

B.COM (H) 5th SEMESTER
INCOME TAX LAW AND PRACTICES, PAPER CODE-303

Unit I

Basic concept of Income Tax: Income, agricultural income, person, assessee, assessment year, previous year, gross total income, total income, maximum marginal rate of tax; Residential status, scope of total income on the basis of residential status, exempted income under section 10.

Unit II

Computation of income under different heads: Salaries, Income from house property, Profits and gains of business or profession, capital gains, Income from other sources.

Unit III

Total income and tax computation: Income of other persons included in assessee's total income, aggregation of income and set-off and carry forward of losses, deductions from gross total income, rebates and reliefs, deduction of tax at source, Computation of total income of individuals and firms - Tax liability of an individual and firm.

Unit IV

Preparation of return of income: SARAL – Manually, On-line filing of Returns of Income & TDS; Provision & Procedures of compulsory online filing of returns for specified assesses, recovery of tax and refund of tax, appeals and penalties.

Note: Refer to latest legislative and finance amendments which come in due course of time.

UNIT 1 BASIC CONCEPTS OF INCOME TAX

Income Tax:

The Indian Income Tax department is governed by the Central Board for Direct Taxes (CBDT) and is part of the Department of Revenue under the Ministry of Finance. The government of India imposes an income tax on taxable income of individuals, Hindu Undivided Families (HUFs), companies, firms, co-operative societies and trusts (Identified as body of Individuals and Association of Persons) and any other artificial person. Levy of tax is separate on each of the persons. The levy is governed by the Indian Income Tax Act, 1961 and Rules framed there under.

Section 1 of Income-Tax Act, 1961 [as amended by finance act, 2015] *An Act to consolidate and amend the law relating to income-tax and super-tax* enacted by Parliament in the Twelfth Year of the Republic of India as follows :—

- (1) This Act may be called the Income-tax Act, 1961.
- (2) It extends to the whole of India.
- (3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962.

Income: Most systems define income subject to tax broadly for residents, but tax nonresidents only on specific types of income. What is included in income for individuals may differ from what is included for entities. The timing of recognizing income may differ by type of taxpayer or type of income.

Income generally includes most types of receipts that enrich the taxpayer, including compensation for services, gain from sale of goods or other property, interest, dividends, rents, royalties, annuities, pensions, and all manner of other items. Many systems exclude from income part or all of superannuation or other national retirement plan payments. Most tax systems exclude from income health care benefits provided by employers or under national insurance systems. (source: https://en.wikipedia.org/wiki/Income_tax accessed on 13-06-15)\
income" includes—

- (i) Profits and gains;
- (ii) Dividend;
- (iii) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.

Explanation.—For the purposes of this sub-clause, "trust" includes any other legal obligation ;

- (iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17 ;
- (iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit ;
- (iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living ;
- (iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;
- (iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;
- (v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59 ;
- (va) any sum chargeable to income-tax under clause (iiia) of section 28 ;
- (vb) any sum chargeable to income-tax under clause (iiib) of section 28 ;
- (vc) any sum chargeable to income-tax under clause (iiic) of section 28 ;
- (vd) the value of any benefit or perquisite taxable under clause (iv) of section 28 ;
- (ve) any sum chargeable to income-tax under clause (v) of section 28 ;
- (vi) any capital gains chargeable under section 45 ;
- (vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule ;
- (viiia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;
- (viii) [Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Original sub-clause (viii) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964;]

- (ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

Explanation.—For the purposes of this sub-clause,—

- (i) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
- (ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game ;
- (x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees ;
- (xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause*, the expression "Keyman insurance policy" shall have the meaning assigned to it in the *Explanation* to clause (10D) of section 10 ;

- (xii) any sum referred to in clause (va) of section 28;
- (xiii) any sum referred to in clause (v) of sub-section (2) of section 56;
- (xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;
- (xv) any sum of money or value of property referred to in clause (vii) or clause (viiia) of sub-section (2) of section 56;
- (xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56;
- [(xvii) any sum of money referred to in clause (ix) of sub-section (2) of section 56;]

Following sub-clause (xviii) shall be inserted after sub-clause (xvii) of clause (24) of section 2 by the Finance Act, 2015, w.e.f. 1-4-2016 :

- (xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43;

Agricultural Income

It means: (a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes; (b) any income derived from such land by—

- (i) Agriculture; or
 - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or
 - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause ;
- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that— (i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) The land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(A) In any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand or

(B) in any area within the distance, measured aerially,—

(I) not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

Explanation 1.—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section.

Explanation 2.—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

Explanation 3.—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

[*Explanation 4.*—For the purposes of clause (ii) of the proviso to sub-clause (c), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;]

Source: <http://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx> (accessed on 13-06-15)

Income partly agricultural and partly business activities

Income in respect of the below mentioned activities is initially computed as if it is business income and after considering permissible deductions. Thereafter, 40,35 or 25 percent of the income as the case may be, is treated as business income, and the rest is treated as agricultural income.

Income ^a	Business income	Agricultural income
Growing & manufacturing tea in India	40%	60%
Sale of latex or cenex or latex based crepes or brown crepes manufactured from field latex or coalgum obtained from rubber plants grown by a seller in India	35%	65%
Sale of coffee grown & cured by seller in India	25%	75%
Sale of coffee grown, cured, roasted & grounded by seller in India	40%	60%

For apportionment of a composite business-cum-agricultural income, other than the above-mentioned, the market value of any agricultural produce, raised by the assessee or received by him as rent-in-kind and utilized as raw material in his business, should be deducted. No further deduction is permissible in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind.

https://en.wikipedia.org/wiki/Income_tax_in_India

Person:

"Person" includes— (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority, and (vii) every artificial juridical person, not falling within any of the preceding sub-clauses. Explanation.— For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains

Assessee:

means a person by whom any tax or any other sum of money is payable under this Act, and includes—

- (a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or assessment of fringe benefits or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;
- (b) every person who is deemed to be an assessee under any provision of this Act ;
- (c) every person who is deemed to be an assessee in default under any provision of this Act ;

Assessment year:

assessment year" means the period of twelve months commencing on the 1st day of April every year. It is the financial year in which income tax is calculated for the assessee. It is next year to the previous year. For Example Sonali started a business on 31st July 2014. Assessment year for calculating tax will be 2015-16 as previous year will be 2014-15.

