



**FAIRFIELD Institute of Management & Technology**

(Affiliated to GGSIP University, New Delhi)

**'A'**

Grade Institute by DHE, Govt. of NCT Delhi, Affiliated to GGSIP University Delhi  
and Approved by Bar Council of India & NCTE

### BBA 212: Taxation Laws

Objectives: The course aims to help students to comprehend the basic principles of the laws governing Direct and Indirect taxes. Students are expected to have only elementary knowledge of the topics specified in the syllabus.

Course Contents

Unit I

Introduction to Income Tax Act 1961

Salient Features and Basic Concepts – Previous Year, Assessment Year, Person, Gross Total Income and Agricultural Income. Residential Status and Incidence of Tax, Fully Exempted Incomes.

Unit II

Heads of Income – Salary, House Property, Business or Profession, Capital Gains, Other Sources, Clubbing of Income, Deductions Under Chapter VI (related to individuals and firms) Assessment of Individuals and Firms (simple problems).

Unit III

Relief's, Set off and Carry Forward of Losses, Deduction of Tax at Sources. Payment of Advance Tax.

Unit IV

Central Sales Tax Act 1956 – Introduction; VAT, Registration of Dealers, Levy and Collection of Tax and Penalties. Service Tax (Finance Act 1994) – Note: Assessment Year (Current) Introduction to procedure for Service Tax Return

.SUBJECT- TAXATION LAWS SUBJECT CODE- 212  
COURSE—BBA (G) 4th Semester

UNIT—1

Income Tax Act, 1961 (Introduction & Basic Concepts)

- Passed in September 1961,
- Came into operation w.e.f. 01.04.1962,
- Extends to whole of India.
- Rate of IT is given in the “Finance Act”, passed by the parliament every year.

Income Tax is a Direct Tax.

- In case of direct tax, the burden and incidence are on the same person who pays the tax, but in the case of indirect tax, the burden is on one and the incidence on another.
- It is levied & collected by the Central Govt.

Tax on “Income”

\_ Income is defined u/s 2(24) of the Act.

\_ It is inclusive in nature, i.e., apart from items listed in the definition, any receipt which satisfies the basic condition of being income is also to be treated as income.

\_ Income broadly includes:

- \_ Profits & Gains from Business and Profession
- \_ Salary Income
- \_ Dividend Income
- \_ Winnings from lotteries, crossword puzzles, races, games, gambling or betting.
- \_ Capital Gains,
- \_ Amount recd. under a Keyman Insurance Policy,
- \_ Voluntary Contributions recd. by a religious or charitable trust or scientific research association or a sports promotion association,
- \_ Allowances given to the assessee by his employee,
- \_ Gift recd. by individual & HUF, in excess of Rs.25000 on or after 01.09.2004.

Section 2(1A) “Agricultural income” means:

- \_ (a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;
- \_ (b) Income derived from such land as is referred to in (a) by agriculture, or by performance of the cultivator or receiver of rent in kind, of any process ordinarily employed by a cultivator or receiver of rent in kind to render such agricultural produce to be taken to the market, or by sale of such produce or of such produce so processed.
- \_ (c) Income derived from buildings on or in the immediately vicinity of such lands subject to certain conditions and exceptions.
- \_ (d) Income of nursery (W.e.f A.Y. 2009-10) any income derived from saplings or seedlings grown in a nursery shall be deemed to be agriculture income. Accordingly irrespective of whether the basic operation have been carried out on land, such income will be treated as agriculture income, thus qualifying for exemption under section 10 (1) of the Act.

Comments:

\_ (i) The exemption is thus available only if the assessee is a cultivator or owner of land which is situated in India and is used for agricultural purposes, and the Income is "derived" from such land.

\_ (ii) Where however such land or building mentioned in (c) above is used or let out for any purpose other than agriculture or processing of agricultural produce as is referred to in (b) above, income derived from such use would not be agricultural income.

\_ (iii) Levy of tax on agriculture income is a State subject and Central Govt. can not levy tax on agriculture income. Hence agriculture income is exempt u/s 10(1). However agriculture income is aggregated with non-agriculture income to determine the tax payable on the non-agriculture income.

**ASSESSEE**

One who is assessed or is liable to pay tax.

According to sec. 2(7) assessee means & includes:

\_ A person by whom any tax or any other sum is payable.

\_ A person in respect of whom any proceeding under the Act is taken.

\_ Every person :

1. who is assessable in respect of income or loss of another person, or

2. who is deemed to be an assessee, or

3. who is deemed to be assessee in default.

**PERSON: Sec. 2(31)**

a) Individual

b) HUF

c) Company

d) Firm

e) AOP/BOI

f) Local Authority

g) Any artificial juridical person not falling under any of the above category.

**PREVIOUS YEAR (P.Y.)**

\_ The yr. in which income is earned is known as Previous Year (P.Y.) and it is taxed in the next year called Assessment year (A.Y.).

\_ Section 3: Fin. Yr. preceding the Assessment Year.

\_ Before AY:1989-90 the assessee used to maintain their previous year by will, e.g., Calender Year, Diwali Year, etc.

\_ In case of a newly set up business/profession or a source of income newly coming into existence during a Fin. Yr. the previous year shall be the period beginning with the date of such setting up or such source coming into existence and ending with the said financial year, i.e., the immediately following March 31st.

**ASSESSMENT YEAR:** Period of 12 months commencing on 1st Apr. every yr. It is the **FINANCIAL YEAR** immediately succeeding the previous year.

**Computation of Income**

1.) Income from Salary XXXX

- 2.) Income from House Property XXX
  - 3.) Income from Business/Profession XX
  - 4.) Income from Capital Gains X
  - 5.) Income from Other Sources XXXXX
- GROSS TOTAL INCOME (Sec. 14) XXXX  
Less: Deductions u/chap-VI-A (Sec.80CCC to 80U) XXX  
TOTAL INCOME [Sec.2(45)] XXXX  
Tax Due XXX  
Less: Rebates and Reliefs u/Chap-VIII XX  
Tax Payable XXXX  
Exceptions to the Rule of P.Y.

- \_ Income of person leaving India permanently or for a long period of time,
- \_ Income of person trying to alienate his assets with an intention to avoid tax,
- \_ Income of a discontinued business,
- \_ Income of non-resident shipping companies having no representative in India.

These incomes are taxed as the incomes of the assessment year immediately preceding the normal assessment year at the rates applicable to the former.

## RESIDENTIAL STATUS OF AN ASSESSEE

Residential Status is the basis of Individual taxability in India. The residential status is determined based on the physical stay of an individual in the relevant financial year as well as preceding ten tax years. This is more relevant if you are an Indian working overseas or having income/income earning assets outside India.

RESIDENTIAL STATUS -As per Income Tax Act, you can be one of the following:

- \_ Non-resident
- \_ Ordinary resident
- \_ Not an ordinary resident in India.(NRI)

## Residents and Non-Resident Concepts

According to the current test of residence, an individual becomes a resident, if he:

- a) is in India for 182 days or more during the previous year; or
- b) Has been in India for at least 365 days within the preceding four years and for at least 60 days in the relevant previous year.

In other situations the person is to be treated as Non-resident.

## “Not Ordinarily Resident”—Definition

Apart from “resident” and “non-resident”, a third category of residential status also exists, namely, “not ordinarily resident (NRI)”. That is to say a person may well qualify as a resident by the criterion lay out above, but yet qualify as “not ordinarily resident in India”. In that event, his income accruing or arising abroad will not form part of his total income, unless it is derived from a business controlled in or a profession set up in India.

A person is not ordinarily resident in India, if

- 1. He has not been a resident in nine out of the ten previous years, or
- 2. Has not been in India for 730 days or more during the preceding seven years

Taxability in India

In the case of a resident, the scope of total income includes all incomes of the previous year earned by the tax payer, regardless of where these incomes accrued, arose or were received.

On the other hand in the case of a non-resident, or a person who is “resident but not ordinarily resident”, only the following incomes earned by him are includible in his total income:

1. Incomes which accrued or arose to him in India during the previous year or which are deemed to have so accrued or arisen or;
2. Incomes which were received in India during the previous year or which are deemed to have been so received.
3. Incomes which accrued or arose to him outside India if derived from a business controlled in, or a profession set up in India (applicable only in the case of a person who is resident but not ordinarily resident).

Notes:

\_ It is important to make sure that the person being assessed belongs to a particular country during particular period and is not able to evade the tax.

\_ Tax incidence or Tax burden on an assessee depends on his residential status.

\_ The residential status is determined with the each source of Income and if a person is resident for one source of income he will have the same status for all the sources of income for that particular PY.

\_ A person may have different residential status for different previous year say he may be resident for previous year 2010-11 and he may be nonresident for previous year 2011-12 but for a single previous year he can have only one status.

\_ For counting the number of days of stay in India, your day of entry / departure should be counted as stay in India.

\_ Residential status and citizenship is not the same thing. You may be an Indian Citizen but a non-resident in India. It is also possible that a foreign citizen is resident / non-resident in India for tax purposes.

\_ You can be resident of more than one country (as per the tax laws of the respective countries) at the same time. Timely and efficient tax planning go long way in lowering your total taxes by employing and taking advantages of in-built provisions of tax exemptions, deductions, concessions, rebates, relief's, allowances and other benefits granted by the tax laws so that the incidence of tax is reduced.

## INCIDENCE OF TAX FOR DIFFERENT TAXPAYERS

Tax incidence of different taxpayers is as follows—

- If it is business income and business is controlled wholly or partly from India
- If it is income from profession which is set up in India

If it is business income and business is controlled from outside India

- If it is income from profession which is set up outside India
- Any other foreign income (like salary, rent, interest, etc.)

## TAXABLE NOT TAXABLE NOT TAXABLE

## INCOME WHICH DO NOT FORM PART OF TOTAL INCOME

### SECTION 10

What is Total Income?

Section 2(45) "Total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act.

Tax is payable on total income and when it is specifically written in the opening portion of the Section 10 is under:- Section 10 :- In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

If these incomes which are mentioned in section 10 do not form part of the Total income, in the practical sense we can say these incomes are "Exempt" from tax hence these incomes are called exempted income under section 10 of the Income tax Act.

S.NO. SECTION DESCRIPTION OF INCOME

1. 10(1) Agricultural Income

2. 10(2) Payments received from family income by the Members of the HUF

3. 10(2A) -Share of profit from a firm.

4. 10(4) -Interest received by a non resident on prescribed securities.

-Interest received by a person who is resident outside India on amounts credited in the "Non resident (External) Account.

5. 10(5) -Leave travel concessions provided by an employer to his Indian citizen employee.

6. 10(6) -Remuneration received by foreign diplomats of all categories provided the same type of exemptions is available to their counterparts (i.e. Indian diplomats) in their countries and these foreign nationals should not have any other "Business or profession"- Section 10(6) (ii).

- Salary received by foreign citizen (i). As an employee of foreign enterprises which is not engaged in any "trade or business" (ii). Such employee does not stay in India for more than 90 days and (iii).Such salary paid is not deductible as expenditure from the taxable income, if any, of such enterprises. - Section 10(6) (vi).

- Salary received by a non resident foreign citizen as a member of ship's crew if the total stay of that person in India does not exceed 90 days in the previous year.-

Section 10(6)(vii).

- Remuneration received by a Foreign

Government's employee during his stay in

India for the purpose of his training in any

(i) Government undertaking (ii) Government owned Company (iii). Subsidiary of Government Owned Company (iv). Government Corporation or (v). Co-operative society wholly financed by the Government. - Section 10(6) (xi).

-Tax paid on behalf of the foreign companies- Section 10(6A).

-Tax paid by Government or an Indian Concern in the case of a non-resident/ Foreign company.- Section 10(6B)

-Income arising to notified foreign companies from services provided in or outside India in project connected with the security of India. - Section 10(6C).

- Foreign allowances granted by the

Government of India to its employees during their out side India postings-

Section 10(7).

-Remuneration received from foreign Government by an Individual who is in

India in connection with any SCTAP (Sponsored co-operative technical assistance programme) with a foreign Government and income of the family members of such employee.-Section 10(8)

and 10(9).

-Remuneration received by non resident consultants and their foreign employees-  
Section 10(8A), (8B) and (9).

7. -Death cum retirement Gratuity. – Section 10(10).

- Commuted value of pension and any payment received by way of commutation  
of pension by an individual out of annuity plan of LIC or other insurer from a fund set up by  
such corporation or insurer.-Section 10(10A).

- Leave salary- Section 10(10AA).

-Retrenchment compensation – Section 10(10B).

8. -Compensation received by victims of Bhopal Gas leak disaster. – Section 10(10BB).

- Compensation from the Central Government or a State Government or Local Authority  
received by an Individual or his legal heir on account of any  
disaster.- Section 10(10BC).

-Compensation received from a public sector company at the time of voluntary retirement or  
separation. – Section 10(10C).

9. - Tax on perquisite paid by employer- Section 10(10CC).

- Any sum (including bonus) on life insurance policy (not being a keyman Insurance policy. –  
Section 10(10D).

10. -Any amount from provident fund paid to retiring employee. - Section 10(11).

- Amount from an approved superannuation fund to legal heirs of the employee. - Section  
10(13).

-House rent allowance subject to certain  
Limits- Section 10(13A).

- Special allowance granted to an employee- Section 10(14).

11. -Income from certain exempted securities-  
Section 10(15).

12. - Payment made by an Indian company, engaged in the business of operation of an aircraft, to  
acquire an aircraft on lease from a foreign government or foreign enterprises if certain conditions  
are satisfied- Section 10(15A).

13. - Scholarship granted to meet the cost of education – Section 10(16).

14. -Daily allowance of a member of Parliament or state legislature – Fully exempt.

- Other allowances paid a member of Parliament or state legislature subject to certain conditions.  
- Section 10(17).

15. - Rewards given by the Central Government or state Government for literary, scientific or  
artistic work or attainment or service for alleviating the distress of the poor , the weak and the  
ailing , or for proficiency in sports and games or gallantry awards approved by the Government .-  
Section 10(17A)

16. Pension or family pension of gallantry awards winners- Section 10(18)

Family pension received by family members of armed forces- Section 10(19)

17. Notional property income of any one palace occupied by a former ruler-Section 10(19A)

18. Income of local authorities – Section 10(20)

19. Any income of housing Boards constituted in India for planning, development or  
improvement of cities, towns or villages- Section 10(20A)

20. Any income of an approved scientific research association –Section 10(21).
21. Income of specified news-agencies i.e. PTI, UNI (for the 1994-95 to 2008-09)-Section 10(22B).
22. Any income (Other than interest on securities, income from property, income received for rendering any specific services and income by way of interest or dividends) of approved professional bodies- Section 10(23A).
23. Any income received by any person on behalf of any regimental fund or non public fund established by the arm forces of the Union for the welfare of the past and present members of such forces or there dependents . – Section 10(23AA)
24. Income of funds established for the welfare of the employees – Section 10(23AAA).
25. Any income of the pension fund set up by LIC or any insurer approved by the controller of Insurance or insurance regulatory and development authority- Section 10(23AAB).
26. Any income (other than Business Income) of a trust or society approved by Khadi and Village Industry commission-Section 10(23B).
27. Income of an authority whether known as Khadi and villege Industry board or by any other name for the development of Khadi and villege Industries-Section 10(23BB).
28. Income arising to any body or authority established, constituted or appointed under any enactment for the administration of public, religious or charitable trusts or endowment or societies for religious or charitable purposes.- Section 10(23BBA)
29. Income of the European economic community derived in India by way of interest , dividends or capital gains in certain cases under the European community International Institutional partners Scheme, 1993 – Section 10(23BBB)
30. Income of SAARC Fund for regional projects.- Section 10 (23BBC)
31. Any income of secretariat of Asian organisation of supreme audit institutions- Section 10(23BBD).
32. Income of Insurance Regularity authority- Section 10(23BBE)
33. Income of North eastern Dev. Finance Corporation to the extent of 60% for assessment year 2007-08 .- Section 10(23BBF)
34. Income of the central Electricity regulatory commission (Applicable from the Assessment year 2008-09).Section 10 (23BBG)
35. Income received by any person on behalf of specified national funds approved public charitable institutions, education Institute and Hospital – Section 10(23C).
36. Income of a Mutual Fund set up by a Public sector Bank or Public Financial Institutions – Section 10(23D)
37. Income of Investor protection Fund- Section 10(23EA).
38. Income of credit guarantee funds, trusts for small Industries- Section 10(23EB)
39. Income of Investor protection Fund by way of contributions form commodity exchange and members thereof (Applicable from the Assessment year 2008-09)- Section 10(23EC).
40. Income by way of Dividend or long – term capital gain of venture capital fund/undertaking – Section 10(23FA).
41. Income by way of interest on securities, property income and income from other sources of a registered trade union or an association of registered trade unions –





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Section 10(24).

