brought forward loss, the unabsorbed depreciation will be allowed as a deduction.

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## **4.2 Minimum Income and Tax Rate**

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In the case of a company if tax payable as computed under normal provisions (i.e., all provisions ignoring section 115JB) is lower than the amount given below, then book profit is taken as taxable income and the amount given below is taken as tax payable by the company—

	Income-tax (as a percentage of book profit)	Surcharge (as a percentage of book profit) @ 7%	Education & SHEC cess (as a percentage of book profit) @3% (2+1)%	Total (as a percentage of book profit)
Domestic company	18.5	1.295	0.59385	20.388

If the book profit exceeds Rs. 1 crore and 10 crore, the surcharge @ 7% and @ 12% to be added respectively.

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## **4.3 Calculation for MAT and tax liability**

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Every company registered under the Companies Act is required to compute the tax liability in following ways i.e. they are required to calculate the tax liability under both the provisions viz. normal provision and MAT provision. The companies like banking companies and insurance companies are not covered under MAT provision.

Under normal provision	under MAT provision
Step-I : To find out taxable income under normal provision	Step-I : To find out Book profit
Step-II : To find out income tax @ @ 30% of taxable income	Step-II : To find out tax @ 18.5% of book profit
Step-III : To add surcharge @ 5% if net income exceeds Rs. 1 crore	Step-III : To add surcharge @ 5% if book profit exceeds Rs 1 crore.
Step-IV : To find out the total of step II & step-III	Step-IV : To find out the total of step II & step III
Step-V :To add educational cess with step-IV [EC @ 2% and SHEC-@ 1%]	Step V : To add educational cess with step-IV [EC@ 2% and SHEC @ 1%]
Step VI : To deduct rebate if any	Step VI : To find out step (IV +V) ⇒Ⓐ
Step VII : To find out step (IV+V) – step VI ⇒Ⓐ	

The company is liable to pay the tax which is higher between A and B i.e. if the tax liability under MAT provision is higher, the company has to pay the amount of B in the relevant previous year. If tax computed at A is more than (or equal to) the tax computed under the provision of MAT will not apply.

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## 4.4 Credit in respect of MAT

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Section 115JAA provides that where tax is paid in any assessment year in relation to the income under section 115JB, a tax credit shall be allowed in subsequent years.

The amount of tax paid u/s 115JB is allowed to be carried toward to the extent of the MAT paid in excess of the regular tax and can be set off against tax payable upto fifteenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under the provision of section 115JAA (for the assessment year 2018-19).

### 4.4.1 Scheme of tax credit

When applicable—One can find out the amount of tax credit under section 115JAA under the following steps :

1. Find out total income of the company (ignoring the provisions of section 115JB).
2. Find out 18.5 per cent of book profit (as per provisions of section 115JB) under section 115JAA if total income (as computed under step 1) is equal to or more than 18.5 per cent of book profit.
3. Find out tax on (1) (supra).
4. Find out tax on (2) (supra).
5. The amount of tax credit is equal to the tax paid under setp 4 as reduced by the tax computed under setp 3.

#### **4.4.2 Carry Forward and set off of Tax Credit**

The amount of tax credit under section 115JAA shall be carried forward and set off subject to the following propositions :

1. No interest is payable in respect of tax credit.
2. Tax credit shall be allowed to be set off in a future year in which tax becomes payable on the total income computed in accordance with the provisions other than section 115JA or 115JB.
3. Set off in respect of brought forward tax credit will be allowed for any assessment year to the extent of tax computed on total income (ignoring section 115JB);
4. Carry forward shall not be allowed beyond the fifteenth assessmant year immediately succeeding the assessment year in which tax credit becomes allowable.
5. There is no other condition to claim the benefit of set off of tax credit. For instance, there is no provisions for submission of return of income within the time limit prescribed by section 139, or for payment of tax in time. Tax credit is allowed even if tax was paid late. Moreover, there is no provision that the Assessing Officer should determine the tax credit which shall be carried forward.

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### **4.5 Report from a Chartered Accountant**

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Every company to which section 115JB applies, shall furnish a report (in Form No. 29B) from a chartered accountant certifying that the book profit has been computed in accordance with the provisions of section 115JB. The report should be submitted along with the return of income.

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## **4.6 Loss which can be Carried Forward**

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In respect of the relevant previous year, the amounts determined under the provisions of section 32(2), or section 73(1) (i) or section 73 or section 74 or section 74A(3), shall be allowed to be carried forward to the subsequent year or years.

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## **4.7 Exercises**

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1. What are the objectives of imposing Minimum Alternate Tax ?
2. How do you determine “Book Profit” for the purpose of imposing MAT ?
3. What are the provisions regarding credit in respect of MAT ?
4. Discuss how tax credit can be carried forward and set off.

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## **Unit - 5 □ Clubbing of Income**

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### *Structure*

- 5.0 Introduction**
- 5.1 Transfer of Income where there is no Transfer of Assets [Sec. 60]**
- 5.2 Revocable Transfer of Assets [Sec. 61]**
  - 5.2.1 Transfer deemed to be Revocable [Sec. 63]**
  - 5.2.2 Transfer held to be Irrevocable Transfers**
- 5.3 Remuneration of Spouse [Sec. 64(1)(ii)]**
- 5.4 Income from Assets Transferred to Spouse [Sec. 64(1)(iv)]**
- 5.5 Income from Assets transferred to Son's Wife [Sec. 64(1)(vi)]**
- 5.6 Income from Assets transferred to a person for the benefit of Spouse [Sec. 64(vii)]**
- 5.7 Income from Assets transferred to a person for the benefit of Son's Wife [Sec. 64(1)(viii)]**
- 5.8 Income of a Minor Child [Sec. 64(1A)]**
- 5.9 Conversion of Self-acquired Property into Joint Family Property and Subsequent Partition [Sec. 64(2)]**
- 5.10 Exercises**

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### **5.0 Introduction**

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Income tax is levied at a steeply progressive rate and persons in the higher income brackets pay tax at a much higher rate than those in the lower brackets. By transfer, and legal arrangements which have the effect of diverting part of a person's normal income to someone else; it is thus possible to reduce the tax incidence. In order to counteract such steps certain special provisions have been made in the Act. Sections 60 to 64 of the Income-tax Act, 1961, contain such provisions which are discussed below.