Previous year:

Defined. Section 3. For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year : **Provided** that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year. Normally income tax is charged on previous year's income. Previous year is the year in which assesses earn income. For example : Preya started business on 7th July 2014. Previous year for Income tax will be 7th July 2014 to 31st March 2015.

Gross Total income:

The Gross Total income of a person is segregated into five heads:-

- Income from salaries

- Income from house property
- Profits and gains of business or profession
- Capital gains and
- Income from other sources

So Gross Total Income: Income is divided into 5 heads in income tax. 1. Salary 2. House Property 3. Business and Profession 4. Capital Gains and 5. Other Sources. Aggregate income of five heads is called Gross Total Income.

Total Income:

Gross total income minus following deductions of Section 80 is called Total income

Deductions allowed under Chapter VI-A i.e., sections 80C to 80U, cannot exceed gross total income of an assessee excluding short term capital gains under section 111A and any long term capital gains. Some deductions under sections 80C to 80DDB are listed below.

Section 80C deductions:

Deduction under this section is available only to an individual or an HUF. Section 80C of the Income Tax Act allows certain investments and expenditure to be deducted from total income up to the maximum of Rs 1,50,000 from the Financial Year 2014-15.

Section 80CCC (pension) :

Payments made to LIC or to any other approved insurer under an approved pension plan is admissible for deduction under this section. Then pension plan policy should be for individual himself out of his taxable income. The deduction is least of the amount paid or Rs 1,50,000

Section 80CCD:

Contribution made by the assessee and by employer to New Pension Scheme is admissible for deduction under this section. The assessee should be an individual who is employed on or after 1 January 2004. The deduction shall be equal to the amount contributed by the assessee and/or by the employer, not exceeding 10% of his salary (basic+dearness allowance). Even a self-employed person can claim this deduction which will be restricted to 10% of gross total income. The total deduction available to an assessee under sections 80C, 80CCC & 80CCD is restricted to 150,000 per annum. However, employer's contribution to Notified Pension Scheme under section 80CCD is not a part of the limit of 150,000.

Sec 80D:

(1) In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted such sum, as specified in sub-section (2) or sub-section (3), payment of which is made by any mode 95[as specified in sub-section (2B),] in the previous year out of his income chargeable to tax.

(2) Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:— (a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family 96[or any contribution made to the Central Government Health Scheme] 96a[or such other scheme as may be notified by the Central

Government in this behalf] 97[or any payment made on account of preventive health check-up of the assessee or his family]as does not exceed in the aggregate fifteen thousand rupees; and (b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee 97[or any payment made on account of preventive health check-up of the parent or parents of the assessee]as does not exceed in the aggregate fifteen thousand rupees.

Explanation.—For the purposes of clause (a), "family" means the spouse and dependent children of the assessee. 97[(2A) Where the amounts referred to in clauses (a) and (b) of sub-section (2) are paid on account of preventive health check-up, the deduction for such amounts shall be allowed to the extent it does not exceed in the aggregate five thousand rupees.

(2B) For the purposes of deduction under sub-section (1), the payment shall be made by— (i) any mode, including cash, in respect of any sum paid on account of preventive health check-up; (ii) any mode other than cash in all other cases not falling under clause (i).]

(3) Where the assessee is a Hindu undivided family, the sum referred to in sub-section (1) shall be the whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in the aggregate fifteen thousand rupees.

(4) Where the sum specified in clause (a) or clause (b) of sub-section (2) or in sub-section (3) is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, the provisions of this section shall have effect as if for the words "fifteen thousand rupees", the words "twenty thousand rupees" had been substituted. Explanation.—For the purposes of this sub-section, "senior citizen" means an individual resident in India who is of the age of 60[sixty years] or more at any time during the relevant previous year.

(5) The insurance referred to in this section shall be in accordance with a scheme⁹⁹ made in this behalf by— (a) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalization) Act, 1972 (57 of 1972) and approved by the Central Government in this behalf; or (b) any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

Amount of Deduction U/Sec 80D

	HUF	Individual		
On whose health insurance policy can be taken	Anymember	Individual himself, spouse, Dependent children	Parents whether dependent or not	Total
General deduction	15000	15000	15000	30000
Additional deduction if insured is a senior citizen	5000	5000	5000	10000
Total	20000	20000	20000	40000

Deduction under Section 80D is also available in respect of contribution to Central Government Health Scheme. However this deduction is not available to HUF. Deduction is available to an individual and only in respect of health insurance policy taken for Individual himself, spouse and

dependent children. If an individual takes an insurance policy on health of Parents whether dependent or not, deduction under this Section will not be available. Deduction under this section within the existing limit, in respect of any payment or contribution made by the assessee to such other health scheme as may be notified by the Central Government.

Section 80DDB : Deduction in respect of medical treatment, etc

Deduction is allowed to resident individual or HUF(Hindu Undivided Family) in respect of expenditure actually during the PY incurred for the medical treatment of specified disease or ailment as specified in the rules 11DD for himself or a dependent relative or a member of a HUF

Section 80E : Education loan interest

Interest payment on education loan for education in India gets deduction under this section. Education loan should be for self, spouse, child or the legal guardian.