42. Any Income received by a person on behalf of statutory provident fund, recognized provident fund, Approved superannuation fund, approved gratuity fund and approved coal – Mines provident fund- Section 10(25).

43. Income of employees state Insurance Fund- Section 25A.

## UNIT—2

### INCOME FROM SALARY

#### TAXABLE SALARY O

1. BASIC SALARY, ADVANCE SALARY, ARREAR OF SALARY, REMUNERATION FOR EXTRA WORK, FOREGOING OF SALARY - Entirely Taxable.

2. BONUS, COMMISSION, FEE, EX-GRATIA

Bonus, Commission, Fee, Ex-gratia received by an employee is included in his income from salary. Bonus, Salary in lieu of notice is taxed on receipt basis.

3. GRATUITY

Gratuity is paid to an employee as a retirement benefit for his long and meritorious service.

Exemptions u/s 10(10) are calculated as under:

Exemption U/S 10(10)

Notes:

1. In Case (3) half month's salary has to be calculated on the basis of last 10 months average salary immediately preceding the month in which employee retires. Further salary for that period includes. Basic salary, dearness allowance if the term of employment so provide and commission based on sales.

2. Completed years of service means : Total period (Present + Past)

3. In case where the employer has received gratuity in any earlier year from his former employer and also received gratuity from another employer in a later year, the limit of Rs. 3.5 lakhs will be reduced by the amount of gratuity exempt from tax in any earlier year.

4. In case of piece rated employee for calculating 15 days salary, daily wages shall be computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of employment.

5. In case of seasonal employment, Instead of 15 days, 7 days shall be taken.

#### 4. PENSION:

Pension is a periodical payment received by an employee after his retirement. Exemptions u/s 10(10A) are calculated as under.

Exemption on Pension U/S 10(10A)

Uncommuted Pension    Commuted Pension    or    Periodically or Lumpsum    Fully Taxable  
Govt./Semi Govt.    Employees    Non Govt.

Employees    Fully exempt    Gratuity    Gratuity not received    received 1/3rd of commuted 1/2 of  
commuted value of normal value of normal pension receivable    pension receivable would be  
exempt would be exempt.

#### 5. ENCASHMENT OF LEAVE

Any amount received by an employee in lieu of leave is taxable. Exemption on Encashment of Leave U/S 10(10AA) During the course of service At the time of retirement Central or State Govt. Employee Non Govt. Employee (excluding local authority)

Note:

1. Average salary is to be calculated on the basis of actual salary drawn immediately 10 months preceding the date of retirement. Salary for thus purpose includes D.A. If in term of retirement benefit and commission based on sales.

#### IMPORTANT:

Leave salary paid to legal heirs of a deceased employee at the time of his/her death is not taxable as salary. (Letter No. 35/1/15 dated 5/11/65)

#### 6. PROVIDENT FUND

##### OBJECT:

Provident fund scheme is a welfare scheme for the benefit of the employees. Under this scheme, certain sum is deducted by the employer from the employee's salary as his contribution to the provident fund every month. The employer also contributes a certain percentage of salary of the employees to the P.F. These contributions are deposited or invested. The interest on these investments is also credited to the P.F. account of the employee. The balance thus keeps accumulating year after year. At the time of retirement/ resignation, the accumulated amount is given to the employee.

##### TYPES:

(1) Statutory Provident Fund (SPF): This fund is set up under the provident fund act 1925. The scheme under this act is mainly meant for Govt. employees/ Semi-Govt. employees/ University/ Educational Institution affiliated to the universities.

(2) Recognised Provident Fund (RPF): RPF scheme is a scheme to which the P.F. Act. 1952 applies. According to P.F. Act. 1952 any person who employs 20 or more employees after three

years of its establishment is under an obligation to register himself under the PF Act.1952 and start PF Scheme for the employees in his organisation.

(3) Unrecognised Provident Fund (URPF) : The scheme started by the employer and the employees in an establishment, although approved by commissioner of PF but not approved by the commissioner of Income – Tax is called URPF.

(4) Public Provident Fund (PPF): This is a scheme which is covered under public provident fund 1968. Any member of the public, whether in employment or not, may contribute to this fund by opening a provident fund account at any branch of the State Bank of India or its subsidiaries. The basic object of Govt. behind PPF is to mobilize personal saving. The employee can deposit money under PPF. In this scheme there is no employer's contribution. The minimum contribution to this fund is Rs. 500/- and maximum Rs. 70,000/ per year.

The contribution made to this scheme alongwith interest is repayable after 15 years.

(5) Approved Superannuation Fund (ASF): ASF means Superannuation Fund which has been approved by the Chief Commissioner of Income Tax. It is retirement benefit plan for employees. The basic object is to provide annuities to the employees of the undertaking on their retirement after a specified age. Under this scheme both employer and employee contribute.

Treatment of Provident Fund for Income Tax Purpose:

Fund Employee's Employer's Interest on Payment of lump sum contribution contribution provident amount on retirement or Fund resignation or termination SPF (Statutory Assessee can fully exempt Fully exempt Fully exempt U/S 10(ii) Provident Fund) claim rebate U/S 10 U/S 10 U/S 80C

RPF -do- Taxable over Taxable over and Exempt if service for more (Recognised and above 12% above 9.5% p.a. than 5 years or termination Provident Fund) of Salary\* Interest credited of service because of ill in excess of 9.5% health or discontinuance of p.a. is included in business or balance gross salary transferred to another employer.

URPF Assessee Not taxable in Not taxable - Accumulated employer (Unrecognised can not claim the year of in the year of contribution + interest on Provident Fund) rebate U/S 80C contribution. contribution employer contribution (till date) is taxable as salary - Accumulated employee contribution is not income but interest on such contribution is taxable in other sources.

PPF Assessee can N.A (As only Fully exempt Fully exempt (Public claim rebate employee U/S 10(ii) Provident Fund) U/S 80C contribution and employer does not contribute)

ASF -do- Fully exempt Fully exempt Generally exempt if payment

(Approved U/S 10 U/S 10 U/S 10 is on the death of Superannuation beneficiary to the legal heir or Fund) payment is given to employee in lieu of commutation of any annuity on his retirement at or after specified age or on his becoming incapacitated prior to such retirement.

Notes:

1. \*Salary means Basic Salary + DA. If the term of employment so provide + commission on sales.

2. Un-recognised superannuation fund is treated as point No. 3 URPF.

3. Transferred balance of URPF when it is converted in RPF: URPF will be treated as RPF right from the beginning, contribution by the employer every year in excess of 12 % of his salary (from A.Y. 1998-99) + Interest credited to the provident fund every year in excess of 9.5 % p.a. (from 1.4.2001) shall be aggregated till the date of conversion of the URPF to RPF. This

aggregate amount is called Transferred balance which will be included in the gross salary of the previous year in which conversion took place.

## 7. PERQUISITE SECTION 17(2):

Section 17(2) gives an inclusive definition of 'perquisite'. As per this Section 'perquisite' includes:

- (i) the value of rent-free accommodation provided (used or not) to the assessee by his employer;
- (ii) the value of any concession in the matter of rent respecting any accommodation provided (used or not) to the assessee by his employer;
- (iii) the value of any benefit or amenity granted or provided (used or not) free of cost or at concessional rate in any of the following cases (specified employee):
  - (a) by a company to an employee, who is a director thereof;
  - (b) by a company to an employee being a person who has a substantial interest in the company;
  - (c) by any employer (including a company) to an employee to whom the provision of clause (a) and (b) do not apply and whose income under the head of Salaries (whether due from, or paid or allowed by, one or more employer), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds Rs. 50,000 (Rs. 24,000 upto assessment year 2001-02).

Except 'employee stock option plan' proviso to (iii) above;

- (iv) any sum actually paid by the employer in respect of any obligation on behalf of the employee;
- (v) any sum payable (not necessarily paid) by the employer to effect an assurance on the life of the employee or to effect a contract for an annuity;
- (vi) the value of any other fringe benefit or amenity as may be prescribed (Inserted w.e.f. assessment year 2002-03).

Note:

- (a) Definition of 'Substantial Interest' : In relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than 20% of the voting power.
- (b) Substantial interest need not be held throughout the previous year.
- (c) To be specified as a director in the company, the person should also be an employee of the company. However, it is sufficient even if he is the director for just a day. Further it does not matter whether he is a full time or part time or nominal director.
- (d) For calculation of ceiling of Rs. 50,000, deduction is made for Monetary payments exempt from income tax Entertainment allowance Professional Tax

The ceiling is computed with reference to aggregate monetary payments received from all the employers during the previous year.

### Valuation of Perquisites

Always Taxable Tax Free Perquisites for Perquisites taxable in case of (Specified & Non-specified) all employees Specified employee only. (S)

1. Rent free accommodation (note-1)
1. Medical facility (note-3)
1. Motor Car facility(note-6)
2. Concessional rent accommodation
2. Refreshment (if meals upto Rs.50)
2. Servant facility (note-7)
3. Obligation payments
3. Recreational facility provided to a
3. Gas, Light & Water
4. Employer contribution to employees group of employee (not being facility (note-8) for Life

Assurance & Annuity restricted to a selected few 4. Education facility (note-9) (other than RPF, ASF and Deposit employees) by employer is 5. Free transport facility Linked Insurance Fund) not taxable. (note-10) 5. Fringe Benefits as prescribed 4. Loan to employee 6. Others (note-2) (if less than Rs. 20,000) (a) Interest free loan 5. Perquisites outside India (if more than Rs. 20,000). 6. Training to employees (b) Traveling, Touring, 7. Rent free house & Accommodation, Expenses conveyance to judge for any Holidays. 8. Rent free house to officials (c) Free meal, tea & snack to parliament (if meal above Rs. 50). 9. Rent free house in remote area (d) Gift voucher or token 10. Educational facility (if more than Rs. 5,000), if Less than 1000 p.m. per children (e) Expenses on credit cards 11. Laptops & Computer facility (f) Club membership & expenses. owned by employer and used (g) Use of movable assets by employee or his family members. (h) Transfer of moveable asset 12. Mobile and Telephone Facility (i) Any other benefit or amenity 13. Employers contribution to pension deferred annuity scheme and staff group insurance 14. LTC (note-4) 15. Accident policy taken by employer 16. Employee stock option plan (As per guidelines of CG) 17. Tax on perquisites paid by employer.

Notes:

Specified employee means:

(i) Director employee

(ii) Substantial interest employee

(iii) Employee whose income from salary is greater than Rs. 50,000

[Salary means Basic + D.A. + Bonus + Comm. + Taxable Allowances / Perquisites (excluding benefits of non monetary nature) –

Standard Deduction – Entertainment Allowance – Employment Tax.]

Obligation payment v/s Perquisites v/s Allowances: Some examples

Obligation Payment Perquisites Allowance (Cash & Not Fixed) (in Kind) (Cash & Fixed) Entirely taxable Valued as per rule 3

Exemptions are provided U/S 10 Reimbursement of house House facility provided House rent allowance rent paid by employee. By employer. Gas, Light & Water Gas, Light & Water For Gas, Light & Water connection in the name connection in the allowance of employee and name of employer. expenses are reimbursed Servant are employed by Servant are engaged by Servant allowance. employee and his salary employer & rendering reimbursed. Service to employee.

Note - 1: Valuation of Rent Free Accommodation Valuation Central/State Govt. Employees Accommodation not in Hotel Accommodation in Hotel In accordance with the When House in When House is For Private purpose For office purpose rule framed by the Govt. taken on Lease/ owned by Rent employer 24% of Salary or Fully exempted

Actual Hotel Charges Whichever is lower

15% of Salary If City Population > 25 Lacs 15% of or actual amount

Salary is valuation of lease/rent Other Cities which ever is If population 10-25 lacs population - 10% of salary. Lower is valuation If population upto 10 lacs population - 7.5% of salary.

Points:

(i) Salary means = Basic Salary + D.A. (If included for retirement benefits) + Commission based on sales + Bonus, Fees,

Commission + Taxable Entertainment Allowance + All Other Taxable Allowance.



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**'A'**

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(ii) Accommodation includes House, Flat, Farm House, Hotel, Guest House, Ship, Mobile Home.

(iii) If employee received salary from more than one employer, the aggregate of the salary received from both employer has to be taken even accommodation has been provided by one employer.

(iv) The above rule is not applicable in following cases House in remote area located Off Shore Area House provided at new place of 40k.m. away from town of posting with retaining old population < 20,000 house upto 90 days One House values

(v) If furnished house facility First of all valuation of unfurnished house facility will be done as discussed above O

Add : If employer is owner of furniture 10% p.a. cost of furniture. O

(Including T.V., Radio, Refrigerator, A.C.) or If such furniture is hired from third party actual hire charges Value of benefit from furnished house facility O

(vi) If concessional house facility Furnished / Unfurnished valuation as discussed above O Less : Concessional amount rent charges

O Value of benefit from concessional house facility O

(vii) Hotel Accommodation

If accommodation is provided for a period not exceeding 15 days at the time of transfer from one place to another. It will not perquisite hence not valued. Otherwise 24% of salary or rent paid.

(viii) If two accommodations are provided at the time of transfer then value of benefit from accommodation will be as follows

(a) Till 90 days — one accommodation's value of benefit as perquisites (accommodation of lower value)

(b) More than 90 days — both accommodation's value of benefit as perquisites

Note - 2:

(a) Interest Free Loans

The value of benefit to employee or any member of his household during the previous year shall be determined accordance with rate charged by the State Bank of India as on the first day of the relevant previous year.

The different rates of interest charged by the State Bank of India as on 1.4.2009 were as below :

Nature of Loan Rate of Interest (per annum)

Housing Loan Upto 5 years 9.75%, 10.25%

Above 5 years 10%, 10.5%

Above 15 years but upto 25yrs 10.25%, 10.75%, 11%

Car Loan Upto 3 years (<7.5 lacs) 11.50%

Above 3 years 11.75%

Above 5 years 12.00%

Education Loan Upto 4 lacs 11.75%

Above 4 lacs but upto 7.5Lacs 13.25%

Loan amount above Rs. 7.5 Lacs 12.50%

Personal Loan — 16.50%

Exemption if :

— Loans are petty not exceeding Rs. 20,000/-

— Loans is for medical treatment in respect of specified disease.