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## **5.1 Transfer of Income where there is no Transfer of Assets [Sec. 60]**

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If any person transfers his income without transferring the ownership of the assets from which the income arises, the same will be taxable in the hands of the transferor without considering that the transfer is revocable or irrevocable or under a settlement, trust, agreement or arrangement.

**Provisions illustrated**—X owns 4,000, 14 per cent debentures of A Ltd. of Rs. 100 each (annual interest being Rs. 56,000). On April 1, 2018, he transfers interest income to Y, his friend, without transferring the ownership of these debentures. Although during 2018-19 interest of Rs. 56,000 will be received by Y, it is taxable in the hands of X, as he has transferred income without transferring the ownership of the asset.

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## **5.2 Revocable Transfer of Assets [Sec. 61]**

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All income arising to any person by virtue of revocable transfer of assets is chargeable to tax as the income of the transferor. For this purpose, transfer may include a settlement, agreement or arrangement.

Revocable transfer means the transferor of asset assumes a right to re-acquire asset or income from such an asset, either whole or in parts at any time in future, during the life time of transferee [sec. 63]

### **5.2.1 Transfer Deemed to be Revocable**

1. It contains any provision for re-transfer directly or indirectly of the whole or any part of the income of assets of the transferor.
2. If it gives in any way the transferor a right to resume power directly or indirectly over the whole or part of the income or assets.
3. In case the transfer is not revocable during the life of the transferor the transfer will not be deemed to be a revocable transfer at all.

The clear object of section 61 is that the assessee should not be allowed to avoid taxation by entering into colorable trust deeds by which in reality the income remains his own, although in name or on paper the income may be shown to be of someone else.

### **5.2.2 Transfer held to be Irrevocable Transfers**

The following are held to be irrevocable transfers :

1. Where by a registered deed Mr. Ram dedicated certain assets in favour of a temple and, while continuing to manage the assets as savarakar of the temple.

Ram also borrowed money from temple fund, it was held that in the absence of any evidence to show that the aforesaid deed was not genuine, the deed has to be held as genuine and valid and irrevocable in the hands of Ram. [CIT vs. Sriram Chandraji Maharaj Ka Mandir (19830 (MD))].

2. The words 'right to resume power' must mean that such a power is lawfully given under the trust deed itself. Thus where the assessee created an irrevocable trust and, as trustee he had power to develop and improve that trust properly and, a supplemental deed, he increased the trustee's remuneration, it was held that such powers would not amount to power to resume control.

Over the trust, so as to make trust revocable, and to include the trust income [CIT vs. Gopalmrishna Kone (Mad)].

3. Where the assessee settler had created a trust for the benefit of his minor children and had appointed herself, her husband and other persons as lifetime trustees and the trust deed empowered the trustees to invest the trust property in such manner as they in their absolute and uncontrolled discretion thought fit, irrespective of the instructions imposed by the Indians Trusts Act, 1882 and the assessee had obtained loan from the said trust free of interest, it was held that the trust was not revocable under section 63 [Leela Nathus, CIT (1981) (Cal)].

**Share of a spouse in a firm :** From assessment year 1993-94 and onwards, where husband and wife are partners in the same firm the share of income of any spouse will not be included in the total income of the other spouse u/s 64(v)(i).

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### **5.3 Remuneration of Spouse [Sec. 64(1) (ii)]**

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In computing the total income of an individual, such income as arises directly or indirectly to the spouse of the individual by way of salary, remuneration etc. in cash or in kind from a concern in which such individual and one or more of his relatives as defined u/s 2(41) has a substantial interest (that is, not less than 20% of the voting power in case where the concern is a company and in any other case not less than 20% of profits of the concern) will be included in the total income of such individual.

However, where both the husband and wife have substantial interest and both are in receipt of remuneration from such concern, remuneration from such concern will be included in the total income of the husband or wife, as the case may, whose total income excluding such remuneration is greater.

However, where the spouse possesses technical or professional qualification and the income is solely attributable to the application of his/her technical or professional knowledge and experience, the provision of Sec. 64(1)(ii) shall not apply.

Professional qualification means fitness to do or undertake an occupation or vocation requiring intellectual skill or requiring manual skill as controlled by intellectual skill which is such that a person should be able to take out a living there from independently though the salary does not cease to be product of professional skill merely because particular employment is accepted.

Technical qualification may take within its fold every thing connected with specialization in particular subject, be it science, technology or commerce or business management.

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## **5.4 Income from Assets transferred to Spouse [Sec. 64(1)(iv)]**

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Where an asset (other than house property) is transferred by an individual to his or her spouse directly or indirectly otherwise than for adequate consideration or in connection with an agreement to live apart any income from such asset will be deemed to be the income of the transferor. For example, the husband gifted shares of a company to his wife. The dividend income received by his wife on such shares is includible in the income of the husband.

However, this section is not applicable in the following cases :

1. If assets are transferred before marriage.
2. If assets are transferred for adequate consideration.
3. If assets are transferred in connection with an agreement to live apart.
4. If on the date of accrual of income, the transferee is not spouse of the transferor.
5. If the property is transferred by the Karta of HUF, gifting coparcenary property to his wife [L. Hriday Marain vs. ITO (SC)].
6. If the property is acquired by the spouse out of the pin money (i.e., an allowance given to the wife by her husband for her dress and usual household expenses) [R. B. N. J. Naidu vs. CIT (Nag.)].