Section 80TTA : Interest on Savings Account Up to Rs 10,000 earned as interest from savings account in bank, post office or a co-operative society can be claimed for deduction under this section. This rebate is applicable for individuals and HUFs \

Section 80U : Disability: Disabled persons can get a flat deduction on Income Tax on producing their disability certificate. If disability is severe Rs 1 lakh can be claimed else Rs 50,000. server here mean disability 80% or more as per this section

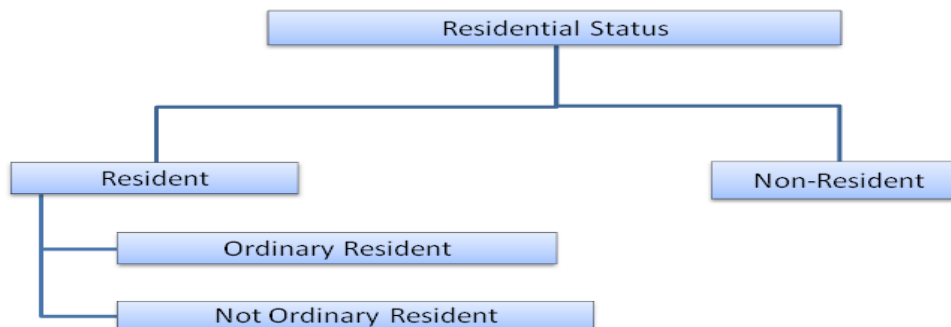
Maximum Marginal Rate of Tax

Maximum marginal rate - Section 164 is the charging section by itself and all that it says is that the 'maximum marginal rate' of tax is to be applied on the computed income. "Maximum marginal rate" is defined as the rate of tax applicable in relation to the highest slab of income provided for association of persons in the relevant Finance Act. The definition is not capable of any doubt, and the only meaning that it admits of is that the rate on the maximum slab of income for AOP is to be treated as the maximum marginal rate of tax for the purposes of section 164. When the statute says that the "maximum marginal rate" is the rate applicable on the highest slab of income, there is no scope for enquiry on the meaning of "marginal" - CIT v. C.V. Divakaran Family Trust [2002] 254 ITR 222/122 Taxman 405 (Ker.).**Source:**

<http://www.caclubindia.com/forum/what-is-the-maximum-marginal-rate-under-income-tax--12693.asp>

Residential Status

The determination of **Residential Status** of a person is very important for the purpose of levy of income tax, as income tax is levied based on the residential status of a taxpayer. The Residential Status of a taxpayer can be divided in the following categories



Determination of Residential Status of Individual

Basic Conditions

The *Residential Status* of an Individual is to be determined on the basis of period of stay of the taxpayer in India and is computed separately for each year. If an individual satisfies any one of the following conditions, he is said to be Resident in India for that financial year. The conditions are:-

- He is in India for a period of 182 days or more in that financial year

OR

- He is in India for 60 days or more during that financial year and has been in India for 365 days or more during 4 previous years immediately preceding the relevant financial year.

If any one of the above basic conditions is satisfied, the individual is said to be resident in India. However, if none of the conditions is satisfied, he is said to be a Non Resident Indian (NRI)

Exceptions to Residential Status

There are 2 exceptions to the above rule of classification of Residential Status:-

1. In case of an individual, who is a citizen of India and who leaves India in any financial year for the purpose of employment outside India, the 2nd condition stated above shall not be applicable and only the 1st condition of 182 days or more would be applicable
2. In case of an individual who is a citizen of India or is a person of Indian origin and who being outside India comes on a visit to India in any financial year, the 2nd conditions stated above shall not be applicable and only the 1st condition of 182 days or more would be applicable.

Additional Conditions:

Classification of Ordinary Resident & Non Ordinary Resident: **As per Section 6(6), a person shall be not ordinary resident in India if he satisfies any one of the following conditions:-**

- He has been a non-resident (in the manner computed above) in 9 out of 10 years immediately preceding the Financial Year

OR

- He has been in India for a period of 729 days or less in 7 previous years immediately preceding the financial year.

If any 1 of the above additional conditions is satisfied, the person is said to be resident but not-ordinary resident in India. However, if none of the above conditions is satisfied, the person is said to be Resident and Ordinary Resident in India.

Relevant points regarding Residential Status

Receipt of Income: For the purpose of levy of income tax, what is important is the 1st receipt. If an amount is received outside India and then subsequently remitted to India, it shall be a receipt outside India. Merely, because it has been remitted to India would not make it an income received in India. For eg: A non-resident receives income equivalent to Rs. 80,000 in USA but then remits it to India. This income would not be taxable in his hands in India because it is neither earned in India nor received (1st receipt) in India.

Citizenship of a Country and Residential Status: Citizenship of a country and residential status are separate concepts. A person may be an Indian national/citizen but may not be a resident in India. On the other hand, a person may be a foreign national/citizen but may be a resident in India.

Computation of Period of Stay: In computing the period of stay for the purpose of residential status, it is not necessary that the stay should be for a continuous period. What is to be seen is the total number of days of stay in India during that financial year. It is also not necessary that the stay should be only at 1 place and can be anywhere in India.

For the purpose of computing the period of 182 days for the determination of residential status, the day he enters India and the day he leaves India should both be treated as stay in India. However, in borderline cases where stay in India is very close to 182 days, his stay in India has to be calculated on hourly basis and a total of 24 hours will be taken as 1 day.

<http://www.charteredclub.com/residential-status/>

Scope of total income on the basis of residential status

Determination of Residential Status of a taxpayer is very important at the time of filing of income tax return as **income tax is levied** based on the Residential status of the taxpayer. The following types of incomes are taxable in the hands of the different categories of taxpayers:-

Particulars	Resident and Ordinary Resident	Not ordinary Resident	Non-Resident
Income received or deemed to be received in India whether earned in India or elsewhere	Yes	Yes	Yes



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

Income which accrue or arise or is deemed to accrue or arise in India during the previous year, whether received in India or elsewhere	Yes	Yes	Yes
Income which accrue or arise outside India and received outside India from a business controlled from India	Yes	Yes	No
Income which accrue or arise outside India and received outside India in the previous year from any other source	Yes	No	No
Income which accrues or arises outside India and received outside India during the year preceding the year and remitted to India during the previous year	Yes	No	No

From the above table, it is clearly visible that the maximum income tax is levied in case of an Ordinary Resident, lesser in case of Not-Ordinary Resident and the least in the case of a Non Resident Indian (NRI).