(b) Value of traveling, stay and other expenses borne by the employer for holiday availed.

Circumstances Value of benefits

(i) Where such facility is maintained by the employer Value at which such facilities are offered by and it is not available uniformly to all employee. other agencies to the public.

(ii) Where the employee is on official tour Amount of actual expenses incurred. and expenses are incurred in respect of any member accompanying him.

(iii) Where any official tour is extended Expenses incurred for such extended as a vacation. period of vacation.

(iv) In any other case where such facility A sum equal to the amount of the given to the employee or any member expenditure incurred by the employer of his household.

Less : Amount paid / Recovered from the employee for such benefit or amenity.

(c) Value of free meals, tea and snacks [Rule 3 (7)(iii)]

Circumstances Value of Benefit

(i) Tea or snacks provided during office hours. Nil

(ii) Free meals during working hours provided in a : Nil (a) Remote area; or (b) an offshore installation.

(iii) Fee meals provided by the employer during office hours : (a) at office or business premises; or Nil, If value thereof in either case is

(b) through paid vouchers which are not upto Rs. 50 per meal transferable and usable only at eating joints.

(iv) In any other case Actual cost to the employer

Less : Amount paid or recovered from the employee for such benefit or amenity.

(d) Value of any gift, voucher or token [Rule 3 (7)(iv)]

Gift voucher or token in lieu of which such gift may be received by employee or by any member of his house hold on ceremonial occasion (like Deepawali, New Year, Anniversary of any organisation) is exempted below Rs. 5,000 p.a.

**IMPORTANT:**

Gifts made in cash or convertible into money like gift cheques etc. are taxable. (As per CBDT circular)

(e) Expenses on credit card [Rule 3(7)(v)] Circumstance Value of Benefit

(i) Expenses including membership fees Amount paid for or reimbursed by the and annual fees charged to a credit employer card or add on card provided by Less : amount paid or recovered from the employer. Paid or reimbursed by the employee the employer for expenses other than official purpose.

(ii) Official purpose Nil Specified conditions to be fulfilled to claim that expenses have been incurred wholly and exclusively for official purposes:

(a) complete details in respect of such expenditure is maintained by the employer which may, inter alia, include the date of expenditure and the nature of expenditure;

(b) it is certified by the employer that such expenditure was incurred wholly and exclusively for the performance of official duty;

(c) the supervising authority of the employee gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties;

(d) where an employee incurs expenditure on entertainment and claims the same to have been incurred wholly and exclusively in the performance of his duties, details of such entertainment expenses, inter alia, include the nature and purpose of entertainment and persons entertained.

(f) Club membership and expenses incurred in a club

Circumstance Value of Benefit

(i) The payment for reimbursement by the The actual amount of expenditure employer of any expenditure incurred incurred or reimbursed by (including the amount of annual or periodical the employer. pay) in a club by the employee or by any Less amount paid or recovered from member of his household for any purpose employee.other than official purpose.

(ii) Where the expenses are incurred wholly and exclusively for official purposes and the conditions specified below are fulfilled.

**INCOME FROM HOUSE PROPERTY**

**SECTION 22 TO 27**

Sec 22 Charging section.

Sec 23 Annual value.

Sec 24 Deduction from NAV.

Sec 25 Subsequent recovery.

Sec 26 Co ownership.

Sec 27 Deemed owner.

[A] General Points

1) The head income from house property covers sec 22 to 27 of the income tax act. Sec 22 is the charging section of the head “ income form house property”

2) Under the head “Income form house property” we are interested to compute income form the rental, income earned by the assessee from letting out of the property not the profit on sale of house property.

3) The word “house property” includes residential house, office, go down, showroom and any other commercial premises.

4) It is not necessary that the property must be let out through the year up to one person only or at the same amt of rent

5) The truly speaking the head “Income form house property” is national head of income. This is because of the fact that sometimes income will be considered even if there is no actual income or higher income will be considered if actual income is lower.

6) Conditions

Sec 22 lays down certain conditions. There are three such conditions these conditions are cumulative. It means all the three conditions are satisfied then the rental income will be taxable under the head income from house property.

a) There must be house property.

It is necessary that there must be house property. House property means the building or superstructure (structure) supported by walls and roofs which can be used by human beings. It includes land appurtenant (closely affected) to the house property. It means there must be a



house property or land appurtenant thereto for e.g. rental income earned from let out a vacant plot of land is not taxable under this head.

b) The assessee must be owner of house property. To charge income under this head assessee need to be the owner of the property rent received not as an owner I not taxable under this head. For e.g. rent received from-----of the property is not taxable under the income from house property.

c) The property must be not used by the assessee for the purpose of his own business or profession the income of which is chargeable to tax.

7) Temporary let out by builder It all the above conditions are satisfied then income is taxable under this head. This is true even if in the case of builder who has constructed the building for selling purpose by let out the same temporary. In short if builder lets out the building (stock in trade) then also rental income is taxable under the head income form h.p.

8) Business of letting out of property If assessee is having business of owning and letting out of property rental income will be chargeable to tax under the head income from h.p. only because all the above conditions are satisfied.

9) Let out of quarters to the employees

If employer has given the quarters on rent to their employees then the rental in vome will be chargeable to tax under the head income from business and profession not under the head income form h.p. This is because the fact that letting out of property is incidental and subservient to the main activity of business therefore the rental income will be charged to the tax under the head income from b & p (Delhi & general mills ltd v/s commissioner of income tax)

10) Letting out of property to support business activity

When the house property has been let out to banks police station etc. To support the main business activity rental income from business and professing or not under the head income from h.p.

11) Composite let out

Both are separable both are inseparable

(e.g. H.P + car) (E.g. classes)

Rent charged rent charged if it is business not business

Separately is common (sec 28) (sec 56)

Rebate if rent of reduce the exp of other h.p. Other assets assets and balance is taxed (Sec 22) (Sec 28or 56) (Sec 22)

[B] Basis of charge (Sec 22)

Income from house property is taxable on "due basis". It means rental income becomes due it is irrelevant or see in which year such rent has actually been collected.

[C] Types of properties for I.T. purpose

a) let out property (lop)

b) self occupied or unoccupied property (so or Up)

c) partly let-out property (plop)

d) deemed let-out property (DLOP)

[D] Format (LOP)

Mr. X

Individual

A.Y. 2007-08

R & or

P.Y. 2006-07

Computation of income from house property

Particular amt

amt

Gross annual value (GAV)

xxx

(-) Municipal taxes paid net annual value

(xxx)

Net annual value

xxx

(-) Deduction u/s 24

1) Statutory deduction (sec 24a) [30% of \_\_\_\_\_]

xxx

2) Interest on borrowed capital (sec 24b)

xxx (xx)

**INCOEM FORM HOUSE PROPERTY**

**XXX**

[E] Gross annual value (sec 23)

Gross annual value if always the starting point for computation of income from h.p. G.A.V. means rental value of the property being an annual value the rental value should always be caln for one year. This is true even in a case where the H.P is letout of for a part of the year and it was empty or vacant for another part of the year G.A.V. is an annual value before any deductions for determination of G.A.V. the following four types of rent are considered.

i) municipal value

Municipal value is the rental value of the property as recorded by the municipal corporation. In other words it is the total rent for which property may be let out according to Municipal Corporation.

ii) Fair Rent

Fair rent means the rent at which the property can reasonably be expected to let out on month to month basic. It is let out to a common man and rent charged is the sole consideration.

### iii) Standard Rent

Standard rent means the rent determined as per provisions of the rent control act. It is ceiling limit for the rent to be charged. In other words rent control act specifies the maximum rent to be charged far rent can not exceed standard rent

### iv) Actual rent

Actual rent means rent received or receivable for the property which is let out based on above G.A.V. can be determined as under.

Particular Amt (Rs)

- a) municipal value xxx
- b) fair rent xxx
- c) hire of (a) and (b) xxx
- d) standard rent xxx
- e) lower from (c) and (d) xxx
- f) actual rent (exc unrec) xxx
- g) higher of (e) and (f) xxx

### \_ Notes

1) If property is let out and also vacant during any part of the P.Y then actual rent received or receivable will be calculated only for the period during which the property was let out in other wards the actual rent for the period during which the property was vacant will be excluded by calculating the actual rent.

For e.g. if a property is let out at Rs. 5000/- p.m. for 8 months then actual rent will be (5000 x 8) Rs. 40000/- and not Rs. 60000/- (5000 x 12)

2) If the let out property is vacant (as per point 1 above )

due to such vacancy only the actual rent received or receivable ..... Less than the expected rent the actual amount so received or receivable shall be deemed to be a G.A.V.

For e.g. if the expected rent (after considering municipal value and standard rent) is Rs. 50000/- p.a. and actual rent received is Rs. 40000/- for 8 month then Rs. 40000/- will be G.A.V. this is because if the property would have been let out for 12 month actual rent would have been more than the fair rent (Rs. 60000/-) on the other hand if actual rent received is Rs. 40000/- for 12 month than Rs. 50000/- being higher will be treated as G.A.V.

### [F] Municipal Taxes

Municipal taxes are the taxes laid by the local authority on the property. It is allowed on payment bases. In other words it is allowed in the year in which it is paid by the assessee it is irrelevant to see whether it is paid for past p.y. present p.y. or future p.y.

[G] Deduction from NAV (SEC 24)

Sec 24 gives a list of expenses which are allowed as a deduction while computing income from h.p. sec 24 provides an exhaustive list. In other words only those deductions are allowed which are specified in sec 24 any other expenses even though incurred on h.p. will not allowed as deduction.

Under this section following tow deductions are allowed.

a) Statutory deduction (sec 24a)

Under the head statutory deduction statutory education are allowed to repairs and collection cost etc incurred the assessee for the purpose of h.p. it is allowed at a fix rate of 30% of NAV IRRESPECTIVE OF ACTUAL EXPENSES INCURRED FOR THE PURPOSE. IN OTHER WORDS ACTUAL EXP UCURRED (IF ANY) SHOULD BE IGNORED.

d) Interest on borrowed capital (sec 24b)

The interest on capital borrowed by the assessee for the purpose of the h.p. will be allowed as a deduction while computing income from h.p. for this purpose following points would be noted.

- 1) The loan may be taken for the purpose of purchase construction repairs or reconstruction of property.
- 2) The interest is allowed as a deduction whether paid or payable.
- 3) Interest on new loan taken to repay the old loan which also be allowed as deduction
- 4) Interest on interest i.e computed is not allowed likewise interest on any loan taken to pay the interest of original loan will not be allowed as a deduction.
- 5) Any brokerage commission fees or other remuneration by whatever name called paid to arrange the loan will not be allowed as deduction.
- 6) Current year interest will be allowed .....full.

However reconstruction period interest will be allowed in part over certain years. Current ear interest means interest paid or payable by the assessee for the current p.y. it should be altered

from the year p.y. which construction is completed.

7) Pre construction period interest

Pre construction period interest will be allowed in five annual equal installments.

i) it is allowed from the year in which construction is completed for the first five years only.

ii) Based on this it can be said that for the first five years after construction total interest allowed will be pre-period interest + current year interest.

iii) Pre construction period means period starting from the date on which loan is taken and ending on 31st march period to the year in which construction is completed.

8) In case when property is let out interest will be allowed in full without any restrictions whatsoever this is true even if interest is more than N.A.V.

Property tax if given on a consolidated basis can be .....as attributable to each such portion or floor on a reasonable basis floor area or annual value can be considered as the appropriate basis or such .....

Interest expenditure relating to the let out floor can be claimed fully without any restriction and the interest attributable shall be allowed up to rs 30000/- or Rs.. 150000/- as the case may be the treatment applicable to self occupied property is same as explained earlier.

(ii) house property:-

Let out for a period and self occupied for a period.

If a single unit of the property (house, flat, tenement etc) is self occupied for few months and let out for other months then such a property may also be owned as partly let out. In this case while calculating G.A.V on the property actual rent should be taken only for let out portion other treatment shall be as above.

[L] When there is unrealized rent

If any amt of rent is not capable of being realized then such portion of rent shall not be included in computing the G.A.V. However if to exclude such unrealized rent the condition prescribed in relevant rule should be specified.

The exclusion of unrealized rent is permissible if the conditions prescribed under rule (4) are satisfied (Notification no 198 of 2001 dated 2nd July 2001) this as under.

• The tenancy is bonafied.

- The defaultly tenancy has vacated or steps have been taken to compel him to vacant the property.
- The defaultly tenant is not an occupation of any other property owned by the assessee.

#### \_ ARREARS OF RENT (SEC 25(d))

Where assessee receives any amt by way of arrears of rent in respect of any property consisting of building or land apartment thereto of which assessee is the honors the amt so received shall be chargeable to tax under the head "income from house property" It shall be charged to tax as income of the P.Y. in which such rent is received. Even if the assessee is no more honors of the property while computing the income chargeable to tax in respect of arrears 30% shall be allowed as a statutory deduction u/s 24(a). Consequently only 70% of arrears is charged to tax. The deduction of 30% is irrespective of actual expense incurred.

#### \_ CO OWNERSHIP (SEC26)

If a house property is an by two or more person then such person are not as co owner are definite and as certain able the share of each person in the computed income of property should be included in his total income on the other hand if their share is not ascertainable then it will be called as an AOP [ i.e. association of person ] accordingly assessment will completed. It may be noted that the income will be computed as if it were on by one owner only. At the same time consensual treatment in respect of SOP is applicable as if such person is individually entitle to such relief.

#### \_ DEEMED OWNER (SEC27)

Sec 22 is the charging sec of the head "income from h.p. it lays down three conditions which must be satisfied to charge an income under the head income h.p. accordingly one of the conation is that the assessee must be the owner o the property. The owner for the purpose includes deemed owner u/s 27.

Sec 27 gives list of the situations o cases whereby assessee is deemed owner of the property ever though legally he is not the owner of the property it should be noted that sec 27 gives ownership only for the purpose of income tax and not of any other property. There are as under.

- An individual who transfers any h.p. to his her spouse otherwise then for adequate consideration and not being transferer will be treated as deemed owner of the property. However if his spouse as paid adequate consideration then transferer will not be treated as deemed owner of the property at the same time if the assessee has gifted a sum to the

spouse. Which spouse has given to the assessee by the way of consideration for the h.p. transferred then transferer will not be treated as deemed owner of the HP.

- The holder of an importable estate is deemed owner of the property.
- A member of co operative society or other association of person to whom building or part thereof is allotted or leased under a house building scheme of the society company or association as the case may be the member is deemed owner of that building or part thereof
- Any person who is allowed and ho retain possession of any building in part performance of a contract of the nature referred to sec 53 (a) of the transfer of property act 1882 is deemed owner of the building or part thereof.
- A person who acquires any right in or with respect any building or part thereof y virtue of any transaction whether by way of transfer of shares in a comparative society company etc or by the way any agreement which has the effect of transferring or enabling to endorsement of such property then such person is deemed owner of the property under sec.....of the transfer of property right which are acquire by the way of lease from month to month or a period of not exceeding 1 year.