It is to be noted that the relationship of husband and wife should subsist both at the time of transfer of asset and also at the time of accrual of income therefrom. Therefore, any income derived by a concubine from an asset transferred to her by her keeper cannot be clubbed in the income of the keeper.

It is also to be noted that the clubbing will arise when the transfer of asset from one spouse to another is without adequate consideration. Love and affection do not constitute adequate consideration.

When the assets transferred directly or indirectly by an individual to his spouse without adequate consideration are invested by the transferee-spouse in his/her business, income arising from business to the transferee-spouse is to be apportioned in the ratio of the value of transferred assets to the total investment of the transfereespouse in the business on the first day of the previous year. The proportionate amount of income relating to the value of transferred asset without adequate consideration is includible in the income of the transferee-spouse.

The provision of Sec. 64(1)(iv) does not apply when the transfer of an asset in connection with the agreement to live apart, there is a transfer of building, the income of which is computed under the head 'Income from house property' even though the transfer is made without adequate consideration. In the case of house property the transfer itself is disregarded, because, there will be no income to be clubbed if the house is not let out to a third party by the transferee and also because the notional annual value is taken to be nil.

Therefore, the transferor of such a property is deemed to be the owner of it so that he may be taxed in the usual manner and usual amount.

Any income arising from the pin-money to the wife cannot be clubbed with the income of the husband because such sum arises out of saving by the wife from the money given to her for her personal expenses and household expenses. Such sum would be the separate property of wife.

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## **5.5 Income from Assets transferred to Son's Wife [Sec. 64(1)(vi)]**

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If an individual directly or indirectly, transfer assets after May 31, 1973 without adequate consideration to son's wife, income arising from such assets will be included in the total income of the transferor.

As the date of transfer is material, it should be noted that in case of movable property the transfer is complete when property is delivered to the transferee. In case of immovable property the transfer will be complete when the deed is registered with the competent authority.

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## **5.6 Income from Assets transferred to a Person for the benefit of the Spouse of the transferor [Sec. 64(vii)]**

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Where an asset is transferred by an individual, directly or indirectly, without any adequate consideration, to a person or an association of persons for the immediate or deferred benefits of his or her spouse, income arising from the transferred assets will be included in the total income of the transferor to the extent of such benefit. If no income or benefit accrues to or derived by wife directly or indirectly, out of the property transferred by the individual, then the non-existent income or benefit cannot be included in the total income of the individual. For instance, X transfers a house property without any adequate consideration to a trust with the specific condition that out of the rental income, Rs. 6,000 per month will be paid by the trust to Mrs. X, though received by Mrs. X from the trust, will be included in the income of X.

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## **5.7 Income from Assets transferred to a person for the benefit of Son's Wife [Sec. 64(1)(viii)]**

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Any income which arises directly or indirectly to any person or association of persons from assets transferred directly or indirectly on or after 1.6.1973 otherwise than for adequate consideration to the person or association of persons by an individual, to the extent to which income from such assets for immediate or deferred benefit of his son's wife, will be clubbed in the hands of the transferor.

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## **5.8 Income of a Minor Child [Sec. 64(1A)]**

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Under section 64(1A), all income accruing or arising to minor child shall be included in the total income of the parent except the following :

- a. Income accruing or arising to a minor child on account of any manual work done by him; or
- b. Income accruing or arising to minor child on account of any activity involving application of his skill, talent or specified knowledge or experience.

The income of the minor child shall be included :

- a. where the marriage of his parents subsists, with the income of that parent whose total income (excluding minor's income) is greater; or

- b. where the marriage of his parents does not subsists, with the income of that parent who maintains the minor child in the previous year.

Where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary to do so.

Income not exceeding Rs. 1,500 in respect of minor child, whose income is to be included is exempt under section 10(32).

**Note :** 'Child' in relation to an individual includes a step child and adopted child of that individual. [Sec. 2(15B)].

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## **5.9 Conversion of Self-acquired Property into Joint Family Property and Subsequent Partition [Sec. 64(2)]**

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The following transactions are covered by section 64(2) :

- a. Where an individual (being a member of a HUF) converts (after Dec. 31, 1969) his self-acquired property into property belonging to the family through to the act of impressing such property with the character of joint family property or throws such property into common stock of the family;
- or
- b. When such an individual transfers his self-acquired property, directly or indirectly, to the family otherwise than for adequate consideration.

For the purpose of Sec. 64(2), property includes any interest in property, movable or immovable, the proceeds of the sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

**Clubbing of income before partition :** Income from the converted property or property transferred for less than adequate consideration is chargeable to tax in the hands of the transferor (before partition of the family).

**Clubbing of income after partition :** If the property converted or transferred by an individual is subsequently transferred amongst the members of the family, the income derived from such converted property, as is received by the spouse of the transferee will be included in the income of the transferor.

Where the income from converted property is included in the total income of the individual, such income is to be excluded from the total income of the family.

**Example 1 :**

A is a member of a HUF, consisting of himself, Mrs. A, B and C (major sons of A) and D (minor son of A). On 1 April, 2018, A converted his separate property, yielding an income of Rs. 1,60,000 per annum into joint family property. For the assessment year 2018-19 the share of A(1/5) and the income of the converted property viz, 3/5th of Rs. 1,60,000 or Rs. 96,000 is includible in the total income of Mr. A if there be partition. But if there is no partition, the entire income from such a property would be includible in the total income of Mr. A Where income referred to above is included in the total income of the converting member, it will be excluded from the total income of the family or as the case may be, of the spouse or minor son of the converting member.

● **Income from accretion to assets :**

In the abovementioned cases the income arising to the transferee from the property transferred is taxable in the hands of the transferor. However, income arising to the transferee from accretion of such income invested by the transferee is not includible in the total income of the transferor. Thus, if Mr. A transfers Rs. 80,000 to his wife without any adequate consideration and Mrs. A deposits the money in a bank, interest received from the bank on such deposits is taxable in the hands of Mr. A. If, however, Mrs. A purchases shares in a company from accumulated interest, the dividend from share received by Mrs. A will be taxable in her hands and will not be clubbed with the income of Mr. A.