Exempted income under section 10

Income tax act provides multiple tax exemptions to every individual. A lot of such exemptions fall under section 10 of income tax act. Following are the tax exemptions provided under section 10:

Agricultural Income: Income received from agriculture is totally exempt from tax if it is the only source of income in the financial year. However, if it is accompanied by income from other sources, it is taxable.

Leave Travel Allowance (LTA): LTA is exempt to a certain extent for domestic travel under section 10(5) of income tax. The exemption is subject to the LTA limit specified in the individual's salary.

Life Insurance: The payment proceeds of a life insurance policy are exempt under section 10(10D). This includes maturity amount as well as death claims.

Gratuity: Gratuity amount received by a government employee is totally exempt from tax. For others covered under payment of gratuity act, it is exempt to the least of the following:

- 1) 15 days salary based on last drawn salary for each year of service.
- 2) Rs. 10,00,000
- 3) Gratuity received

For those not covered under gratuity act, it is exempt to the least of:

- 1) Half month average salary for each year of service completed.
- 2) Rs. 10,00,000
- 3) Gratuity received

Leave Encashment: For a government employee, leave encashment upon retirement or leaving the job is tax free under section 10. For a non-government employee, it is exempt up to least of the following:

- 1) Earned leave (no. of months) * Average monthly salary
- 2) 10 * Average monthly salary
- 3) Rs. 3,00,000
- 4) Actual leave encashment received

Commutated Pension

Commutated pension for govt. employees is fully exempt. For others, it is exempt to least of the following:

- 1) If gratuity is received, up to 1/3rd of the pension received.
- 2) If gratuity not received, 1/2 of the pension received.

Compensation under VRS: Compensation received under VRS scheme upon voluntary retirement is exempt up to maximum of Rs. 5,00,000. **Provident Fund:** Payments received from Provident Fund (PF) are exempt as part of section 10. However, PF withdrawal is taxable for less than 5 years of service. Also, EPF balance can be withdrawn only subject to few conditions.

HRA: House Rent Allowance (HRA) for an employee is exempt to the least of the following:

- 1) HRA received
- 2) Rent paid – 10% of salary
- 3) 50% of salary for Delhi, Mumbai, Kolkata and Chennai and 40% elsewhere.

Dividends received: Dividends announced by any company in case of mutual funds or stocks are exempt from tax in the hands of an individual, irrespective of the company paying tax on it.

Equities held for more than 1 year: Any equity instrument, share or mutual fund held for more than 1 year is free from tax at the time of sale. This is also known as long term capital gains.

Superannuation fund: Any amount received from an approved superannuation fund is exempt from tax in the hands of an individual.

Transport allowance: Transport allowance is exempt up to Rs. 800 per month i.e. Rs. 9,600 per annum. Transport allowance here means expenditure incurred for travel between place of residence and place of work.

Education and Hostel allowances for children: Education allowance is exempt up to Rs. 100 per month per child for a maximum of 2 children. Hostel allowance is exempt for hostel expenditure up to Rs. 300 per month per child for a maximum of 2 children.

Interest on Securities: Income from securities in the form of interest, premium, etc from certificates, bonds and deposits is exempt from tax.

<http://www.investmentyogi.com/exemptions-under-section-10-of-income-tax-act/>

UNIT 2 COMPUTATION OF INCOME UNDER DIFFERENT HEADS

Salaries

1. Relationship of employer and employee must exist to create salary income.
2. Only receipts from employer are taxable under this head. Receipts from a person other than employer are taxable under “Other Source”.
3. In case Salary is received after deduction of following items... these are added back to get fully Salary:
 - (i) Own Contribution to Provident Fund.
 - (ii) Tax Deducted at Source (TDS)
 - (iii) Repayment of Loan etc.
 - (iv) LIC Premium, if deducted from salary.
 - (v) Group Insurance Scheme.
 - (vi) Rent of house provided by employer.Previous Year in case of Salaries is always Financial Year i.e. for the Assessment Year 2015-2016 it is 1-4-2014 to 31-3-2015.

Salary includes:

1. **Wages.** Fully Taxable.
2. **Annuity or Pension.** Fully Taxable
3. **Gratuity.** It has been treated separately.
4. (a) Any Fees -- Fully Taxable
(b) Commission -- Fully Taxable
(c) Bonus -- Fully Taxable
(d) Perquisites -- (Perks) These are treated separately u/s 17(2)
(e) Profit in lieu of Salary -- These are treated separately u/s 17(3)
5. **Salary in lieu of Leave / Leave Encashment.** Fully Taxable.
6. **Advance Salary.** Fully Taxable
7. **Arrears of Salary.** Fully Taxable.
8. Refund of Provident Fund (PF)
 - (a) If SPF -- Fully exempted
 - (b) If RPF -- Fully exempted if service is more than 5 years.
 - (c) If URPF -- Taxable portion is added in salary income. Taxable portion is equal to employer's contribution + interest on this part. Interest on own contribution to URPF is taxable under the head “Income from Other Sources.”

III. Allowances:

A. Fully Exempted Allowances:

Foreign Allowance given by Govt. to its employees posted abroad. HRA given to Judges of High Court & Supreme Court.

B. Fully Taxable Allowances:

- (i) Dearness Allowance / Additional D.A. / High Cost of Living Allowance -- Fully Taxable.
- (ii) City Compensation Allowances (CCA).
- (iii) Capital Compensatory Allowance
- (iv) Lunch Allowance
- (v) Tiffin Allowance
- (vi) Marriage / Family Allowance
- (vii) Overtime Allowance
- (viii) Fixed Medical Allowance.
- (ix) Electricity and Water Allowance
- (x) Entertainment Allowance. It is fully added in employee's Salary.