#### INCOME FROM BUSINESS OR PROFESSION

Sec. 2(13) defines business to include trade, commerce or manufacturing or any other adventure in the nature of trade, commerce or manufacturing. Profession implies professed attainments in special knowledge which is acquired through study & application. Sec. 2(36) defines Profession to include vocation i.e. any activity on account of inborn talent or skill e.g. Income from acting, singing, rendering discourses on religion etc.

Case law of Dr. K. George Thomas vs. CIT (SC)

Assessee was practicing against atheism & engaged in the movement for spread of religion. In this course, he received donations from his friends for the same course. The funds were taxed as Income from vocation (since nexus between receipt and vocation) can be clearly established)

Business Income not taxable under the head Income form Business & Profession:-

- 1) Rental income in case of dealer in property – always shown under the head 'Income from House Property' even if is the assessee's business to let out house property on rent.
- 2) Dividend on shares in case of dealer in shares - always shown



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as 'Income from other sources' (in case of taxable dividend only)

3) Winning from lottery, Crossword puzzle, Betting, Gambling etc. - always shown as 'Income from other sources'

As per Sec. 145, income shall be computed depending upon the method of accounting regularly adopted by the assessee. (either cash or mercantile)

Although method of accounting followed by assessee is the basis for computation of income under this head, there are certain provisions which apply independent of the method of accounting. Depreciation Sec. 32

Preliminary Expenses, VRS Sec. 35D, 35DDA

Tax, duty, cess or fee, bonus commission, PF,

Employee state insurance, Leave salary,

interest to specified institutions

Sec. 43B

Interest on compensation or on enhanced compensation

145A

Discount on redeemable debenture Madras Industrial

Investment Corporation

Ltd. 225 ITR 802 (SC)

Opening stock and closing stock CIT vs. Krishnaswami

Mudaliar – 53 ITR 122

(SC)

Income from Business Profession is chargeable to tax under this head only if the Business/ profession is carried on by the assessee at any time during the PY. However the following receipts are taxable even if no Business / Profession is carried on by the assessee during the PY

1) Recovery or excess recovery against deduction [Sec. 41(1)]

2) Sale of depreciable assets by power generating units [Sec. 41(2)]

3) Sale of an asset used for scientific research [Sec. 41(3)]

4) Recovery or excess recovery against bad-debts [Sec. 41(4)]

5) Amount withdrawn from special reserve [Sec. 41(4A)]

6) Sum received after discontinuance of business profession [Sec. 176(3A), (4)]

7) Sum received for restrictive covenant [Sec. 28(va)]

Concept of Mutuality

Income out of mutuality is not taxable

Tests of a Mutual concern

1) Mutual objective / Common purpose



2) All transactions are for & among members

3) Contributors & participators are same

Case Law of CIT vs. Bankipur Club Ltd. (SC)

Club earns income from members by supplying drinks, refreshments, & by letting out property to members (and their guests occasionally), these are privileges attached to the membership & so surplus is not taxed. However concept of Mutuality is to be seen from the objects of the club & it may differ from case to case. But it should not be understood in a very strict manner.

Sec. 28 Charging Section

The following items shall be chargeable to tax under the head "Profits and Gains of Business Profession"

- i) Profits and gains of any business or profession carried on by the assessee at any time during the PY
- ii) Any compensation or other payment due to or received by any person in connection with termination or modification of a contract relating to management of affairs in co. or relating to any agency for a business activity or vesting management in favour of government
- iii) Income derived by a trade, professional or similar association from specific services performed for its members.
- iv) Profit on sale of import entitlement licenses, incentive by way of cash compensatory support & drawback of duty & similar export incentive
- v) The volume of any benefit or perquisite, whether convertible into money or not arising from business or the exercise or profession

Case Law of Boeing Ltd. vs. CIT (2001)(Madras HC)

Company gave a dealer incentive for achieving sales in the form of a car it was held to be blue.

- vi) Any interest, salary, Bonus, commission or remuneration received by a partner of firm from such firm. However if any salary or interest is disallowed u/s 40(b) it will not be taxed in the hand of partner to the extent of disallowance
- vii) Any sum received or receivable in cash or kind for not carrying out any activity or sharing any know how, patent, copyright, Trade mark or similar commercial right
- viii) Any sum received under keyman insurance policy
- ix) Any sum received or receivable in cash or kind on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or

transferred if the whole of the expenditure on such capital asset has been allowed as deduction u/s 35AD (applicable from AY 2010-11 onwards)

Speculation Business – According to Explanation 2 to sec. 28 where an assessee carries on speculative transaction which constitutes a business shall be considered as a separate & distinct business. A speculative transaction is defined u/s 43(5) to mean a transaction in which a contract for purchase and sale of any commodity including stock and shares is periodically or ultimately settled otherwise than by actual delivery or transfer to the commodity or scrip. However any transaction in ordinary business course to guard against loss due to price fluctuation not considered as speculation business.

Derivative business is also not considered as speculation.

Income from Business / Profession

Profit as per P/L a/c XX

ADD: Expenses debited to P/L a/c but specifically disallowed under the IT Act

XX

Receipts considered as Business income but not credited to P/L a/c

XX

LESS: Expenses specifically allowed under IT Act (But not debited to P/L a/c)

(XX)

Receipts wrongly credited to P/L a/c (XX)

Income from Business / Profession XX

Expenses specifically allowed under IT Act

Sec. 30 – Rent, rate, Tax, Repairs, Insurance for building used in business

Se. 31- Repairs, Insurance for plant and machinery or furniture used in business

An expenditure would qualify as current repairs if it is incurred to 'preserve and maintain' an already existing asset. In order to avail the benefit of deduction u/s 31, such expenditure would not bring into existence any new asset or an advantage of an enduring nature. There may be a question as to whether the expenditure in connection with replacement, if not allowable u/s 31, can be claimed u/s 37 (1). The honorable Supreme Court in CIT vs. Sri Mangayarkarasi Mills Pvt. Ltd. (2009) 315 ITR 144 has held down the test as to whether such cost of replacement is revenue or capital expenditure based on the satisfaction of the following:

a) What is replaced is only a part

- b) What is replaced had gone weak and old so as to require replacement
- c) The replaced asset has to be sold either as junk or at nominal value or it remains unsold and unusable
- d) There has been no significant increase productive capacity after the replacement

Case Law of

CIT vs. Volga R (2001) (Delhi HC)

On account of fire, extensive damage was caused to business premises and air conditioning plant. Electric motors, pumping sets etc. were completely damaged. Expenditure incurred towards replacement of damaged parts of air-conditioning plant is held to be allowable as current repairs.

CIT vs. madars Cement Ltd. (2001) Madras HC

The replacement of a section in a series of machines which are interconnected, in a segment of the production process which together form an integrated whole may in some circumstances, be regarded as amounting to repair when without such replacement that unit in that segment will not function. However, the above view can not be extended to the entire manufacturing facility from the stage of raw material to the delivery of the final finished product. In order to constitute 'current repairs' the expenditure must have been incurred to "preserve and maintain" an already existing asset, and the object of the advantage. Assessee company discarded the old mill and replaced the same by installing and commissioning a new cement mill in pursuance of modernization programme is not allowable u/s 31

CIT vs. Hero Cycles 2009

In this case it was decided that revenue expenditure incurred by the assessee towards cost of electronic motors for replacement of existing machinery.

Sec. 35 -Expenditure on Scientific research

According to Sec. 43(4) scientific research means any activity for the extension of knowledge in the field of natural or applied sciences including agricultural, animal husbandry or fisheries.

Note: If co. is approved u/s 35 (1)(iia) whereby deduction of 125% of the sum contributed to the co. is available to the contributor then the co. can't claim weighted deduction of 150% u/s 35(2AB) in respect of its own expenditure incurred after 31.03.2008

Case Laws

Sandoz India Ltd. [Bombay HC]

It was decided that approach roads (roads connecting one dept. to another) are part of building & qualify for deduction u/s 35

CIT vs. Rane Brake Linings (2003) [Madras HC]

In this case expenditure incurred on building was allowed even though construction was not complete. Deduction is for expenditure incurred & asset may not be complete in all respect.

Multi Metals vs. CIT (2002) (Rajasthan HC)

Expenditure on Scientific Research

Any revenue

expenditure incurred by the assessee (related to business) includes pre commencement

expense as well (i.e. expenditure incurred 3 years prior to

commencement of business) However PCE should be certified by prescribed authority.

Also PCE does not include value of perquisites Deduction = 100%

Any capital expenditure (except cost of land)

incurred by the assessee (related to business) includes PCE

as well Deduction = 100%

(depreciation u/s 32 can't be claimed again)

Contribution to approved Scientific Research Association, university, college for Scientific Research, social research, statistical research. Also includes contribution to National Lab & IIT for prescribed programmes & contribution to a co. registered in India with its main object of Research & Development Available to specified co. engaged in Research & development which is approved by the prescribed authority

Deduction = 150% Except land & building Asset purchased earlier & used for business was after some years used for scientific research. Assessee claimed WDV as a deduction u/s 35. Disallowed as deduction u/s 35

There is no such provision in the Act which provides that if assessee has acquired some assets for business and after using he transfers them for research, he can get benefit u/s 35. Besides block of assets concept doesn't allow you to distinguish any individual asset CIT vs. Panacea Biotech Ltd. (2009) (Delhi) In case of assessee following mercantile system, he can claim deduction if he has incurred the expenditure in a particular year even though not actually paid during the year. Sale of Asset used for Scientific Research Introduced in business & then sell it Sell it directly in the market without introducing it in the business

In such a case asset form part of block of asset where actual cost is nil whether the asset is sold sale price will be deducted from block

In such a case lower of Surplus or  
Total deduction u/s 35 will be taxed as  
Business Income u/s 41(3)

Note: Excess of surplus over cost is  
Capital Gain. However Capital Loss is  
not to be calculated.

Unabsorbed Capita Expenditure on Scientific Research is treated  
just like unabsorbed depreciation.

Sec. 35ABB - Expenditure w.r.t. telecom license

- Deduction = Total cost of license / No. of years for which license is valid
- Deduction begins from year of payment
- If payment is made in advance deduction begins from the first year
- If payment is made in installments proportionate deduction
- If no payment is made no deduction

Sale of Telecom license

Sold fully (just like SLM of dep.)

Calculate the Opening Balance of  
the license in the beginning of the  
year when sold

i) If sale price < Opening Balance then the difference is claimed as deduction in the year of sale.  
No deduction in remaining years

ii) If sale price > Opening Balance then the difference or total deduction u/s

35ABB whichever is less is taxed as Business Income Sold in Parts Calculate the Opening  
Balance of the license in the beginning of the

year when sold i) If sale price < Opening

Balance new deduction

from the year of sale =

(Opening Balance - sale price) /

8nexpired period

ii) If sale price > Opening  
Balance then the difference  
or total deduction u/s  
35ABB whichever is less is  
taxed as Business Income

Sec. 35AC – Payment to approved association for carrying out eligible project of economic and social welfare. A corporate assessee can alternatively spend directly on the project. Institutions and their projects need to be approved.

Sec. 35CCA – Contribution to National fund for rural development Contribution to National Urban Poverty Eradication Fund

Sec. 35AD – This sec. provides for 100% deduction in respect of any capital expenditure incurred by an assessee during the PY for specified business sub. To the fulfillment of certain conditions

Eligible Business – The following shall be considered as specified business for the purpose of availing deduction under this section:

1. Setting up and operating a cold chain facility;
2. Setting up and operating a warehousing facility for storage of agricultural produce;
3. Laying and operating a cross country : (i) natural gas; or (ii) crude; or (iii) petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

Amount eligible for deduction

(i) 100% of the amount of any capital expenditure incurred wholly or exclusively for the purpose of the specified business carried on by the assessee shall be allowed as deduction.

(ii) It may be noted that, for the purpose of deduction under this section, capital expenditure shall not include acquisition of: (a) land; (b) goodwill; or (c) financial instrument – Sec. 35AD (8). (Please do theory in detail)

Sec. 35D- Preliminary expenses w.r.t. setting up a new business or expansion of existing business/ setting up a new unit.

(1) GQA [Gross Qualifying Amount]

(2) NQA [Net Qualifying Amount]

(3) Deduction

NQA

1. In case of non-corporate assessee

Lower of (i) GQA or

(ii) 5% of Cost of project

Cost of Project is the actual cost of fixed asset on the last day of previous year when business commences or when expansion is complete.

2. In case of a corporate assessee Lower of (i) GQA or

(ii) 5% of Cost of project / 5% of Cost of Capital

Employed whichever is higher

Cost of Capital Employed = Total issued share capital + debenture + long term borrowings as on the last day of the previous year when business commence or expansion is complete.

Deduction = NQA / 5

Note: This deduction is available only to an Indian co. or resident non-corporate assessee and not to foreign co.

Sec. 35DD - Expenditure on amalgamation & demerger – Available to an Indian co. Deduction is 1/5th every year.

Sec. 35DDA – VRS Compensation - Deduction is 1/5th every year

Sec. 44DB –In case of Amalgamation or demerger of a co-operative bank, deduction u/s 32,35D, 35DD & 35DDA shall be computed as under:

Compute the amount of deduction in the aforesaid section of the Previous Year in which change of ownership takes place because of amalgamation or demerger on the assumption that the amalgamation or demerger has not taken place

The amount of deduction so determined shall be apportioned between the

(a) amalgamating co-operative bank and amalgamated cooperative bank or;

(b) demerged co-operative bank and resulting co-operative bank, as the case may be, in the ratio of number of days for which the assets are used by them during the previous year in which ownership changes.

Sec. 35E- Expenses w.r.t. to mining – available to Indian co. or non-corporate resident assessee.

Expenditure incurred on extraction or production of minerals (including expenditure incurred 4 years prior to commencement of business) can be claimed as deduction in 10 equal annual installments.

Sec. 36

Sec.36 (1)(i) – Insurance premium w.r.t. stock, spares etc. used in business/ profession

Sec.36 (1)(ia) – Insurance premium on life of cattle paid by Federal Milk Co-operative society

Sec.36 (1)(ib) – Insurance premium on life of employees paid by employer (provided it is paid by any mode other than cash)

Sec.36 (1)(ii)- Bonus or commission to employees (sub. to provision of sec. 43B)

Sec.36 (1)(iii) -Interest on borrowed capital (sub. to provision of sec. 43B)

Sec.36 (1)(iiia) –Discount on Zero Coupon Bonds

Sec.36 (1)(iv) –Employer's contribution to Recognised Provident Fund & approved Super Annuation (sub. to provision of sec. 43B)

Sec.36 (1)(v) - Employer's contribution to approved Gratuity Fund (sub. to provision of sec. 43B)

Sec.36 (1)(va) - Employer's contribution towards staff welfare schemes. The moment the amount is deducted from their employee's salary it is taken as employer's income, however it is deposited in the relevant fund on or before the due date of the relevant act then it is available as deduction u/s 36(1)(va). If paid after due date deduction is lost forever.

Sec.36 (1)(vi) – Write off of animals if the animals become useless or deceased (not used as stock)

Sec.36 (1)(vii) – Bad-debts only w.r.t. mercantile system of the accounting. Only w.r.t. debt which have been claimed as income earlier (i. e. shown on credit side of P/L a/c as income)

Sec.36 (1)(viii) – Provision for Bad-debts/reserve for Bad-debts – Available only to Bank & Financial institutions(i. e. business of money lenders) If a Reserve for Bad-debts created and then there are actual bad-debts deduction w.r.t. bad-debts, will be claimed only to the extent of actual bad-debts exceed the reserve.