● **Clubbing of negative income :**

Under section 64, the income of a specified person is liable to be included in the total income of the individual in the circumstances mentioned above. For the purposes of including income of specified person in the income of the individual, the word 'income' includes loss.

**Head of income under which the clubbed income will be included**—Under the above provisions income of an individual includes income of other persons. In such a case a problem arises as how the income be computed and under which head such income will be chargeable to tax. In this respect the following procedure should be adopted.

**Step one :** First compute the income in the hands of the actual recipient as if the actual recipient of income is taxable under the relevant head of income.

**Step two :** After computing the income under the relevant head of income in the hands of actual recipient, it will be clubbed under the same head of income in the hands of other person.

**Step three :** Gross total income of person in whose hands the income is clubbed shall be calculated as if it is his own income. Provisions of set off and carry forward of losses would be applicable as if it is applicable in any other case.

**Step four :** Deductions under sections 80CCC to 80U will be given to the person in whose hands income is clubbed within the overall ceiling provided in these sections. No separate deduction is available to the actual recipient of income. Rebate under section 88, 88B, 88C, 88D, 88E will be given as if these rebates are available in any other case.

● **Cross transfer :**

If two or more transfers are inter-connected and are parts of the same transaction in such a way that it can be said that circuitous method has been adopted as a device to evade implications of the provisions of section 64, the case will fall within the section. The question of inter-connection between two transfers being parts of the same transactions and being a device to evade the implication if these provisions are question of fact to be decided in such case by looking at the evidence on record.

**Example 2 :**

A made a gift of Rs. 50,000 to the wife of his brother B for the purchase of a house by her and immediately B transferred certain shares of the value of Rs. 50,000 owned by him to A's minor son. During the year ending March 31, 2018 the chargeable income from house property was Rs. 5,000 while the amount of dividend paid on the shares was Rs. 3,000. State with reason how and in whose hands these two items of income will be taxed.

**Answer :**

It is a clear case of cross transfer. Though there is no direct transfer of assets by A to his minor son and by B to his wife with transaction appears to be indirect transfer or cross transfer arranged to by-pass the provisions of section 64(1). The Supreme Court in CIT vs. Kothari (1963), observed that cross transfers which are so intimately connected as to form parts of a single transaction are covered by Sec. 64(1) although the transaction may not be mutual, i.e., in the technical sense each transaction may not constitute consideration for others. Therefore, income arising to Mrs. B will be taxed in the hands of B. Income arising to son of A will be taxable in the hands of A or Mrs. A after excluding the exempted amount or Rs. 1,500 as provided u/s 64(1A).

● **Recovery of tax (Sec. 65) :**

Under sections 60-64, incomes belonging to other persons are included in the total income of the assessee. In such cases, by virtue of section 65, the actual recipient of income is liable on service of notice of demand, to pay the tax assessed in respect of income included in the income of other persons.

The Assessing Officer may recover the tax either from the person assessed or from such other persons to whom the income actually belongs. The Assessing Officer may serve notice of demand on such persons of the proportionate amount of tax attributable to such income beneficially held by him. Whereas asset is jointly held by more than one person, they are jointly and severally liable to pay tax.

**Example 3 :**

Mr. A, married individual, is carrying on a timber business. He owns a house property wholly let out to tenants and yielding an income of Rs. 60,000 per annum. He transfers the house property to his wife, Mrs. A as a gift. He has filed a return of Rs. 90,000 as his business income for the assessment year 2018-19. He is assessed on the total income of Rs. 1,50,000 including the income from house property, transfer being disregarded. Tax liability stands at Rs. 19,000. The concerned Assessing Officer has the following options for recovery of tax :

- a. He may recover the entire amount of tax, i.e., Rs. 19,000 from Mr. A; or
- b. He may recover the amount of tax partly from Mr. A and partly from his wife as under.

Mr. A : Rs. 11,400 [i.e., Rs. 90,000 × (19,000 ÷ 1,50,000)]

Mrs. A : Rs. 7,600 [Rs. 60,000 × (19,000 ÷ 1,50,000)]

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## **5.10 Exercises**

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1. Under what circumstances income of other persons can be included in the total income of the assessee under the Income-tax Act ?
2. Explain the provisions of the Income-tax Act relating to transfer of self acquired property into the common hotchpots of the family.
3. X gifted to his wife 100 shares of a company on which she received 150 shares from the company. She sold all the shares. Discuss whether the gain on such sale can be included in the assessment of X. If so, determine the extent to which such gain can be clubbed with X's income.

4. In consideration of promise to marry, X transferred to Y 10,000 shares of Indian Steamships Ltd. on May 1, 2017. X married Y on July 1, 2017 and during the previous year ended March 31, 2018 relevant assessment year 2018-19, Y received dividend on the said shares amounting to Rs. 40,000. While assessing X, the Assessing Officer contends that the dividend income of Rs. 40,000 received by Y is includible in his assessment. Examine the validity of the contention.
5. Mr. Basu is employed in a public limited company on salary of Rs. 10,000 p.m. Mrs. Basu has been holding its equity shares aggregating in all to more than 20% right from the beginning of childhood days. The A.O. is convinced that Mr. Basu is getting such salary genuinely. However, he is of the opinion that salary received by Mr. Basu has to be included in the total income of Mrs. Basu. Discuss.