In case of Government employees a deduction is allowed u/s 16(ii) at the rate of least of following :

- (a) Statutory Limit Rs. 5,000 p.a.
- (b) 1/5 (20%) th of Basic Salary ; or
- (c) Actual Entertainment Allowance received.

C. Partly Taxable Allowances:

1. House Rent Allowance (HRA)

- (a) Fully exempted, if received by the Judges of High Court and Supreme Court.
- (b) Fully Taxable, if received by an employee who is living in his own house or in a house for which no rent is paid.
- (c) Exempted up to least of following for those employees who are living in rented houses:
 - (i) Actual HRA received by the employee.
 - (ii) Rent paid - 10% of Salary ; or
 - (iii) 40% of Salary in ordinary town ; 50% of Salary in Mumbai, Kolkata, Chennai or Delhi.

Note. *Taxable HRA = HRA Received - Least of Above.*

Salary = Pay + D.A. which enters into Pay for Service or Retirement Benefits + Commission on Turnover Achieved by Him.

Following Allowances are Exempted upto actual expenditure incurred for employment. Excess, if any, shall be taxable...

2. Uniform Allowance
3. Conveyance Allowance
4. Traveling Allowance

Following Allowance are Exempted up to amount so notified..

5. Special Compensatory Allowance
6. Border Area Allowance

7. Tribal Area Allowance -- Exempted upto Rs. 200 p.m. if received in the States of M.P., Tamil Nadu, U.P., Karnataka, Tripura, Assam, West Bengal, Bihar, or Orissa.
8. Children's Education Allowance -- Exempted up to Rs.100 p.m. per child for education in India **of own two children only.**
9. Hostel Expenditure Allowance -- Exempted up to Rs. 300 p.m. per child for Hostel expenditure **on own two children only.**

IA. Exempted Perquisites:

1. Leave Travel Concession subject to conditions & actual spent only for travels.
2. Computer/ Laptop provided for official / personal use.
3. Initial Fees paid for corporate membership of a club.
4. Refreshment provided by the Employer during working hours in office premises.
5. Payment of annual premium on Personal Accident Policy.
6. Subscription to periodicals and journal required for discharge of work.
7. Provision of Medical Facilities.
8. Gift not exceeding Rs. 5,000 p.a.
9. Use of Health Club, Sports facility.
10. Free telephones whether fixed or mobile phones.
11. Interest Free / concessional loan of an amount not exceeding Rs.20, 000 (limit not application in the case of medical treatment)
12. Contribution to recognized Provident Fund / approved superannuation fund, pension or deferred annuity scheme & staff group insurance scheme.
13. Free meal provided during working hours or through paid non transferable vouchers not exceeding Rs. 50 per meal or free meal provided during working hours in a remote area.

The value of any benefit provided free or at a concessional rate (including goods sold at concessional rate) by a company to the Employees by way of allotment of shares etc., under the Employees stock option plan as per Central Government Guidelines.

B. Taxable Perquisites:

1. Rent Free Accommodation
2. Provision of Motor Car or any other Conveyance for personal use of Employee.
3. Provision of Free or Concessional Education Facilities.
4. Reimbursement of Medical Expenditure.
5. Expenditure on Foreign Travel and stay during medical expenditure.
6. Supply of Gas, Electricity & Water.
7. Sale of an Asset to the Employee at concessional price including sale of Share in the Employer Company.

C. Perks Exempted for Employees but Taxable for Employer under Fringe Benefit Tax.

Value of the following benefits is not taxable in the hands of an employee. The employer has to pay tax on deemed income calculated as percentage of expenditure incurred.

1. Any free or concessional ticket provided by the employer for private journeys of his employee or their family members
2. Any contribution by the employer to an approved superannuation fund for employees;
3. Following Expenditure also consider taxable as Fringe Benefit Tax.

1. Expenditure incurred on entertainment ;
2. Expenditure incurred on provision of hospitality of every kind by the employer to any person.
3. Expenditure incurred on conference like conveyance, tour & travel (including foreign travel) , on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference.
4. Expenditure incurred on sales promotions including publicity ;
5. Expenditure incurred on employee's welfare ;
6. Expenditure incurred on conveyance
7. Expenditure incurred on Hotel, Boarding & Lodging facilities ;
8. Expenditure incurred on Repair, Maintenance of Motor Cars and the amount of Depreciation there on.
9. Expenditure incurred on use of telephone and Mobile Phones.
10. Expenditure incurred on maintenance of any accommodation in the nature of Guest House other than used for Training purpose.
11. Expenditure incurred on Festival Celebrations.
12. Expenditure incurred on use of Health Club and similar facilities.
13. Expenditure incurred on gifts ;

Fringe Benefit Tax (FBT) is not applicable in case of following type of employers.

1. An Individual or a sole Proprietor
2. A Hindu Undivided Family
3. Government
4. A Political Party
5. A person whose income is exempt u/s 10(23c)
6. A Charitable Institution registered u/s 12AA.
7. RBI
8. SEBI

Receipts which are included under the head 'Salary' but Exempted u/s 10.

1. **Leave Travel Concession (LTC)** - Exempt upto rules.
2. **Any Foreign Allowance or perks** - If given by Govt. to its employees posted abroad are fully exempted.
3. **Gratuity:** A Govt. Employee or semi-Govt. employee where Govt. rules are applicable -- Fully Exempted.
 - A. *For employees covered under Payment of Gratuity Act.--*

Exempt up to least of following :

- (a) Notified limit = Rs. 10,00,000
- (b) 15 days Average Salary for every one completed year of service (period exceeding 6 months = 1 year * 15 days salary = (Average monthly salary or wages x 15/26
- (c) Actual amount received.