Sec.36 (1)(ix) – Deduction w.r.t. special reserve available to financial institution engaged in providing long term finance for Agricultural development, Industrial development, infrastructural development, financing houses.

Deduction is lower of

(i) Amount transferred to special reserve or

(ii) 20% of profit

(iii) 2 (paid – up share capital + general reserve) – opening balance of special reserve

Sec.36 (1)(x) – Deduction w.r.t. promoting family planning among employees is available only to co. Any revenue expenditure – 100%; any capital expenditure – 1/5th of every year

Sec.37 (1) – General Deduction available, if the following conditions are fulfilled

(a) Not covered as expenses from Sec.30 to Sec.36

(b) Not a capital expenditure

(c) Not a personal expenditure

(d) Incurred wholly for business purpose

(e) It should not be expenditure for any purpose which is an offence or prohibited by law.

e. g. (i) salaries & wages paid to employees

(ii) Traveling expense

(iii) Advertisement expenditure (however advertisement through any magazines or sovenir or contribution to political party is not allowed)

(iv) Audit fees

(v) Legal expense

(vi) Pooja expense

(vii) Revenue losses incidental to business

(viii) Custom duty, sales tax etc. (except Income tax, Wealth tax,

40A(7)

u/s

40A(9)

## INCOME FROM CAPITAL GAINS

### 1. Chargeability u/s 45

Profits or gains arising from the transfer of a capital asset is chargeable to tax in the year in which transfer take place under the head "Capital Gains".

#### Definitions

Transfer: Sec. 2(47): Transfer in relation to a capital asset includes sale, Exchange, or relinquishment of the asset or extinguishment of any rights therein or the compulsory acquisition



thereof under any law or conversion of the asset by the owner in stock-in-trade of a business carried on by him or the maturity or redemption of a zero coupon bond.

Capital Asset: Sec. 2(14): Capital Asset means property of any kind (Fixed, Circulating, movable, immovable, tangible or intangible) whether or not connected with business or profession.

Exclusions —

- a. Stock-in-trade
- b. Personal effects of the assessee
- c. Agricultural land in a rural area
- d. 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Bonds, 1980 issued by the Central Government
- e. Special Bearer Bonds, 1991 issued by the Central Government.
- f. Gold Deposit Bonds issued under Gold Deposit Scheme 1999

Short-term capital asset: Sec. 2(42A): means a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer. However, in the following cases, an asset, held for not more than twelve months, is treated as shortterm capital asset—

- a. Quoted or unquoted equity or preference shares in a company Circular No. 495 dated 22.9.1987 explaining amendments by Finance Act, 1987 whereby unquoted shares of a private limited company also if held more than 12 months falls in the category of LTTCG. Also Refer the Judgment in 120 TTTJ 699 for unquoted shares held for less than 36 months.
- b. Quoted Securities
- c. Quoted or unquoted Units of UTI
- d. Quoted or unquoted Units of Mutual Funds specified u/s. 10(23D)
- e. Quoted or unquoted zero coupon bonds

Long-term capital asset: Sec. 2(29A): means a capital asset which is not a short-term capital asset

## 2. Year of chargeability to tax

Capital gains are generally charged to tax in the year in which 'transfer' takes place. Exceptions —

- a. Sec. 45(1A) — Insurance Claim — In the year of receipt.
- b. Sec. 45(2) — Conversion of capital asset into stock-in-trade — In the year of actual sale of the stock.
- c. Sec. 45(5) — Compulsory acquisition — When consideration or part thereof is first received.

Exempt Capital Gains under Section 10

10(33) : Transfer of US 64 on or after April 1, 2002

10(37) :

Compulsory acquisition of Urban Agriculture Land where consideration is received after March 31, 2004.

10(38) :

Long-term capital gain arising on transfer on or after October 1, 2004 of equity shares or units of equity oriented mutual fund and the STT is paid at the time of transfer.

### 3. Computation of capital gains (Sec. 48)

The method of computation depends on the nature of capital asset transferred. It is as follows:—

Short-term Capital

Gain

Long-term

Capital Gain

A. Find out Full Value of Consideration

A. Find out Full

Value of Consideration

B. Deduct: B. Deduct:

(i) expenditure

incurred wholly and

exclusively

in connection with

such Transfer.

(i) expenditure

incurred wholly

and exclusively

in connection

with

(ii) Cost of

Acquisition

(iii) Cost of

Improvement

(iv) Exemption

provided by Ss. 54B,

54D & 54G, 54GA

such Transfer.

(ii) Indexed Cost

of Acquisition

(iii) Indexed

Cost of

Improvement

(iv) Exemption

provided by Ss.

54, 54B, 54D,

54EC, 54ED,

54F & 54G,

54GA

C. (A-B) is short-term

capital gain

C. (A-B) is a

long-term



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capital gain

4. Full value of consideration for transfer of land or building  
or both: Sec. 50C

Higher of the followings:—

a. Full value of the consideration received or accruing

b. Value adopted or assessed (w.e.f. 1st day of October, 2009 the word "or assessed" shall be substituted by "or assessed or assessable") by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer.

5. Indexed Cost of acquisition = Cost of acquisition \* Cost inflation index for the financial year  
In which the asset is transferred/ Cost inflation index for the first financial year in which the  
asset was held by the assessee or the year beginning on 1.4.1981, whichever is later or the year  
of Improvement of the asset

However, in case of Bonds, Debentures except capital indexed bonds depreciable assets, and for  
non-residents even if they are

long term capital assets the benefit of indexation is not available.

Cost inflation Index

Financial

Year

Cost

Inflation

Index

1981-82 100

1982-83 109

1983-84 116

1984-85 125

1985-86 133

1986-87 140

1987-88 150

1988-89 161

1989-90 172

1990-91 182

1991-92 199

1992-93 223

1993-94 244

1994-95 259

1995-96 281

1996-97 305

1997-98 331

1998-99 351

1999-

2000

389

2000-01 406



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2001-02 426  
2002-03 447  
2003-04 463  
2004-05 480  
2005-06 497  
2006-07 519  
2007-08 551  
2008-09 582  
2009-10 632  
2010-11 711  
2011-12 785

Computation of Long Term Capital Gains on Shares both Equity  
and Preference, Listed or Unlisted and Debentures:

Capital Assets

If

transaction

is covered by STT at the time of transfer

IF it is not covered by STT Long Term Without indexation With indexation Listed equity shares

covered by Sec. 10(36)

0% 0% 0%

Listed equity

shares not

covered by Sec.

10(36)

0% 10% 20%

Unlisted equity

shares

NA NA 20%

Listed

Preference

shares

NA 10% 20%

Unlisted

Preference

shares

NA NA 20%

Listed

Debenture

NA 10% NA

Unlisted NA 20% NA

Debenture

CAPITAL GAIN IN CASE OF CONVERSION OF A PRIVATE

COMPANY OR AN UNLISTED PUBLIC COMPANY INTO AN LLP:

Sec. 47(XIIIb)

This section provides that conversion of a private company or unlisted public company into an LLP in accordance with Secs. 56

and 57 of the LLP Act will not be regarded as transfer, if following conditions are fulfilled :

- a. All the assets and liabilities of the company become the assets and liabilities of the LLP.
- b. All the shareholders of the company become the partners of the LLP and their profit sharing ratio and the capital contribution in the LLP are in the same proportion as their shareholding in the company on the date of conversion.
- c. Shareholders of the company do not receive any consideration or the benefit, directly or indirectly, other than share in the profit and capital contribution in the LLP.
- d. For a period of at least five years from the date of conversion, the erstwhile shareholders of the company in aggregate are entitled to at least 50% of the profits of the LLP.
- e. The total sales, turnover or gross receipts in the business of the company in any of the three years preceding the year of conversion do not exceed Rs. 60 lakhs.
- f. For a period of three years from the date of conversion, the accumulated profits of the company on the date of conversion are not paid to any partner of the LLP, whether directly or indirectly.

Sec. 47A (4)

This section provides that if any of the conditions in (a) to (f) above are not complied with, then the profits arising from transfer of capital assets or intangible assets on conversion of the company to the LLP not charged under Sec. 45 shall be taxed in the hands of the LLP in the year in which the conditions are violated.

Sec. 49

It provides that cost of acquisition of the capital assets acquired by the LLP in the process of conversion shall be deemed to be the cost for which the converted company had acquired the assets. CAPITAL GAINS - VARIOUS EXEMPTIONS DETAILS

Section 54 54B 54D 54EC

CAPITAL GAINS - VARIOUS EXEMPTIONS DETAILS

Section 54F 54G 54GA

NOTES

1. In case New Asset is transferred before 3 years from date of purchase/construction, the Capital Gains exempted earlier will be chargeable to tax in year of transfer of new asset.
2. In order to avail the exemption, gains are to be reinvested, before the due date of return u/s 139(1). If the amount is not so reinvested, it is to be deposited on or before that date in account of specified bank/institution and it should be utilized within specified time limit for purchase/construction of new asset.
3. U/s 54F Capital Gains exempted earlier shall be chargeable to tax — if a) If the assessee purchases within 2 years or constructs within 3 years any residential house other than the one in which reinvestment is made & b) If the new asset is transferred within a period of 3 years from the date of its purchase/construction.

4. As per Section 54H, where the transfer is by way of compulsory acquisition, the period available for acquiring the new asset u/ss. 54, 54B, 54D, 54EC and 54F shall be computed from the date of receipt of compensation and not the date of transfer.

5. If cost of new house is more than the net consideration of original asset, the whole of the gains is exempt. If cost of specified asset is less than net consideration, proportionate amount of the gains will be exempt i.e. Capital Gain X cost of New Asset/Net consideration on sale of asset.

Income from Other Sources

Section-56 – Charging Section

Income from: -

- (1) Sub-letting of House Property.
- (2) Director's Sitting Fees.
- (3) Family Pension.
- (4) Income from Undisclosed Sources.
- (5) Remuneration received by members of Parliament.
- (6) Examination Fees from Non-employer.
- (7) Rent from a vacant piece of Land.
- (8) Interest on URPF on Employer's Contribution.
- (9) Agriculture Income from land situated outside India.
- (10) Guarantee Commission/Underwriting Commission to Directors.
- (11) Gratuity received by a Director not as an employee.
- (12) Gift Tax: Money (Cash) received by Individual/HUF without consideration from any person(s), if exceeds Rs.50,000 then whole amount shall be taxable.
- (13) Award to Profession Sportsman is Taxable. Award to Non- Profession Sportsman is not Taxable
- (14) Composite Rent Separable: HP and PGBP, Not separable: Whole in OS.
- (15) Lottery Prize: Books Maintain: Accrual Basis, No Books: In the year of Receipt. In another case: Only on receipt basis.

Section-57 – Any revenue expenditure expended to earn income chargeable u/h OS will be allowed as deduction against such income.

Section-56 – Taxation of Gifts

(1) If any sum of money aggregate value of which exceeds Rs.50,000, is received during P.Y. without consideration, by an Individual/HUF from any person(s), then the whole of the aggregate of such sum shall be taxable.

(2) Exceptions: -

- (a) Gift received in kind is not taxable.
- (b) Gift from the following persons is not taxable: -
  - \_ On occasion of Marriage of Individual.
  - \_ Under a Will or by way of Inheritance.
  - \_ In contemplation of death of the payer.
  - \_ Any Local Authority.
  - \_ Trust/Foundation/University/Institution etc. referred u/s-10(23D).



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\_ Trust/Institution registered u/s-12AA.

\_ From a Relative. Relative means: -

- Spouse, Brother/Sister of Spouse, Any lineal ascendant or descendant of the spouse of the Brother/Sister of.
- Brother/Sister of Individual, Brother/Sister of Parents, Any lineal ascendant or descendant of the Individual.
- Spouse of the persons referred above.

Q. D, a lady, received the following gifts during the year ending 31.3.2006:

- (a) Rs.30,000 from her elder sister.
- (b) Rs.50,000 from the daughter of her elder sister.
- (c) Rs.1,25,000 from various friends on the occasion of her marriage.
- (d) Watch valued Rs.60,000.
- (e) From Grandfather on Birthday Rs.60,000.

Discuss the taxability or otherwise of these gifts in the hands of D.  
Sol.)

Statement showing Taxability of Gifts

(For A. Y. 2009-10)

Gift Reason & Taxability

Elder Sister

Rs.30,000

Relative – Not Taxable

Daughter of her elder sister

Rs.50,000

Not a Relative, but not exceeding Rs.50,000 – Not Taxable

Friends on occasion of her marriage Rs.125000

Special Occasion – Not Taxable

Watch

Rs.60,000

Gift-in-kind – Not Taxable

Grandfather

Rs.60,000

Relative – Not Taxable

(lineal ascendant)

Taxability of Family Pension

(1) Taxable u/h Income from Other Sources.

(2) Deduction u/s-57: Least of following: -

(a) 1/3rd of Gross Pension, or

(b) Rs.15,000.

(3) Exemption u/s-10

(a) Family pension received by family members of Army Personnel who are recipient of gallantry awards (i.e., Param Vir hakra, Maha Vir Chakra, Vir Chakra etc.)

(Pension received by him is also exempt)

(b) Family pension received by the widow, children or nominated heirs of a member of the armed forces (including para-military forces) whose death has occurred in the course of operational duties.

Loss on Maintaining Camels for Races

\_ Cannot be carried forwarded. However, it can be set-off u/s-70 and 71.

\_ However, U/s-74A, B/F unabsorbed loss from activity of maintaining race horses can be carried forwarded for 4 assessment years.

Q. A takes loan of 5,00,000 to invest in shares and receive dividend. Interest on Loan Rs.1,00,000. Discuss.

Ans.

\_ Section-14A: In computation of Total Income, the expenditure incurred in relation to income, which does not form part of Total Income, shall not be allowed as deduction.

\_ Since Dividend is exempt u/s-10(34), and hence does not form part of total income. Therefore, interest not allowed as expenditure. (What treatment in Capital Gains?)

Taxation of Dividend

Section-10(34) – Dividend referred in Section 115-O and Deemed Dividend u/s2(22)(a) to (d) is Exempt in hands of SH. Because Company pays Dividend Distribution Tax @ 15% (+10%+3%) on it  
Section-2(22) – Deemed Dividend

Dividend Includes: -

(a) Distribution by Company to SH All or any part of Assets.

(b) Distribution to : -

\_ Eq/Pref. SH ] Debentures, Debenture-stock, or

Deposit Certificates

\_ Pref. SH ] Bonus Shares

(c) Any Distribution to Shareholders on Liquidation to ESH

(d) Any Distribution to Shareholders on Reduction of

Capital

\_ Exception Buy back u/s77A and In Demerger.