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## **Unit - 6 □ Assessment Procedure & Advance Payment of Tax**

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### *Structure*

- 6.0 Introduction**
- 6.1 Return of Income**
  - 6.1.1 Voluntary Return**
  - 6.1.2 Obligatory Filing of Return**
  - 6.1.3 Return of Loss**
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- 6.2 Kinds of Assessment under the Income Tax Act, 1961**
  - 6.2.1 Self Assessment**
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- 6.3 Issue of Notice**
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  - 6.4.3 Advance Tax Payment under different situations [Sec. 210]**
  - 6.4.4 Installment of Advance Tax and Due Dates [Sec. 211]**
  - 6.4.5 Payment of Advance Tax in case of capital gains/casual income**
- 6.5 Exercises**
- 6.6 References**

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### **6.0 Introduction**

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The word 'assessment' is used in the Income Tax Act at different places with different connotations. It is used to mean computation of income, or the determination of the amount of tax payable or the procedure laid down in the Act for imposing liability upon the tax payer. Assessment procedure comprises of four stages : the first

stage consists in either the assessee on his own, filling a return of his total income, as also the total income of any other person in respect of whom he is assessable, or asked by the Assessing Officer to do so within the specified period. The second stage is concerned with computation of taxable income of the assessee. The third stage consists of determination of the amount of tax payable by him on the basis of such computation. The last stage is the making of the assessment order and issue of notice of demand specifying the sum, if any, payable by the assessee. Assessment includes reassessment and re-computation.

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## **6.1 Return of Income**

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### **6.1.1 Voluntary Return**

Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeding the maximum amount which is not chargeable to income tax, shall on or before the due date, furnish a return of his income or income of such other person in the prescribed form and verified in prescribed manner and setting forth such other particulars as may be prescribed. The section 139(1) applies to all persons whether they are residents or non-residents. A return in order to be valid must comply with the prescribed conditions.

### **6.1.2 Obligatory filing of return when income is lower than exemption limit proviso to Sec. 139(3)**

A person whose income is below exemption limit and is residing in a specified area shall submit his return of income in Form No. 2C if he fulfils any one of the following conditions at any time during the previous year :

- a. Ownership or lease of a motor vehicle; w.e.f. 1.6.1996; motor vehicle will not include a two wheeled motor vehicle; or
- b. Occupation of any category or categories of immovable property as may be specified by the Board by notification whether by way of ownership or tenancy or otherwise; or
- c. Foreign travel; or
- d. Subscription of a cellular telephone (not being WLL); or
- e. Holder of a credit card (not being an “add-on” card issued by a bank or institution); or

- f. Member of a club where entrance fees charged is Rs. 25,000 or more. Moreover, travel to any country shall not include travel to neighboring countries and places of pilgrimage as may be notified by a Board and the above provisions shall not apply to such persons as are notified by the Board. The Government has specified that the above provisions shall not apply in case of non-resident. Moreover, an individual who at least 65 years of age and not engaged in any business or profession is not subject to condition (b) & (d).

**Time limit for furnishing return of income :** The return of income must be filed in a prescribed manner, on or before the due date mentioned as below :

Different situations of return	Due date of submission
1. Where the assessee is a company :	30th November
1.1 Where the company is required to furnish a report in terms No- 3CEB u/s 92E pertaining to international transaction	
1.2 Any other Company	30th September
2. Where the assessee is person other than company :	
2.1. Where accounts of the assessee are required to be audited under any law	30th September
2.2. Where the assessee is a working partner in a firm whose accounts are required to be audited under any law	30th September
2.3. In any other case	31st July

**Note :** Where the last day for filing return of income or loss is a day on which the office is closed the assessee can file the return on the next day afterwards on which the office is open and, in such cases, the return will be considered to have been filed within the specified time limit.

### 6.1.3 Return of loss [Sec. 139(3)]

A return of loss can also be filed within the dates mentioned above. The following losses cannot be carried forward if the return of loss is not submitted in time—

- a. Business loss (speculative or otherwise);
- b. Capital loss; and
- c. Loss from activity of owning and maintaining race-horses.

#### **6.1.4 Belated return**

If the assessee has not filed a return of income u/s 139(1) or in response to notice u/s 142(1), he may furnish the return at any time before the expiry of one year from the end of relevant assessment year or before the completion of assessment, whichever is earlier.

#### **6.1.5 Revised return [Sec. 139(5)]**

If any person having furnished a return u/s 139(1) or in response to a notice u/s 142(1) discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

**Defective return [Sec. 139(9)] :** A return of income shall be regarded as defective unless all the conditions laid down in section 139(9) are fulfilled. [Learners are required to go through a text book for this purpose]

Where the Assessing Officer (AO) considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee for rectifying the same within 15 days from the date of such intimation or within such further period which he may grant, or application made in this behalf. If the defect is not rectified within the period allowed, the return filed will be treated as invalid and the assessee will render himself liable to the resultant consequences such as experts assessment, interest for non-submission of a valid return.

Where the tax-payer rectifies the defect after the expiry of the period of 15 days or the extended period, but before the assessment is made, the Assessing Officer has been empowered to condone the delay and treat the return as a valid return.

### 6.1.6 Return form - The forms are given below–

New ITR Form	Subject
ITR-1 (i.e., SAHAJ)	For individuals having income from salary/one house property (not being brought forward loss from previous years)/income from other sources (not being winning from lottery and income from race horses)
ITR-2	For individuals and HUFs not having business/ professional income
ITR-3	For individuals/HUFs being partners in firms and not carrying out business or profession under any proprietorship
ITR-4	For individuals and HUFs having income from a proprietary business or profession
ITR-4S (i.e., Sugam)	For individuals/HUFs deriving business income and such income is computed in accordance with special provisions referred to in sections 44AD and 44AE
ITR-5	For firms, AOPs and BOIs or any other person (no being individual of HUF or company)
ITR-6	For companies other than companies claiming exemption under section 11
ITR-7	For persons including companies required to furnish return under section 139(4A)/(4B)/(4C)/(4D)/(4E)/(4F)
ITR-V	Acknowledgement [Where the date of the return of income in Forms ITR-1, ITR-2, ITR-3, ITR-4, ITR-5, and ITR-6]

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## 6.2 Kinds of Assessments under the Income Tax Act, 1961

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### 6.2.1 Self-assessment [u/s 140A]

Where any tax is payable on the basis of any return required to be furnished u/s 139 or 148 or as the case may be after taking into account the advance payment of tax, if any already paid under any provision of this Act, the assessee shall be liable to pay such tax. He shall pay it together with interest payable under the provisions of this Act for delay in furnishing the return or any default or delay in payment of advance tax. The tax and interest, etc. will be paid before furnishing the return shall

be accompanied by proof of the payment of such tax and interest, the amount paid shall first be adjusted towards tax payable.