B. Other Employees -- Exempted up to least of following provided service is more than 5 years or employee has not left service of his own :

- (a) Notified limit = Rs. 10,00,000
- (b) 1/2 month's average salary for every one year of completed service (months to be ignored.)
- (c) Actual amount received

Average Salary = Salary for 10 months preceding the month of retirement divided by 10.

4. Commutation of Pension :

In case commuted value of pension is received --

(a) If Govt. employee -- is Fully Exempted.

(b) *If other employee who receive gratuity also* -Lump sum amount is exempted upto commuted value of 1/3rd of Pension.

If other employee who does not get gratuity -- Lump sum amount is exempted upto commuted value of 1/2 of pension.

5. Leave Encashment u/s 10(10AA)

(a) If received at the time of retirement by a Govt. employee---Fully Exempted

(b) If received during service---Fully taxable for all employees

(c) If received by a private sector employee at the time of retirement exempted upto :

(i) Notified limit Rs. 3,00,000

(ii) Average salary x 10 months

(iii) Actual amount received.

(iv) Average Salary x No. of months leave due.

6. Any Tax on perks paid by employer. It is fully Exempted.

7. Any payment received out of SPF . Any payment received out of SPF is Fully Exempted.

8. Any payment received out of RPF . Any payment received out of RPF is Fully Exempted, If service exceeds 5 years.

9. Any payment received out of an approved superannuation fund . is Fully Exempted

Deductions from Salary:

Deduction Out Of Gross Salary [Sec. 16]

1. Entertainment Allowance [U/s 16(ii)]

Deduction u/s 16(ii) admission to govt. employee shall be an amount equal to least of following :

1. Statutory Limit of Rs.5,000 p.a.
2. 1/5 th of Basic Salary
3. Actual amount of entertainment allowance received during the previous year.

2. Tax on Employment u/s 16(iii)

In case any amount of professional tax is paid by the employee or by his employer on his behalf it is fully allowed as deduction.

Deduction U/S 80C Out Of Gross Total Income (GTI)

The following are the main provisions of the newly inserted Section 80C. :

1. Under Section 80C , deduction would be available from Gross Total Income.
2. Deduction under section 80C is available only to individual or HUF.
3. Deduction is available on the basis of specified qualifying investments / contributions / deposits / payments made by the taxpayer during the previous year.

4. The maximum amount deduction under section 80C , 80CCC, and 80CCD cannot exceed Rs.1 lakh.

Note-Deduction u/s 80C shall be allowed only to the following assessee :

1. An Individual
2. A Hindu Undivided Family (HUF)

<http://incometaxmanagement.com/Pages/Gross-Total-Income/Salaries/Chat-Showing-Computation-of-Salary-Income.html>

Income from House property

Income from house property is one among the taxable heads of income as per the Income Tax act. It constitutes the income earned from a property by his/her owner.

Property hereby refers to any building (house, office building, godown, factory, hall, shop, auditorium, etc.) and/or any land attached to the building (e.g. Compound, garage, garden, car parking space, playground, gymkhana, etc.).

This is the only head of income, which taxes notional income (except under some circumstances under capital gains, income from other sources). The taxability may not necessarily be of actual rent or income received but the potential income, which the property is capable of yielding.

While self-occupied and rental property is within the purview under this head, income from vacant house is dealt with under the head ‘income from other sources’.

Taxable value

The annual value of property consisting of any building or land appurtenant (belonging) thereto, except such property which is used by assessee for the purpose of business and profession, shall be the taxable value.

How to determine Annual Value?

Gross Annual Value (GAV) of property will be required to determine the annual value, which is higher of:

(a)The sum for which the property might reasonably be expected to let from year to year. In cases of properties where Standard Rent has been fixed, such sum cannot exceed this value. However, where property was vacant during the whole or part of the previous year and rent actually received or receivable is less than expected rent, then rent actually received or receivable is taken as GAV.

(b) Where property is actually let out and the rent received or receivable is more than the amount determined in (a) above, the annual value would be the actual rent received.

Exclusions

Following amounts will be excluded while determining GAV:

The amount of municipal tax realized from a tenant.

- Notional interest on the amount received towards 'rent/security deposit' from the tenant
- Repairs carried out by the tenant.

When Annual Value is 'NIL'?

The annual value of a property shall be considered 'nil' in following cases:-

(a) Self-occupied property, i.e. property which is in occupation of the owner for the purpose of his own residence and he does not derive any other benefit out of it.

(b) Similarly, if the owner of only one residential house is unable to occupy it on account of his employment, business or profession carried on in any other place and he is residing in a property not owned by him.

Let's illustrate this with an example. Mr. Piyush Arora, who bought a house in Mumbai had to shift to a rental accommodation in Bangalore due to his job. In this scenario, the annual value will be nil and still Mr. Piyush will get a tax deduction up to Rs. 1,50,000 for interest paid on borrowed capital.

Net Annual Value is arrived at after deducting the municipal taxes and the unrealized rent (subject to certain conditions). However, receipt of any unrealized rent shall be chargeable to tax in the year of receipt.

Deductions u/s 24

Serial No	Particulars	Amount or Percentage Deduction
1	Standard deduction	30% of Net Annual Value
2	Property acquired/constructed after 1st April, 1999 with borrowed capital (deduction is allowed only where such acquisition or construction is completed within 3 years from the end of the financial year in which capital was borrowed)	Rs. 1,50,000
3	In all other cases except in point 2.	Rs. 30,000
4	In case of let out property	Full deduction of interest on borrowed capital.

*Interest for the period prior to the acquisition or construction of the premises would be deductible in five equal instalments starting from the year in which property is acquired/constructed (possession).

Tax Planning for Income from House property

You can minimize your tax out go in the following cases:-

(1) **Owing more than one property** – If you own more than one property, then only one house of your choice will be considered as self-occupied and others will be considered as let out or Deemed to be let out (if not let out). Therefore, you should carefully evaluate and choose a property with less tax liability.