(e) Dividend u/s-2(22)(e) is Taxable in the hands of Shareholders, So No DDT on it by Company. Any Advance or Loan by a Public are NOT Substantially interested to the extent the company possess Accumulated Profits to: -

- \_ Beneficial Owner having 10% or more Voting Right of the Company.
  - \_ A concern in which above person is Member or Partner and having Substantial interest.
  - \_ To any person on before of or for individual benefit of such shareholder.
  - \_ Beneficial Ownership, "Membership/Partnership" in concern to be checked On the Date of Loan & Advance and not after.
  - \_ Substantial Interest in Firm – At any time during the P.Y,
  - \_ Section-2(22)(e) is applicable even if loan is repaid.
  - \_ Arati Debi – If Loan is more than Accumulated Profit, then the entire loan will be deemed dividend u/s2(22)(e).
  - \_ Accumulated profits shall include all profits upto the date on which Loans & Advance is given to the Shareholder.
  - \_ G. Narasimhan – For the purpose of Section-2(22), Accumulated Profits get reduced by deemed dividend u/s 2(22)(e).
  - \_ Exceptions to Section-2(22)(e): -
  - \_ Not deemed dividend if lending money is the substantial part (i.e., >50% of PGBP) of the business of the company and loan made in the ordinary course of business.
  - \_ No DDT on Dividend payable/paid which was setoff by the company against the loan/or part of loan which was treated as dividend u/s2(22)(e).
- Section 2(22)(a) to (d)]  
(Applicable on all companies)  
To the extent of Accumulated Profits\* (whether capitalised or not)  
[\* – Deemed Dividend u/s2(22)(e)]  
Section 2(22)(e) ]  
(Applicable on Closely Held Companies)  
Accumulated Profits (Not Capitalised)  
Section-115-O – Tax on distributed profit of Domestic Companies
- \_ Dividend Distribution Tax @ 15% (+10%+3%) = 16.995%.
  - \_ To be paid within 14 Days of Dividend Declared/Distributed/Paid,
  - \_ On Interim/Final/ Deemed Dividend u/s2(22)(a) to (d) or Otherwise,
  - \_ Whether out of Current or Accumulated Profits or out of Share Capital.
  - \_ No DDT (if Dividend from Current Profits) for Undertakings engaged in developing or developing, operating & maintaining SEZ + Exempt in the hands of Shareholders.

\_ Dividend u/s-2(22)(e) and Dividend from Foreign Company is taxable in the hands of Shareholders therefore No DDT payable by the company.

\_ No Deduction for Dividend & CDT as Business Expenses to company.

\_ Consequences for non-payment of DDT

\_ U/s 115P ] Interest @ 1% p.m. or part thereof.

\_ U/s 115Q ] Assessee in default.

\_ U/s 271C ] "Penalty = Tax"

and

U/s 276B ] Rigorous imprisonment from 3 months to 7 years.

Accumulated Profits include

For 2(22)(c) – All profits upto the date of liquidation. In case liquidation is consequent to Compulsory Acquisition by Govt. then Profits upto date of liquidation except 3 successive P.Y.

For Others – All profits upto the date of distribution/payment.

Section-46A – Capital Gain on Buy-Back of Shares

Consideration Received – Cost of acquisition = Capital Gains. Deferred Dividend taxable when declared.

Dividend from Abroad – Gross Dividend is Taxable (and not net).

Taxation of Political Parties

Section-13A – Following incomes not included in Total Income of Political Party: -

(1) Income chargeable u/h: -

(a) House Property,

(b) Other Sources

(c) Capital Gains

(2) Voluntary Contribution: Provided that: -

\_ Books of A/cs and other documents are maintained as would enable AO to properly deduce the income.

\_ Records of (Name & Address) of person if Voluntary Contribution exceeds Rs.20,000.

\_ Accounts audited by Accountant.

\_ No Exemption if Report u/s29C of the Representation of People Act for a F.Y. is not furnished.

Example: Income of Political Party for A.Y. 2009-10

Rent of Property (Exempt u/s-13A) Nil

Interest on Deposits (Exempt u/s-13A) Nil

Contributions exceeding Rs.20,000 (Names of persons making contribution not available)

21,00,000

Contributions not exceeding Rs.20,000 Nil

Net Profit of Cafeteria run in Delhi is assessable as

Business Income



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3,00,000

Total Income 24,00,000

Taxation of Units

Dividend Income from units of UTI or Mutual Fund or Administrator of Specified Undertaking or Specified Company is Exempt u/s-10 in hands of unit-holder.

Section-115-R – Company shall pay tax: -

Money Market Mutual Fund or • 25% of Income

Liquid Fund: Distributed.

Other than MMMF or Liquid Fund

• 12.5% of Income

Distributed to

Individual/HUF.

• 20% for others.

Payment of Tax within 14 days of Distribution/Payment. On or before 15th September file a “Statement of Income Distributed during P.Y.” in prescribed form.

Note: Equity Oriented Mutual Fund Exempt u/s10 + Exempt u/s-115-R.

Equity Oriented Fund means: -

(1) Units Scheme, 1964 made by UTI (US-64), and

(2) Such Fund where more than 65% of Investible Funds is invested in Equity Shares of Domestic Companies. (65% = Annual Average of monthly average of opening and closing figures).

Capital Gains on Units

(1) Units of US-64

\_ STCG/LTCG ] Exempt u/s 10(33)

\_ If held as Stock-in-trade ] Taxable u/h PGBP.

(2) Units of Equity Oriented Fund

\_ LTCG ] Exempt u/s 10(33) if sold through Stock Exchange & STT paid.

\_ LTCG ] Exempt u/s 10(33) if Sold to Mutual Fund and STT paid.

\_ STCG ] Taxable @ 15% u/s 111A where: -

\_ Units sold through Stock Exchange & STT paid.

\_ Units sold to Mutual Fund and STT paid.

(3) Units other than Equity Oriented Fund

\_ STCG ] Taxable at Normal Rates.

\_ LTCG ] At rates specified in Section-112 (20% or 10% as the case may be)

Dividend Stripping

Section-94(7) – Where any person: -

- (1) Acquires Securities/Units 3 months before Record Date, and
- (2) Sells Securities within 3 months/Units within 9 months of Record Date, and
- (3) Receives any Dividend which is Exempt u/s10(34) or 10(35)

Then, On Such Sale/Purchase: -

\_ Dividend ] Exempt u/s10(34) or 10(35)

\_ Loss ] Upto Dividend Income Ignores, Remaining Loss allowed.

(1), (2), (3) must be fulfilled to attract this Section. E.g., If Dividend received is not exempt then this Section shall not be applicable.

Section-94(7) is applicable even if shares are purchased as Stockin-trade.

Example:

Mr. X buys 1000 shares of Reliance @ Rs.300 per share on 30.6.2007. Record Date 1.8.2007. Mr. X receives dividend Rs.20,000 which is exempt u/s10(34). Mr. X sells the shares on 30.9.2007 @ Rs.270 per share.

Sol.) Dividend Exempt u/s 10(34) =

Rs.20,000

Capital Gains (2,70,000 – 3,00,000) = –

Rs.30,000

Out of STCL of Rs.30,000, loss of Rs.20,000 shall not be allowed to be set-off or carry forward as per the provisions of Section-94(7).

Bonus Stripping

(Not Applicable to Shares)

Section-94(8)

(1) If Units acquired 3 months before Record Date of Bonus, and

(2) Bonus Units allotted, and

(3) Original Units sold within 9 months.

\_ Any Loss on Sale of Original Units shall be ignored, and

\_ Such ignored Loss shall be the COA of “Bonus Units held\* by him on the Date of Sale/Transfer of Original Units.”

\_ On the date of Sale/Transfer of Original Units he must hold at least 1 Bonus Unit.

\_ Section-94(8) is applicable even if Units are held as Stock-intrade.

AGGREGATION OF INCOME

Sec 68 Sec 69 Sec69A Sec69 B Sec69C

Sec 69D

Cash Unexplained Unexplained Investments not

Unexplained Any sum

Credits investments Money/jewels fully disclosed

Expenditure borrowed/

repaid on

Hundi

Sec 68

- \_ Any unexplained credit
- \_ No proper source
- \_ Sum is chargeable for that previous year (year in which the entry is made)
- \_ To avoid Sec 68 assessee should prove that
  - (i) identity of creditor
  - (ii) capacity of creditor is beyond doubt
  - (iii) genuine transaction

Sec69

- \_ Investments not recorded in the books of account
- \_ No satisfactory explanation
- \_ Chargeable in the year the invested amt was allowed as deduction

Sec69A

- \_ Includes bullion, jewelry or other valuable articles
- \_ Investments not recorded in the books of account
- \_ No satisfactory explanation
- \_ Chargeable in the year the invested amt was allowed as deduction

Sec69B

- \_ Includes investments, bullion, jewelry or other valuable articles
- \_ Actual Investments > Amt recorded in books
- \_ No satisfactory explanation
- \_ Chargeable in the year the amount was invested

Sec69C

- \_ Incurrence of any expenditure.
- \_ No source of income for such expense
- \_ No satisfactory explanation
- \_ Such expense will not be allowed as deduction under any head of income.
- \_ Chargeable to tax in the year expense was incurred.

Sec69D

- \_ Amt borrowed or repaid on hundi otherwise on account payee cheque
- \_ Deemed to be income of person borrowing or repaying.
- \_ Chargeable in the previous year in which it was borrowed or repaid.
  - (i) If deemed as income at time of borrowing – not deemed as income at time of repayment.
  - (ii) Amount repaid shall include amt of interest paid on amt borrowed.

DEDUCTION UNDER CHAPTER VI

Section 80G has been in the law book since financial year 1967-68 and it seems it's here to stay. Several deductions have been swept away but the tax sop for donations appears to have survived the axe. The main features of tax benefit with respect to charity are as

follows: Allowable to all kind of Assessee:- Any person or 'assessee' who makes an eligible donation is entitled to get tax deductions subject to conditions. This section does not restrict the deduction to individuals, companies or any specific category of taxpayer. Donation to Foreign Trust: - Donations made to foreign trusts do not qualify for deduction under this section. Donation to Political Parties:- You cannot claim deduction for donations made to political parties for any reason, including paying for brochures, souvenirs or pamphlets brought out by such parties. Only donation made to made to prescribed funds and institutions qualify for deduction: - All donations are not eligible for tax benefits. Tax benefits can be claimed only on specific donations i.e. those made to prescribed funds and institutions.

Maximum allowable deduction:- If aggregate of the sums donated exceed 10% of the adjusted gross total income, the amount in excess of 10% ceases to be entitled for tax benefit.

Only donations in cash/cheque are eligible for the tax deduction:-Donations in kind do not entitle for any tax benefits.

For example, during natural disasters such as floods, earthquake, and many organisations start campaigns for collecting clothes, blankets, food etc. Such donations will not fetch you any tax benefits.

Donation made by NRI: - NRIs are also entitled to claim tax benefits against donations, subject to the donations being made to eligible institutions and funds.

Deduction if donation deducted from Salary and donation receipt certificate is on the name of employer:- Employees can claim deduction u/s 80G provided a certificate from the Employer is received in which employer states the fact that The Contribution was made out from employee's salary account.

Limit on donation amount: -There is no upper limit on the amount of donation. However in some cases there is a cap on the eligible amount i.e. a maximum of 10% of the gross total income.

Deduction amount U/s. 80G:- Donations paid to specified institutions qualify for tax deduction under section 80G but is subject to certain ceiling limits. Based on limits, we can broadly divide all eligible donations under section 80G into four categories:

- a) 100% deduction without any qualifying limit (e.g., Prime Minister's National Relief Fund).
- b) 50% deduction without any qualifying limit (e.g., Indira Gandhi Memorial Trust).
- c) 100% deduction subject to qualifying limit (e.g., an approved institution for promoting family planning).
- d) 50% deduction subject to qualifying limit (e.g., an approved institution for charitable purpose other than promoting family planning).

For list of Institution donation to whom is eligible to 100% deduction without any qualifying limit, eligible to 50% deduction without any qualifying limit, 100% & Subject to qualifying limit and of those eligible for 50% deduction subject to qualifying limit please check the link given below:-

**Qualifying Limit:-** The qualifying limits u/s 80G is 10% of the adjusted gross total income. The limit is to be applied to the adjusted gross total income. The 'adjusted gross total income' for this purpose is the gross total income (i.e. the sub total of income under various heads) reduced by the following:

o Amount deductible under Sections 80CCC to 80U (but not Section 80G)

o Exempt income

o Long-term capital gains

o Income referred to in Sections 115A, 115AB, 115AC, 115AD and 115D, relating to non-residents and foreign companies. **Eligible Donation:-** There are thousands of trusts registered in India that claim to be engaged in charitable activities. Many of them are genuine but some are untrue. In order that only genuine trusts get the tax benefits, the Government has made it compulsory for all charitable trusts to register themselves with the Income Tax Department. And for this purpose the Government has made two types of registrations necessary u/s. 12A & U/s. 80G. Only if the trust follows the registration U/s. 12A, they will get the tax exemption certificate, which is popularly known as 80G certificate.

The government periodically releases a list of approved charitable institutions and funds that are eligible to receive donations that qualify for deduction. The list includes trusts, societies and corporate bodies incorporated under Section 25 of the Companies

Act 1956 as non-profit companies.

Tax benefit depends on rate of Tax applicable to the Assessee:-

Let us take an illustration. Mr. X an individual and M/s. Y Pvt.

Ltd., a Company both give donation of Rs. 1,00,000/- to a NGO called Satyakaam. The total income for the A.Y. year 2011-2012 of both Mr. X and Ms. Y Pvt. Ltd. is Rs. 3,00,000/-. The tax benefit would be as shown in the table:

Mr. X MS. Y Pvt. Ltd.

i) Total Income for the year  
2011-12

3,00,000.00 3,00,000.00

ii) Tax payable before 14,000.00 90,000.00

Donation

iii) Donation made to  
charitable organisations

1,00,000.00 1,00,000.00

iv) Qualifying amount for  
deduction (50% of donation  
made)

50,000.00 50,000.00

v) Amount of deduction u/s 80G (Gross Qualifying Amount subject to a maximum limit 10% of the

Gross Total Income)

30,000.00 30,000.00

iv) Taxable Income after

deduction

2,70,000.00 2,70,000.00

v) Tax payable after

Donation

11,000.00 81,000.00

vi) Tax Benefit U/S 80G

(ii)-(v)

3,000.00 9,000.00

Note: Education Cess & Sec. & Higher Educ. Cess has not been included in working of tax benefit.

UNIT – 3

SET OFF AND CARRY FORWARD OF LOSSES

1. Unabsorbed business losses can be carried forward and set off against profits from any business from A.Y. 2000-2001. There is no need to continue the same business in which the loss was incurred.

2. Depreciation can be carried forward and set off against the profits from any business in the succeeding assessment year up to A.Y. 2001—2002. The business in which the loss was incurred need not be continued in that year.

3. The effect of depreciation, business loss and investment allowance should be given in the following order:

o Current year's Depreciation

o Unabsorbed Business loss

o Unabsorbed Depreciation

o Unabsorbed Investment Allowance.

4. A return of loss is required to be furnished for determining the carry forward of such losses, by the due date prescribed for different assessee u/s. 139(1) of the Act. (S. 80).