For failure to pay the self-assessment tax, the assessee would be deemed to be in default u/s 140(3) and recovery proceedings would be initiated against him. However, there is no provision to levy penalty for such default under the substituted section 140A(3).

### **6.2.2 Regular assessment (Sec. 143)**

Regular assessment is done by the Assessing Officer (AO) on the basis of return of income filed by the assessee or on the basis of further evidence etc. collected by the AO or submitted by the assessee. In a case where the assessee has not submitted return of income or where the AO desires to obtain some documents etc. in support of the return filed u/s 139, there is a provision to make enquiry before assessment u/s 142.

#### **● Enquiry before assessment (Sec. 142)**

For the purpose of making an assessment, the AO serves on any person who has made a return u/s 139(1), a notice requiring him on a date specified therein.

- (i) where such person has not made a return within the time allowed u/s 139(1), to furnish return of this income of any other person in respect of which he is assessable under this Act, in prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or
- (ii) to produce or cause to be produced such accounts or documents as the AO may require; or
- (iii) to furnish in writing and verified in the prescribed manner, information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, where included in accounts or not), as the AO may require.

#### **● Summary assessment**

On the basis of return Sec. 143(1)(a) without calling the assessee : w.e.f. assessment year 1989-90, the requirements of passing an assessment order in all cases where returns filed are dispensed with.

- (i) If any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, and advance tax paid and any amount paid

otherwise by way of tax or interest, then without prejudice to sub-section (2), an intimation shall be sent to the assessee specifying the sum as payable and such intimation shall be deemed to be a notice of demand issued u/s 156 and all the provisions of the Act shall apply accordingly.

- (ii) If any refund is due on the basis of such return, it shall be granted to the assessee.

**Adjustment** (Proviso-2); the department may make certain adjustment in returned income or loss. These adjustments are :

- a. Any arithmetical errors in the return, accounts or documents, accompanying it shall be rectified.
- b. Any loss carried forward, deduction, allowance or relief which is prima facie admissible but which has not been claimed in the return should be allowed, and
- c. Any loss carried forward, deduction, allowance or relief claimed in the return which is prima facie inadmissible shall be disallowed. Provided further that where adjustments are so made an intimation shall be sent to the assessee, notwithstanding that no tax or interest is found due from him after making the said adjustments.

Provided also that an intimation for any tax or interest due under this clause cannot be sent after the expiry of two years from the end of the assessment year in which income was first assessable.

● **Regular assessment after calling the assessee [Sec. 143(2)]**

Where a return has been filed u/s 139 or in response to a notice u/s 142(1). The AO shall, if he considers it necessary or expedient to verify the correctness or completeness of the return and to ensure that the income has not been understated or the loss declared is excessive or the tax has not been underpaid, serve on the assessee a notice either to attend his office or to produce on a date specified any evidence on which the assessee may rely in support of the return.

A proviso to this sub-section provides that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.

● **Regular assessment after hearing u/s 143(3)**

On the day specified in the notice issued u/s 143(2) or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence

as the AO may require on specified points, and after taking into account all relevant materials which he has gathered, the AO shall, by an order, in writing, make as assessment of total income or loss of the assessee, and determine the sum payable by him on the basis of such assessment. He will determine the sum payable by the assessee or refund of any amount due to him.

### **6.2.3 Best judgement assessment [Sec. 144]**

A best judgement assessment is an assessment by the AO to the best of his judgement and after taking into account all relevant materials which he has gathered. In the scheme of such assessment, the AO may take assistance from the accounts maintained by the assessee and also rely on the information gathered by him as also the surrounding circumstances of the case.

An assessment to the best of judgement is a quasi-judicial process. Any quasi judicial process requires an opportunity of being heard before decision is awarded. Such opportunity shall be given by the AO by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgement. It shall, however, not be necessary to give such opportunity in a case where notice u/s 142(1) has been issued prior to the making of assessment under this section.

● **Principle of best judgement assessment** : In making the best judgement assessment, the AO should not be influenced by a desire to punish the assessee for the default, however, culpable such default might be. He must not act dishonestly or vindictively or capriciously because he must exercise judgement in this matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment. There might be guesswork in the matter, but it should be a honest guesswork.

● **Conditions for ex-parte assessment/best judgement assessment** : Such assessment is made in the following circumstances :

- (i) failure to file a return of income u/s 139(1) or 139(4) or 139(5) of the Act;  
or
- (ii) failure to comply with all the terms of a notice u/s 142(1), or failure to comply with directions issued u/s 142(2A); or
- (iii) having filed the return of income, the assessee fails to comply with the terms of a notice u/s 143(2); or

- (iv) if the AO is not satisfied about the correctness or completeness of accounts of the assessee, or if no method of accounting has been regularly employed by the assessee.

In case of best Judgement assessment, an assessee has right to file an appeal u/s 246 or to make an application for revision u/s 264 to the Commissioner.

One should note that refund can't be granted u/s 144.

#### **6.2.4 Income escaping assessment or reassessment [Sec. 147]**

An income is said to have escaped assessment when it has not been charged to tax in the original assessment year to which it rightly belongs, it is immaterial that the income was charged to tax in some assessment year. The concept of income escaping assessment is wide enough to cover a claim of deduction wrongly allowed. The expression 'escaped assessment' is not restricted to these cases only which have not come to the notice of the AO at all but the AO erroneously decided that the income was not assessable. Thus the term 'escaped assessment' includes both non-assessment as well as under-assessment. When a person, though liable to be taxed, has not been assessed to tax, there is escapement. The reasons of escapement may range from the stupidity of an officer to the cupidity of the assessee.