Illustration:

If Shiva has two houses than he can choose one which will minimize his tax liability.

Particulars (If Deemed Let out)	House 1	House 2
Annual Value	3,60,000	7,00,000
Less: (Municipal Taxes)	(40,000)	(54,000)
Net Annual Value (NAV)	3,20,000	6,46,000
Deductions u/s 24		
(a) 30% of NAV	(96,000)	(1,93,800)
(b) Interest on borrowed capital	(1,75,000)	(2,50,000)
Income from House Property	49000	2,02,200

If Shiva considers House 1 as Self-occupied and House 2 as deemed to be let-out then his income from house property will be Rs. 52,200 and it will be negative Rs. (1,01,00) vice-versa. Therefore, he should consider House 1 as deemed let out and House 2 as self –occupied.

(2) **Joint Home Loan** – If you are a Joint owner and also apply for a joint home loan then both the co-borrowers can take a maximum deduction of 150000 each.

(3) **First house is in a single name and planning a second home** – If your first home is in single name then you can buy a second home in your spouse’s name to help you avoid tax on ‘deemed to be let-out’ property.

(4) **Joint Ownership** – Income from house property can be divided between both the co-owners which can reduce overall tax liability.

Profits and gains of Business and Profession

Meaning of Business and Profession

Business simply means any economic activity carried on for earning profits. According to Sec 2(3) business is “any trade, commerce, manufacture or any adventure in the nature of trade commerce and manufacture”. Any transaction with a motive of selling at profits included under this concept. It is not necessary that there should be a series of transaction in a business and it should be carried on permanently.

Profession is an occupation requiring purely intellectual skills or manual skills controlled by the intellectual skill of the operator. e.g. Lawyer, doctor, engineer etc. So profession refers to those activities where the livelihood is earned by the persons through their intellectual or manual skill.

The following income shall be chargeable to income-tax under the head Profits and gains of business or profession,

- 1) The profits and gains of any business or profession which was carried on by the assessee at any time during the previous year
- 2) Any compensation or other payment due to or received by any person in connection with a business or profession
- 3) Income derived by a trade, professional or similar association from specific services performed for its members
- 4) Profits on sale of a license granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947) ;]
- 5) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India ;]
- 6) Any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971 ;]
- 7) Value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;
- 8) Any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm:
- 9) Any sum received under a Key man insurance policy including the sum allocated by way of bonus on such policy.
- 10) Interest on securities held as stock in trade

Computation of income from business or profession

The following are the general principles to be followed while computing income of business or profession.

- 1) Profit should be computed according to an accepted method of accounting regularly employed by the assessee. E.g. cash system or mercantile system
- 2) Only expenses incurred in connection with the business or profession of the assessee will be allowed.
- 3) Losses, if any should be incidental to the operation of the business
- 4) Profit and losses of speculation business should be kept separate.

- 5) If any sum is allowed as deduction in any previous year and subsequently recovered, it will be taxable in the previous year in which it is received.
- 6) Any amount allowed as expenses in the earlier years if recovered during the current

Expenses expressly allowed

1. Rent, rates, taxes, repairs and insurance for buildings[Sec 30]

Rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession is allowed as a deduction. If the business premises are owned by the assessee, no notional rent will be allowed.

2. Repairs and insurance of machinery, plant and furniture[Sec 31]

The amount paid on account of current repairs and the amount of any premium paid in respect of insurance against risk of damage or destruction of machinery, plant and furniture used in business or profession will be allowed as deduction

3. Depreciation [Sec32]

Depreciation is allowed in respect of tangible assets like buildings, machinery, plant or furniture and intangible assets acquired on or after the 1st day of April, 1998, like know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, owned wholly or partly, by the assessee and used for the purposes of the business or profession.

Depreciation is allowed on block of assets at the prescribed rates on the written down value of such block of asset. Block of assets means the group of assets falling within a same class of assets for which same rate of depreciation is prescribed.

Depreciation will be allowed only when the assets are owned wholly or partly by the assessee. If an asset is used partly for business purpose and partly for personal purpose, depreciation shall be allowed only for that part which is used in business or profession.

Calculation of WDV	
Value of asset at the beginning of the previous year	XXXX
Add: value of assets acquired during the previous year	XXXX
	XXXX
Less: scrap value received on the sale of assets in the PY	<u>XXXX</u>
W.D.V of the asset	XXXX

In the case of an asset acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period less than 180 days in that previous year, the depreciation of such asset shall be restricted to 50% of the amount calculated at the prescribed rate.

Treatment of depreciation

- a. If depreciation given P&L A/c and adjustment
 - i. Add depreciation given in the P&L a/c to Net profit
 - ii. Subtract depreciation given in the adjustment to net profit
- b. If depreciation is given only in P&L a/c [and not in the adjustment
 - i. Ignore depreciation given in P&L a/c
- c. If the depreciation is given only in the adjustment [and not in the P&L a/c
 - i. Subtract depreciation from the net profit

Unabsorbed depreciation [Sec 32(2)]

If the full amount of depreciation cannot be charged due to absence or inadequacy of profit, the balance amount of depreciation which cannot be so allowed is called unabsorbed depreciation. Unabsorbed depreciation relating to the previous year can be set off against profit of other business and balance, if any can be set off against his income chargeable under any other head for that year. If still some part of such allowance remains unabsorbed, it can be carried forward. No time limit is fixed for the purpose of carrying forward of unabsorbed depreciation. It can be set off against any income. In the matter of set off, the order of priority is , first, current depreciation, second brought forward business losses and last ,unabsorbed depreciation.