DEDUCTION OF TAX AT SOURCE

Nature of payment\* TDS (SC: Nil,

EC:Nil, SHEC: Nil)

\_ Sec. 192 - Payment of salary to a resident/non-resident [normal rate of tax is applicable \_ see para \*\*\*\*\*, SC : Nil, EC : 2% and SHEC : 1%]

\_ Sec. 193 - Interest on securities to a resident\_

\_ a.\_ interest on (a) debentures/securities for money issued by or on behalf of any local authority/statutory corporation, (b) listed debentures of a company [not being listed securities in demat form], (c) any security of the Central or State Government [i.e., 8% Savings (taxable) Bonds, 2003, but not any other Government security]

10



\_\_ b.\_ any other interest on securities  
(including interest on non-listed debentures)

10

\_ Sec. 194 - Dividend to a resident\_

\_\_ a.\_ deemed dividend under section 2(22)(e) 10

\_\_ b.\_ any other dividend Nil

\_ Sec. 194A - Interest other than interest on securities to a resident

10

\_ Sec. 194B\_ - Winnings from lottery or crossword puzzle or card game or other game of any  
sort to a resident/non-resident

30

\_ Sec. 194BB\_ - Winnings from horse races to a resident/non-resident

30

\_ Sec. 194C - Payment to a resident contractor/sub-contractor\_

\_\_ a.\_ payment/credit to an individual or a Hindu undivided family

1

\_\_ b.\_ payment/credit to any person other than an individual or a Hindu undivided family

2

\_ Sec. 194D - Insurance commission to a resident 10

\_ Sec. 194E\_ - Payment to a non-resident sportsman or sports association 10

\_ Sec. 194EE - Payment in respect of  
deposits under National Savings Scheme,  
1987 to a resident/non-resident 20

\_ Sec. 194F - Payment on account of repurchase of units of MF or UTI to a resident/non-resident  
20

\_ Sec. 194G\_ - Commission on sale of lottery tickets to a resident/non-resident

10

\_ Sec. 194H - Commission or brokerage to a resident

10

\_ Sec. 194-I - Rent to a resident\_

\_\_ a.\_ rent of plant and machinery 2

\_\_ b.\_ rent of land or building or furniture or fitting

10

\_ Sec. 194J - Fees for professional or technical services to a resident

10

\_ Sec. 194LA - Payment of compensation to a resident on acquisition of certain  
immovable property

10

\_ Sec. 194LB\_\_\_ \_ TDS on interest payable on infrastructure debt fund to a nonresident or a  
foreign company

5

Tax rates for the assessment year 2013-14 are given below\_



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(Affiliated to GGSIP University, New Delhi)

**'A'** Grade Institute by DHE, Govt. of NCT Delhi, Affiliated to GGSIP University Delhi  
and Approved by Bar Council of India & NCTE

For a resident woman (who is below 60 years on the last day of the previous year, i.e., born on after April 1, 1952)\_

Net income range Income-tax rates\_ Educationcess Secondary and higher education cess Up to Rs.

2,00,000

Nil Nil Nil

Rs.

2,00,000

\_Rs.

10% of (total income minus Rs.

2,00,000)

2% of incometax

1% of incometax

5,00,000

Rs.

5,00,000

\_Rs.

8,00,000

Rs. 30,000 + 20%

of (total

incomeminus Rs.

5,00,000)

2% of incometax

1% of incometax

Above Rs.

8,00,000

Rs. 90,000 + 30%

of (total

incomeminus Rs.

8,00,000)

2% of incometax

1% of incometax

For a resident senior citizen (who is 60 years or more at any time during the previous year but not more than 80 years on the last day of the previous year, i.e., born during April 1, 1932 and

March 31, 1952)\_

Net income

range

Income-tax rates\_ Educationcess Secondary and higher

education cess

Up to Rs.



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NAAC ACCREDITED

'A'

Grade Institute by DHE, Govt. of NCT Delhi, Affiliated to GGSIP University Delhi  
and Approved by Bar Council of India & NCTE

2,50,000

Nil Nil Nil

Rs.

2,50,000

\_Rs.

5,00,000

10% of (total  
income minus Rs.

2,50,000)

2% of incometax

1% of incometax

Rs.

5,00,000

\_Rs.

8,00,000

Rs. 25,000 + 20%

of (total

incomeminus Rs.

5,00,000)

2% of incometax

1% of incometax

Above Rs.

8,00,000

Rs. 85,000 + 30%

of (total

incomeminus Rs.

8,00,000)

2% of incometax

1% of incometax

For a resident super senior citizen (who is 80 years or more at any time during the previous year,  
i.e.,born before April 1,

1932)\_

Net income

range

Income-tax rates\_ Educationcess Secondary and  
higher

education cess

Up to Rs.

5,00,000

Nil Nil Nil

Rs.

5,00,000

\_Rs.



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'A'

Grade Institute by DHE, Govt. of NCT Delhi, Affiliated to GGSIP University Delhi  
and Approved by Bar Council of India & NCTE

8,00,000  
20% of (total  
income minus Rs.  
5,00,000)  
2% of incometax  
1% of incometax  
Above Rs.  
8,00,000  
Rs. 60,000 + 30%  
of (total  
incomeminus Rs.  
8,00,000)  
2% of incometax  
1% of incometax  
For any other individual (born after April 1, 1952),  
every HUF/AOP/BOI/artificial juridical person\_  
Net income  
range  
Income-tax rates\_ Educationcess Secondary and  
higher  
education cess  
Up to Rs.  
2,00,000  
Nil Nil Nil  
Rs.  
2,00,000  
\_Rs.  
5,00,000  
10% of (total  
income minus Rs.  
2,00,000)  
2% of incometax  
1% of incometax  
Rs.  
5,00,000  
Rs. 30,000 + 20%  
of (total  
2% of incometax  
1% of incometax  
\_Rs.  
8,00,000  
incomeminus Rs.  
5,00,000)



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**'A'**

Grade Institute by DHE, Govt. of NCT Delhi, Affiliated to GGSIP University Delhi  
and Approved by Bar Council of India & NCTE

Above Rs.  
8,00,000  
Rs. 90,000 + 30%  
of (total  
incomeminus Rs.  
8,00,000)  
2% of incometax  
1% of incometax

Notes:

1. Surcharge - Nil
2. Education cess - It is 2 per cent of income-tax.
3. Secondary and higher education cess - It is 1 per cent of incometax.

\*Surcharge is applicable for TDS purposes only when the recipient is a foreign company and payment/credit subject to TDS exceeds Rs. 1 crore. In no other case, surcharge is applicable at the time of deduction of tax at source. Education cess and secondary and higher education cess are applicable for TDS purposes in the case of tax deduction from payment of salary to a resident or a nonresident.

Education cess and secondary and higher education cess are also applicable in the case of payment or credit of any other sum to a non-resident or a foreign company. In no other case, education cess and secondary and higher education cess are applicable for TDS purposes. Moreover, if the PAN of the deductee is not intimated to the deductor, tax will be deducted at source either at the rate given in the table or at the rate of 20 per cent, whichever is higher. Further, under section 94A(5), if payment or credit is made or given to a deductee who is located in a notified jurisdictional area, tax is deductible at the rate given in the table or at the rate of 30 per cent, whichever is higher.

\_Under sections 194B and 194BB, if recipient is a non-resident (other than a foreign company), tax is deductible at the rate of 30.9% (i.e., IT: 30%, EC: 2% and SHEC: 1%). If the recipient is a non-domestic company, tax is deductible at the rate of 30.9% (i.e., IT: 30%, EC: 2% and SHEC: 1%), if payment does not exceed Rs. 1 crore or at the rate of 31.518% (i.e., IT: 30%, SC: 2%, EC: 2% and SHEC: 1%) if payment/credit exceeds Rs. 1 crore.

\_Under sections 194E & 194G, if recipient is a non-resident (other than a foreign company), tax is deductible at the rate of 10.3% (i.e., IT: 10%, EC: 2% and SHEC: 1%). If the recipient is a non-domestic company, tax is deductible at the rate of 10.3% (i.e., IT: 10%, EC: 2% and SHEC: 1%), if payment/credit does not exceed Rs. 1 crore or at the rate of 10.506% (i.e., IT: 10%, SC: 2%, EC: 2% and SHEC: 1%) if payment/credit exceeds Rs. 1 crore.

\_\_\_Under section 194LB, if recipient is a non-resident (other than a foreign company), tax is deductible at the rate of 5.15% (i.e., IT: 5%, EC: 2% and SHEC: 1%). If the recipient is a non-domestic company, tax is deductible at the rate of 5.15% (i.e., IT: 5%, EC: 2%

and SHEC: 1%), if payment/credit does not exceed Rs. 1 crore or at the rate of 5.253% (i.e., IT: 5%, SC: 2%, EC: 2% and SHEC: 1%) if payment/credit exceeds Rs. 1 crore.

## ADVANCE TAX

Payment of tax is not allowed to be deferred to the assessment year. Perhaps the motive of government is to collect the big amount of tax at the earliest.

## ADVANCE TAX SCHEME

Tax is paid in advance when the liability of advance tax is Rs.5, 000 or more. The provisions of advance tax are applicable on all types of persons irrespective of the residential status of the person. The advance tax is paid in the previous year itself. Thus, the tax is paid in the year of earning of income, in other words the earning of income and payment of tax goes simultaneously. Thus, the tax is paid as income is earned. This scheme of advance payment of tax is also called pay as you earn scheme, i.e., pay tax as you earn income.

## DATES OF PAYMENT OF ADVANCE TAX<sup>203</sup>

Advance tax is paid by the all persons, both corporate assessee (company assessee) and non-corporate assessee (other than noncorporate assessee). The advance tax is to be paid in the following installments on the following dates:

For Non-Corporate Assessee

Due Dates Amount of Tax payable

- On or before 15 September - not less than 30% of tax payable
- On or before 15 December - not less than 60% of tax payable
- On or before 15 March - not less than 100% of tax payable

For Corporate Assessee

Due Dates Amount of Tax payable

- On or before 15 June - not less than 15% of tax payable
- On or before 15 September - not less than 30% of tax payable
- On or before 15 December - not less than 60% of tax payable
- On or before 15 March - not less than 100% of tax payable

Since, the actual tax and actual income can be computed only after completion of the year therefore, the income is estimated at different due dates mentioned above. The tax on such estimated income is computed and percentage of the tax as mentioned above is payable by the assessee at different due dates.

UNIT – 4

## INTRODUCTION

Central Sales Tax (CST) is a tax on sales of goods levied by the Central Government of India. CST is applicable only in the case of inter-state sales and not on sales made within the state or

import/export of sales.

Inter-state sale is when a sale or purchase constitutes movement of goods from one state to another. Accordingly, consignments to agents or transfers of goods to branch or other offices is not a sale as per the CST Act

CST is payable in the state where the goods are sold and movement commences. The tax collected is retained by the state in which the tax is collected. CST is administered by Sales Tax authorities of each state. Thus, the State Government Sales Tax officer who assesses and collects local (state) sales tax also assesses and collects CST.

Sales Tax is a tax, levied on the sale or purchase of goods. There are two kinds of Sales Tax i.e. Central Sales Tax, imposed by the Centre and Sales Tax, imposed by each state.

## INTER-STATE SALE

An inter-state sale takes place when a sale or purchase:

- Leads to movement of goods from one State to another State.
- Is achieved by the transfer of documents of title while the goods are being moved from one State to another State.

Example 1: "A" in Orissa sells and delivers goods to "B" in Gujarat.

Example 2: "X" in Orissa delivers goods to "Y" in Calcutta. "Y" sells it to "C" in Delhi by transferring the document of title during the goods movement from Orissa to Delhi.

Note: Goods that are sold within a state, but while transporting travel through another state is not considered inter-state sales.

## WHAT ARE THE OBJECTIVES OF CST ACT?

1. Formulate principles for determining when a sale or purchase of goods takes place:-

- in the course of interstate trade or commerce; or
- outside a State ; or
- in the course of import into or export from India.

2. Provide for the:-

- levy of
- collection and
- distribution

Of taxes on sales of goods in the course of interstate trade or commerce.

3. Declare certain goods to be of special importance of inter state trade or commerce.

4. Specify the restriction and conditions to which state laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.

5. Provides for collection of tax in the event of liquidation of a

company.

6. Authority to settle disputes in course of interstate trade or commerce.

WHAT ARE THE CONDITIONS FOR CST ACT TO BECOME APPLICABLE?

1. The sale should not take place in the course of import into or export from India.
2. There should be a Dealer and such dealer must be registered under the CST Act.
3. He should made a sale to any buyer (registered dealer or unregistered dealer)
4. He should carry on any business.
5. He should made a sale of any goods (declared or undeclared)
6. The sale should be made in the course of interstate trade or commerce ( i.e. the sale should not be a sale inside a state.

WHAT HAPPENS IF THE ABOVE CONDITION ARE SATISFIED

1. The CST Act becomes applicable and CST is levied at the Rate specified.
2. it is levied on Turnover, which in turn is computed on the basis of the sale price.
3. it is payable by the dealer who makes the sale in the course of interstate trade or commerce.
4. It is payable in respect of sale of goods effected by him during the year.
5. It is so payable to appropriate state in which the dealer has a place of business.

RATE OF CST

- In an inter-state sale to a registered dealer against form C the rate of CST is 4% or local sales tax rate whichever is lower.
- If under the local sales tax law, sale or purchase is exempt from CST the CST is Nil.
- In an inter-state sale to government against form D the rate of CST is 4% or local sales tax rate whichever is lower.
- Rate of CST in case of inter-state sale of declared goods without form C or D is twice the rate of tax applicable to the local sale or purchase of such goods in that state.
- Rate of CST in case of other goods ( i.e. non-declared goods) is 10% or the applicable local sales tax of that state, which ever is higher.

SALE PRICE

“Sale Price” means the amount payable to a dealer as consideration fro the sale of any goods.



It does not include,

- Cash Discount (including Trade Discount, Quantity Discount, Additional Discount ). This sum is deducted from sale consideration.
- Cost of installation, freight and delivery is excluded ( if such cost is separately charged).
- Goods returned by buyer within 6 months.
- Goods rejected by buyer.

It includes,

- Consideration for sale any goods
- Excise Duty ( whether included in sale price or separately charged)
- Sales Tax payable by the dealer ( whether included in sale price or separately charged)
- Sum charged for anything done by the dealer in respect of the goods at the time of or before the deliver thereof.
- Cost of packing material and packing charges.
- Insurance charges if the seller has insured the goods.
- Bonus Disocunt / Incentive Bonus for attracting Sale Targets.

CST Transaction Forms

Dealers have to issue certain declarations in prescribed forms to buyers/sellers. The type of forms are C, D, E1, E2, F, H and I. Forms C, E1, E2, F and H are printed and supplied by Sales Tax authorities. Dealers have to issue declarations in these forms printed and supplied by the Sales Tax authorities. Form D is to be issued by government organization departments making purchases. These forms are to be prepared in triplicate.

Form C The sales tax on inter-state sale is 4% or the applicable sales tax rate for sale within the State whichever is lower if the sale is to a dealer registered under CST and the goods are covered in the registration certificate of the purchasing dealer. The purchasing dealer is eligible to get these goods at concessional rate if a declaration in C form is submitted to the selling dealer.

Form D Sale to government is taxable @ 4% or applicable sales tax rate for sale within the State whichever is lower. This concession on CST is applicable if Form D is issued by the government department which purchases the goods.

Form E1 This form is issued by the dealer who makes the first inter-state sale during movement of goods from one State to another. This enables the purchaser to claim exemption from CST on the second inter-state sale during the movement of goods by transfer of documents of title.

Form E2 This form is issued by the second or the subsequent seller when the goods move from one state to another in a series of interstate sales by transfer of documents of title. This form enables the purchaser to claim exemption form CST on subsequent sale of

goods.