##### **● Income escaping assessment :**

If the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year he may assess or reassess such income subject to the provision of section 148 to 153. He may also assess or reassess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section. He may recompute the loss or depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter referred to as relevant assessment year).

**Limitation :** If an assessment has been made for the assessment year u/s 143(3) or u/s 147, no action shall be taken u/s 147 after the expiry of 4 years from the end of relevant assessment year, unless the income has escaped assessment due to the failure on the part of the assessee to file a return u/s 139 or in response to a notice u/s 142(1) or 148 or to disclose fully and truly all material facts necessary for his assessment.

**Disclosure :** Production before the AO of Accounts Books or other evidence from which material evidence could, with due diligence, have been discovered within the meaning of the foregoing proviso.

● **Cases of income escaping assessment :**

Explanation 2 section 147 clarifies that the following shall also be deemed to be cases of income escaping assessment :

- a. Where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable during the previous year exceeded the maximum amount which is not chargeable to income tax.
- b. Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the AO that the assessee has understated his income or has claimed excessive loss deduction, allowance or relief in the return.
- c. Where as assessment has been made but the following have occurred :
  - (i) income chargeable to tax has been under-assessed; or
  - (ii) such income has been assessed at too low a rate; or
  - (iii) such income has made the subject of excessive relief under this Act; or
  - (iv) excessive loss or depreciation allowance under this Act has been computed.

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### **6.3 Issue of Notice u/s 148**

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Before making assessment or reassessment or recompilation u/s 147, the AO shall serve on assessee a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return of his income or the income of any person in respect of whom he is assessable during the previous year corresponding to the relevant assessment year.

It will be in the prescribed form verified in the prescribed manner and set forth such other particulars as may be prescribed. The provision of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139.

- **Time limit and sanction of issue of notice [Section 149/151 applicable w.e.f. 1-6.2001.**

Sl. No.	Upto 4 years from the end of relevant Assessment year	Beyond 4 years but upto 6 years from the end of the relevant assessment year
1. Where an assessment order has been passed under section 143(3) or 147.	(i) Notice can be issued for whatever be the amount of income which has escaped assessment.  (ii) Notice can be issued only be an assessing officer of the rank of an Assistant Commissioner or Deputy Commissioner  (iii) It can be issued by the AO below the rank AC/DC if the Joint Commissioner is satisfied on the reasons recorded by the AO that it is fit case for issue of such Notice.	(i) Notice can be issued only if the income which has escaped assessment is likely to be Rs. 1,00,000 or more for that year.  (ii) Notice can be issued only by assessing officer of the rank of an Assistant Commissioner or Deputy Commissioner.  (iii) Notice can be issued only if the Chief Commissioner or Commissioner is satisfied on the reasons recorded by the AO that it is fit case for issue of such Notice.
2. Where no asst. order has been passed under Sec. 143(3)/147	(i) Any AO can issue notice u/s 148 himself.  (ii) Notice can be issued whatever be the amount of income which has escaped assessment.	(i) Any AO can issue notice u/s 148.  (i) Notice can be issued only if the income which has escaped assessment is likely to be Rs. 1,00,000 or more for that year.  (iii) Notice can be issued only by the AO below the rank of Joint Commissioner if the JC is satisfied that it is a fit case for issue of such notice.

● **Circumstances where time limit given under section 149(1) is not relevant :**

**(i) Issue of notice after 4 years if assessment is made u/s 143(3)/147 [proviso to section 147 and explanation 1 to section 147] :**

Where an assessment u/s 147/143(3) has already been made for the relevant assessment year, no action u/s 147 is possible after the expiry of 4 years from the end of the relevant assessment year unless any income chargeable to tax escaped assessment by reason of the failure on the part of the assessee to :

- a. make a return u/s 139 or in response to a notice u/s 142(1)/148; or
- b. disclose fully and truly all material facts necessary for the assessment for that assessment year.

Production before the AO account books or other evidence from which material evidence, could, with due diligence have been discovered by the AO will not necessarily amount to disclosure of material facts.

**(ii) Agent of a non-resident [Sec. 149(3)] :**

If the person on whom a notice u/s 148 to be served is a person treated as the agent of a non-resident u/s 163 and the assessment, reassessment or recompilation to be made in pursuance of the notice is to be made on him as the agent of such nonresident, the notice shall not be issued after the expiry of a period of two years from the end of relevant assessment year.

However, notice to the non-resident can be issued as per the normal period prescribed u/s 149 even after finding that notice to the agent is time-barred u/s 149(3) and hence invalid.

● **Sanction for issue of notice Sec. 151(1) :** In a case where an assessment u/s 143(3) or 147 has been made for the relevant assessment year, no notice shall be issued u/s 148 by an AO who is below the rank of Assistant Commissioner, unless the Deputy Commissioner is satisfied or reasons recorded by such AO that it is a fit case for issue of such notice. This is required under the provision of Sec. 149(2).

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## **6.4 Advance Payment of Tax**

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Although the income of a previous year of the assessee is taxable in the immediately following assessment year the assessee has to pay advance tax during the financial year preceding the assessment year on the basis of his own computation of income. The scheme of advance tax-payment is also known as ‘**pay tax as you earn**’ scheme.

Under this scheme every income (including capital gains, winnings from lotteries, crosswords, puzzles, etc.) is liable to payment of advance tax with effect from the assessment year 1989-90. Tax will be payable in advance during any financial year, in accordance with the provisions of sections 208 to 211, in respect of the total income of the assessee which would be chargeable to tax for assessment year immediately following the financial year, such income referred to as current year income for this purpose.

#### **6.4.1 Condition of liability to pay advance tax [sec. 208]**

Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during the year, as computed in accordance with provisions of this unit, is Rs. 10,000 or more.

#### **6.4.2 Computation of Advance Tax (u/s 209)**

The amount of advance tax payable by an assessee in the financial year as his/ her own accord as per section 210(1)/210(2)/210(5)/210(6) on the estimated current income will be computed as follows—

First, Estimate the current income of the Financial year for which the advance tax is payable.

Second, Compute tax as such estimated income at the rate of tax applicable to the relevant financial year.

Third, Add surcharge, Educational Cess & Secondary & Higher Education Charge.

Fourth, Allow relief if any, u/s 89, 90, 90A & 91.

Fifth, Deduct the TDS NL.

Sixth, the balance will be the amount of advance Tax to be paid.

#### **6.4.3 Advance tax payment under different situations [Sec. 210]**

The amount of advance tax payable by an assessee for the financial year shall be computed as follows :

- a.** Where the calculation is made by the assessee for the purposes of payment of making an order u/s 210(1), (2), (5) or (6), he will be required to estimates the current income and income tax thereon at the rates in force in the financial year. From the tax so calculated, Tax deducted at source will be deducted.

Calculation can be made on similar way in the case of upward and downward revision of current income.

- b.** Where the calculation is made by the AO for the purpose of making an order u/s 210(3), higher of the following will form the basis of calculation of advance tax :
- (i) The total income of the latest previous year in respect of which he has been assessed by way of regular assessment; or
  - (ii) The total income returned by the assessee in any return of income furnished by him for any subsequent previous year.

Tax on current income at the rates in force during the financial year less tax deducted at source will be amount of advance tax payable.

- c.** Where the calculation is made by the AO for the purpose of making an amendment under u/s 210(4), the computation will be in respect of the total income subsequently returned or assessed which has been made on the basis of amendment by the AO. The tax calculated at the rates in force in the financial year shall be reduced by the amount deductible or collectible at source out of the income which has been taken into account in the computation of current income.
- d.** Payment of advance tax by the assessee of his own accord or in pursuance of an order of AO Sec. 210(1) : Any person who is liable to pay advance tax u/s 208 shall, of his own accord, compute and pay the specified instalments of advance tax. The due dates and the appropriate percentage of each instalment of advance tax have been stated in section 211. The current income is calculated in the manner laid down in Sec. 209 above.

● **Assessee to furnish his estimates [Sec. 210(5)] :**

Sub-section 5 enables the assessee to furnish his own estimate of current income in order to reduce the amount of advance tax determined by the AO under sub-section (3) or (4) above. Such intimation shall be sent in prescribed form. (Form 28A).

● **In case of higher estimate [Sec. 210(6)] :**

Where the amount of advance tax on current income as per assessee's own estimate is likely to be higher than what has been determined under sub-section (3) or (4), his estimate under sub-section (5) above, the assessee shall pay higher tax in accordance with his own calculation of advance tax.

#### 6.4.4 Instalment of advance tax and due dates [Sec. 211]

In the case of non-company assessee, advance tax has to be paid in three instalments. However, in the case of a company assessee, advance tax is payable in four instalments. The relevant due dates are given below :

	In the case of A corporate assessee	In the case of A non-corporate assessee
On or before June 15 of the previous year	Upto 15% of advance tax payable	
On or before Sept. 15 of the previous year	Upto 45% of advance tax payable	Upto 30% of advance tax payable
On or before Dec. 15 of the previous year	Upto 75% of advance tax payable	Upto 60% of advance tax payable
On or before March 15 of the previous year	Upto 100% of advance tax payable	Upto 100% of advance tax payable

#### Notes :

1. Any payment of advance tax made before 31st March shall also be treated as advance tax paid during financial year.
2. If advance tax paid is less than 90% of the assessed tax (i.e., total tax computed less tax deducted at source), liability to interest u/s 234B @ 1% p.m. arises.
3. Shortfall in payment of instalments of advance tax due on 15-9 and 15-12 attracts liability to interest @ 1% p.m. u/s 234C.

#### 6.4.5 Payment of advance tax in case of capital gains/casual income

The advance tax is payable on all types of income, including capital gains and winning of lotteries, crossword puzzles etc. However, it is not possible for an assessee to estimate his capital gains or winnings from lotteries etc. which are generally unexpected. Therefore, in such cases, it is provided that by any such income arises after the due date of any instalment, then the entire amount of tax payable (after deduction of tax at source, if any) as such capital gain or casual income should be paid in remaining instalments of advance tax which are due or where no such instalment is due, by 31st March of the relevant financial year. If the entire amount of tax payable is so paid, then no interest on late payment will be leviable.

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## 6.5 Exercises

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1. (a) What are prescribed due dates for filing return of income for different types of assessee ?  
(b) What are the types of assessments allowed under the Income-tax Act ?
2. What are the circumstances under which an AO may make a Best Judgement Assessment ? What are the principles to be followed in making BJA? What are the remedies open to the assessee to get such assessment modified or cancelled?
3. (a) What do you understand by 'Summary Assessment' ?  
(b) What do you understand by the expression 'income escaping assessment' ? What are the cases when income is said to have escaped assessment? What are the time limits for re-opening an assessment, as stipulated in section 149 & 151?  
(c) What adjustment can be made by an Assessing Officer while making regular assessment under section 143(1) ?
4. Discuss the provisions relating to advance payment of tax.
5. (a) When is an assessee required to send an estimate of his current year's income?  
(b) What are the dates prescribed and appropriate percentage for payment of instalments of advance tax ?
6. Discuss the provisions of section 210 for payment of advance tax under different situations.

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## 6.6 References

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1. Taxmann's-Income-tax Act, 1961
2. Income Tax—Bhagawati Prasad.
3. Taxmann's Direct Taxes—Laws & practice.
4. Systematic Approach to Income Tax—Ahuja & Gupta.