**Form F** This form is issued when goods are dispatched to another state as a consignment or to the branch of a dealer in another State. The CST is not payable if there is only inter-state stock transfer and there is no sale. To claim inter-state movement of goods as “not a sale”, the dealer has to produce a declaration in

Form ‘F’ received from Consignment Agent or Branch Office in another State. One Form F covering receipts during one calendar month has to be issued.

**Form H** This form is issued by an exporter for purchase of goods.

The purchase of goods is for an export order or in pursuance of an export order. These goods are then sold in export and the form enables seller of the goods to the exporter to claim deduction on the goods sold for export.

**Form I** This form is issued by a dealer located in a Special Economic Zone (SEZ). No CST is levied when sales is made to a dealer located in SEZ.

## REGISTRATION OF DEALERS

According to Section 7, registration of dealer can be done in any of the two ways-

1. Compulsory registration
2. Voluntary registration<sup>317</sup>

### COMPULSORY REGISTRATION SECTION 7

Every dealer who is liable to pay Central sales tax should make an application for registration under the Act. to appropriate authority in his state. If a dealer does not get himself registered, he would be subject to penalty under section 10 which is imprisonment which may extend to six months or fine or both and in case of continuing offence, a fine of Rs. 50 per day till the default continues.

### VOLUNTARY REGISTRATION SECTION 7

Under following circumstances any dealer can voluntarily apply for registration even though he is not liable to pay tax under central sales tax Act.

1. If he is registered under sales tax law of state but, is not liable to pay tax under central sales tax Act
2. If there is no sales tax Act in a state or any part of it, any dealer having a place of business in that state or part there of
3. If he deals in a tax-free goods in a state The dealer can apply for registration at any time and, if he does not apply for registration no penalty will be imposed upon him.

### Advantages of Registration

1. A registered dealer has to pay actual sales Tax @ 4% only on goods purchased by him for manufacture or resale and, he buys the same against Form C. otherwise, he will be charged @ 10%.
2. Subsequent sales in the course of movement of goods by transfer of documents of title to goods will be exempted from central salestax if, registered dealer effecting sales is able to produce Form E-I or E-II.

## PROCEDURE FOR REGISTRATION

1. The dealer must make an application to the concerned authority in the appropriate state, in Form A within 30 days of the day when he becomes liable to pay tax. The form contains the following details.

- (i) Name of the manager of business 318
- (ii) Name and addresses of proprietor or partner of the business.
- (iii) Date of establishment of business.
- (iv) Date on which first inter-state sale was made.
- (v) Name of the Principal place and other places of business in the appropriate state.
- (vi) Particulars of any license held by the dealer.

2. Single Place of business – If a dealer has single place of business in the appropriate State and he is registered in that state, he shall apply to the sales tax authority of that state only for obtaining registration under central sales tax Act

2. More than one place of business in the same state – If a dealer has more than one place of business in the same state, he shall select one of these places as the principal place of business and , get only one certificate of registration.

3. More than one place of business in different states. If a dealer has more than one place of Business in different states, he will get a separate certificate of registration with respect to each state.

4. Fees for Registration is Rupees twenty five to be paid in cash or court fee stamp.

5. The application has to be signed by, in case of –

- Sole proprietorship, the proprietor
- Partnership firm, any one the partner
- HUF, the karta
- Company, the director
- Government, authorized officer

Grant of Certificate of Registration sec 7 (3)

If the application is in order and assessing officer is fully satisfied with the facts contained therein, he will register the dealer under this Act and issue a certificate of Registration in Form B. If a dealer has more than one place of business then additional copies of certificate will be issued.

## AMENDMENT OF CERTIFICATE OF REGISTRATION

Certificate of registration may be amended – 319

- (i) At the request of dealer.
- (ii) By authorities themselves after giving one notice to the dealer.

The amendment will be made

1. If dealer has changed the name, place or nature of his business  
or

2. If dealer has changed the class or classes of goods.

3. For any other reasons.

## CANCELLATION OF CERTIFICATE OF REGISTRATION

It may be cancelled either.

1. At the request of the dealer.
2. By authority granting registration. Cancellation at the Request of Dealer



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Dealer shall submit an application along with his certificate and copies thereof to the registering authority within six months before the end of the relevant year. The certificate will be cancelled if dealer is not liable to pay any tax under CST Act.

Cancellation by the authority

Certificate of registration will be cancelled under following situation.

- The dealer has discontinued the business.
- The dealer dies.
- Dealer fails to furnish security or additional security.
- Dealer has failed to pay tax or penalty under CST Act.
- Voluntarily registered dealer has ceased to be

### SERVICE TAX

#### LEVY OF SERVICE TAX

As on 1st May, 2006, 95 services are identified as taxable services in India. Section 64 of the Finance Act, 1994, extends the levy of service tax to the whole of India, except the State of Jammu & Kashmir. Generally, the liability to pay service tax has been placed on the 'service provider'. Service tax is payable @ 12% of the 'gross amount' (in specific cases partial deductions are allowed, refer section 67 of the Finance Act) charged by the service provider for providing such taxable service. The Education Cess is payable

@2% of the service tax payable. The liability to pay service tax has been placed on the 'receiver / recipient' of the service under certain situations. (Refer section 68 of the Finance Act and Rule 2(1)(d) of Service Tax Rules, 1994)

Example: Suppose the value of taxable service is Rs.100. Service tax

@12% will be Rs.12 and Education Cess @2% of the Service Tax will be Rs.0.24

### REGISTRATION

Every service provider of a taxable service is required to take registration with the jurisdictional Central Excise Office. A 'registered' service provider is referred to as an 'assessee' (Refer section 69 of Finance Act, 1994). The service tax is administered by the Central Excise Department. The government website

[www.exciseandservicetax.nic.in](http://www.exciseandservicetax.nic.in) gives the details of the jurisdictional offices of the Central Excise Department, State-wise, District-wise as well as Commissionerate-wise.

In the following cities, Service Tax Commissionerates have been established. All service tax matters in the specified limits are dealt by them.

1. Mumbai
2. Delhi
3. Chennai
4. Kolkata
5. Bangalore
6. Ahmedabad

### PROCEDURE FOR REGISTRATION

- Fill the Form ST-1 in duplicate. (Form ST-1 is available on the departmental website ([www.cbec.gov.in](http://www.cbec.gov.in))) Enclose photocopy of PAN card and proof of address to be registered.

- Copy of PAN card is necessary as a PAN based code (Service Tax Code) is allotted to every assessee.
- These forms are required to be submitted to the jurisdictional Central Excise office ( in case of six Service Tax Commissionerates, to the jurisdictional Division office. There are separate service tax commissionerates in Mumbai, Chennai, Delhi, Kolkata, Bangalore and Ahmedabad as mentioned in the previous chapter).
- A person liable to pay service tax should file an application for registration within thirty days from the date on which the service tax on particular taxable service comes into effect or within thirty days from the commencement of his activity.
- (Refer Rule 4 (1) of Service Tax Rules, 1994)
- Where a person, liable for paying service tax on a taxable service,
  - provides such service from more than one premises or offices;or
  - receives such service in more than one premises or offices; or,
  - iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax,
  - and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.
- The registration under sub-rule (2), shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located:
  - Provided that nothing contained in this sub-rule shall have any effect on the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006.
- A single registration is sufficient even when an assessee is providing more than one taxable services. However, he has to mention all the services being provided by him in the application for registration and the field office shall make suitable entries/endorsements in the registration certificate.
- (Refer Rule 4 (4) of Service Tax Rules, 1994)
- An assessee should get the registration certificate (registration number) within 7 days from the date of submission of form S.T.1, under normal circumstances.
- (Refer Rule 4 (5) of Service Tax Rules, 1994)
- A fresh registration is required to be obtained in case of transfer of business to another person.
- (Refer Rule 4 (6) of Service Tax Rules, 1994)
- Any registered assessee when ceases to provide the taxable service shall surrender the registration certificate

immediately.

- (Refer Rule 4 (7) of Service Tax Rules, 1994)
- In case a registered assessee starts providing any new service from the same premises, he need not apply for a fresh registration. He can simply fill in the Form S.T.1 for necessary amendments he desires to make in his existing information. The new form may be submitted to the jurisdictional Superintendent for necessary endorsement of the new service category in his Registration certificate.

#### VALUE OF TAXABLE SERVICE

- The valuation under service tax is governed by the provisions made under section 67 of the Finance Act, 1994
- Value of taxable service shall be determined on the basis of one of the following:
  - consideration in money for providing the service.
  - consideration in money + consideration in any other form
  - consideration in any form other than money
  - The consideration in any form other than money shall be determined in a manner as prescribed.
- (Refer section 67(1) of the Finance Act, 1994)
- Service Tax (Determination of Value) Rules, 2006 have been notified which have the following salient features:
  - the value of taxable service shall be the gross amount charged for providing such service in ordinary course of trade and the gross amount charged is the sole consideration.
  - when value can not be determined by the method given at 5.3.1, then the service provider shall determine the equivalent money value of such consideration ( which shall In no case be less than the cost of provision of such taxable service)
  - if the Central Excise Officer is satisfied that the value determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue a notice to show cause why the value of taxable service should not be fixed at the amount specified in the notice.
  - Any expenditure or costs incurred by the service provider in course of providing taxable service shall be treated as consideration for the taxable service provided and shall be included in the value of taxable value.
  - The expenditure or costs incurred by the service provider as a 'pure agent' of the recipient of the service, shall be excludible from the value of taxable service, subject to conditions specified in the rule 5(2) of the Service Tax (Determination of Value) Rules, 2006
  - Specific cases in which the commission, costs, etc. shall be included or excluded are provided under rule 6 of the Service Tax (Determination of Value) Rules, 2006
  - Rule 7 of the Service Tax (Determination of Value) Rules, 2006 provides for actual consideration to be the value of taxable service in case of services provided from outside India
  - (refer section 66A of the Finance Act, 1994, as amended)



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• The gross amount charged can be inclusive of service tax. In such a case the value shall be such amount as , with the addition of tax payable, is equal to the gross amount charged.  
( e.g. if gross amount charged, including service tax is Rs.100.  
Then the value of taxable service shall be Rs.90.75 and the service tax payable shall be Rs.9.07 plus Education Cess  
Rs.0.18)

- (Refer section 67(2) of the Finance Act, 1994)
- The gross amount charged for taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
- (Refer section 67(3) of the Finance Act, 1994)

## PAYMENT OF SERVICE TAX

The table below shows the rate of service tax applicable at the relevant period of time.

Sr.No.	Period	Rate of Service Tax
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1. Till 13.05.2003 5% Nil

2. 14.05.2003 to 09.09.2004  
8% Nil

3. 10.09.2004 10% 2% of the S.T.

4. 18.04.2006 12% 2% of the S.T.

• In case of Individuals or Proprietary Concerns and Partnership Firm, service tax is to be paid on quarterly basis. The due date for payment of service tax is the 5th of the month immediately following the respective quarter. For the purpose, quarters are : April to June, July to September, October to December and January to March. However, payment for the last quarter i.e. January to March is required to be made by 31st of March itself.

- ( Refer Rule 6 (1) of Service Tax Rules, 1994)
- In case of any other category of service provider than specified in 1 above, service tax is to be paid on monthly basis, by the 5th of the following month. However, payment for the month of March is required to be made by 31st of March itself.
- ( Refer Rule 6 (1) of Service Tax Rules, 1994)
- Service tax is to be paid on the amount realized / received by the assessee during the relevant period ( i.e. a month or a quarter as the case may be)

- (Refer Rule 6 (1) of Service Tax Rules, 1994)
- The assessee is required to deposit the amount of service tax due in the designated banks through TR-6 challan .
- (Refer Rule 6 (2) of Service Tax Rules, 1994) ( Assessee may contact jurisdictional office for details of designated banks.)
- From 1st October, 2006 e-payment of service tax has been made mandatory for the assessee who have paid service tax of Rs.50 Lakhs and above during the last financial year or who have paid service tax of Rs.50 Lakhs and above during the current financial year (i.e. 2006-07, till 30th September, 2006)
- (Refer Rule 6 (2) of Service Tax Rules, 1994)
- It is required that the TR-6 challan should be yellow in colour. Each category of service is assigned a particular 'account head'. While depositing the service tax the appropriate 'account head' pertaining to the particular service category should be mentioned on the challan. The correct accounting heads have been given in the table showing the 'List of Services' in the foregoing pages.
- If the assessee deposits the amount of tax liable to be paid, by cheque, then the date of presentation of the cheque to the designated bank would be treated as the date of payment of service tax.
- (Refer Rule 6 (2a) of Service Tax Rules, 1994)
- Where an assessee has paid to the credit of Central Govt. service tax in respect of taxable service, which is not provided by him either wholly or partially for any reason, the assessee may adjust the excess service tax so paid by him (proportionately on pro-rata basis) against his service tax liability for the subsequent period, if the assessee has refunded the value of taxable service and the service tax thereon to the concerned person.
- (Refer Rule 6 (3) of Service Tax Rules, 1994)
- The assessee can opt for provisional payment of service tax in case he is not able to correctly estimate the tax liability. In such a situation he may request in writing to the jurisdictional Assistant / Deputy Commissioner for the same.
- (Refer Rule 6 (4) of Service Tax Rules, 1994).
- Service tax (including interest, penalty, refund) is to be rounded off to the nearest rupee. 50 paise or more should be rounded off to the next rupee and less than 50 paise should be ignored.
- (Refer Board's Circular No.53/1/2003 dated 11.03.2003)
- Service tax is an indirect tax and can be recovered from the service receiver by the service provider in course of his business transactions. Even if a service receiver disputes or refuses to pay the service tax element, the service provider



must discharge his service tax liability.

- Any person, who has collected any sum on account of service tax, is under obligation to pay the same to the Government. He can not retain the sum so collected with him by contending that service tax is not payable.
- (Refer section 73A of the Finance Act, 1994.)

## RETURNS

- Every assessee is required to submit a half yearly return in form S.T.3 or S.T.3A (in triplicate) along with copies of T.R.6 challans. For the purpose of filing returns half year is counted from April to September and October to March. In case the assessee has opted for provisional payment of service tax he is required to file the service tax return in form S.T.3A. (Rule 7(1) of Service Tax Rules, 1994)
- Date of filing of Returns : The half yearly return is required to be filed by the 25th of the month following a particular half year. (Rule 7(2) of Service Tax Rules, 1994)
- E-filing of Returns : The department has extended the facility of filing the returns on-line (e-filing of returns). This facility is available for all the categories of service providers. The assessee who is willing to opt for this facility is required to submit an application ( at least one month in advance before the due date for filing the return), in prescribed format (Annexed to Circular No.71/1/2004-ST dated 02.01.2004) to the jurisdictional Central Excise officer. The department would allot a username and password in due course of time to such assessee.

## INTEREST

The due date for payment of service tax is 5th day of the month of the following the relevant month / quarter. It is provided under section 75 of the Finance Act, 1994 that in case of delayed payments ( after due date) the assessee is required to pay simple interest at the rate prescribed. Notification No. 26/2004 dated 10.09.2004 has specified the rate of interest at 13% per annum. The table below shows the rate of interest applicable at relevant period of time.

Sr.No. Period Rate of Interest

1. Till 11.05.2001 1.5% per month
2. 11.05.2001 to 11.05.2002 24% per annum
3. 11.05.2002 to 10.09.2004 15% per annum
4. From 10.09.2004 13% per annum

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