Additional depreciation

Additional depreciation is available from the assessment year 2003-04, subject to the following conditions

1. It is available only in respect of plant and machinery acquired and installed after 31-3-2005
2. Additional depreciation is available at the rate of 20% of the actual cost. If however, the asset is put to use for less than 180 days in the year in which it is acquired, the rate of depreciation will be 10%

4. Tea development account [Sec 33AB]

If an assessee , who carrying on the business of growing and manufacturing tea, coffee or rubber , deposits an amount in the tea development account , he can avail this deduction . The amount of deduction least of the following

- (a) a sum equal to the amount or the aggregate of the amounts so deposited ; or
- (b) a sum equal to 40% per cent of the profits of such business

Withdrawal from deposits will not be allowed except for the specified purposes specified below.

They are:

- (a) Closure of business;
- (b) Death of an assessee ;
- (c) Partition of a Hindu undivided family;
- (d) Dissolution of a firm;
- (e) Liquidation of a company.

5. Expenditure on scientific Research[Sec 35]

The following deductions shall be allowed, in respect of expenditure on scientific research

- a) Any revenue expenditure lay out or expended on scientific research related to the business.
- b) An amount equal to 125% of any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific Research:
- c) An amount equal to 125% of any sum paid] to a university, college or other institution to be used for research in social science or statistical research :
- d) Capital expenditure incurred, other than acquisition of a land, on scientific research related to the business carried on by the assessee. Where any deduction is allowed in respect of any capital expenditure represented by an asset, no depreciation will be provided on that asset under [Sec 32]
- e) Where the assessee pays any sum to a National Laboratory University or an Indian Institute of Technology or a specified person with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority, then a deduction of a sum equal to one and one- fourth times the sum so paid is allowable. No deduction in respect of such sum shall be allowed under any other provision of this Act
- f) Where a company engaged in the business of bio-technology or manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article, incurs any expenditure on scientific research on in-house research and development facility a sum equal to 150% of the expenditure is allowed as deduction

6. Expenditure on know-how [Sec 35AB]

If the assessee has paid any lump sum amount for acquiring any know-how for the purposes of his business, the amount shall be allowable as deduction in 6 equal installments commencing from the year in which such an expenditure in incurred. If such know-how is developed in a laboratory owned or financed by the government or university, deduction is allowable in 3 equal installments

7. Amortization of certain preliminary expenses [Sec 35D]

Preliminary expenses incurred by an Indian company or a person (other than a company) who is resident in India will be allowed as a deduction. If the expenses are incurred before 1st April 1998, it will be allowed in 10 equal installments and if such expenditure is incurred on or after 1st April 1998 the deduction will be allowable in 5 equal installments. Maximum amount eligible for this deduction is an amount equal to 5% (if expenditure incurred before 1st April 1998, it is 2.5%) of the cost of the project or in the case of an Indian company, at the option of the company, the amount of capital employed in the business.

Preliminary expenses includes the following

- expenditure in connection with preparation of feasibility report, preparation of project report, conducting market survey or any other survey necessary for the business of the assessee, engineering services relating to the business of the assessee



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

- legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;
- legal charges for drafting the Memorandum and Articles of Association of the company;
- printing charges of the Memorandum and Articles of Association
- Registration fee etc.
- shares and debentures issue expenses
- underwriting commission
- brokerage and charges for drafting, typing, printing and advertisement of the prospectus;

8. General Deduction [Sec 37]

The following general deductions are allowable from business or professional income;

- Legal expenses
- Customs duty, excise duty and sales tax paid
- Sales tax appeal expenses
- Day to day expenses to carry on the business
- Gift to employees
- Workmen compensation fund

Expenses Expressly Allowed

The following expenses are expressly disallowed from business or professional income.

1. Guest house expenses
2. Wealth tax
3. Income tax
4. Tax penalty
5. Advance income tax
6. Drawings
7. Salary to proprietor
8. Interest on capital
9. Life Insurance Premium
10. Expenses for family members
11. Provision like provision for bad debts, provision for taxation etc
12. Donations, gift and charity
13. Depreciation allowed above the prescribed limit
14. All expenses of capital nature
15. All expenses relating to other heads of income
16. Amount exceeding Rs.20,000 paid in cash
17. Medical insurance premium paid in cash

Scheme of Taxation of Income From Business

<i>Particulars</i>	<i>Amount</i>
Net profit as per P&L A/c	
Add: Non business expenses	
Add: Business income not credited in P&L A/c	
Less: Non-business Income credited in P&L A/c	
Less: Business expenses not debited in P&L A/c	

Scheme of Taxation of Income From Business

<i>Particulars</i>	<i>Amount</i>
Professional receipts	

Less: professional expenses

Income from profession

All rules of business income is applicable in the case of professional income

<http://www.mbaknol.com/tax-management/profits-and-gains-of-business-or-profession/>Source: Scribd.com

1 Chargeability:

The following incomes are chargeable to tax under the head Profit and Gains from Business or Profession:

S. No.	Section	Particulars
1.	28(i)	Profit and gains from any business or profession carried on by the assessee at any time during the previous year
2.	28(ii)	Any compensation or other payment due to or received by any specified person
3.	28(iii)	Income derived by a trade, professional or similar association from specific services performed for its members
4.	28(iiia)	Profit on sale of a license granted under the Imports (Control) Order 1955, made under the Import Export Control Act, 1947
5.	28(iiib)	Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of Government of India

6. 28(iic) Any duty of Customs or Excise repaid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971.
7. 28(iiid) Profit on transfer of Duty Entitlement Pass Book Scheme, under Section 5 of Foreign Trade (Development and Regulation) Act, 1992
8. 28(iiie) Profit on transfer of Duty Free Replenishment Certificate, under Section 5 of Foreign Trade (Development and Regulation) Act 1992
9. 28(iv) Value of any benefits or perquisites arising from a business or the exercise of a profession.
10. 28(v) Interest, salary, bonus, commission or remuneration due to or received by a partner from partnership firm
11. 28(va) Any sum received for not carrying out any activity in relation to any business or not to share any know-how, patent, copyright, trademark, etc.
12. 28(vi) Any sum received under a Key man Insurance policy including the sum of bonus on such policy
13. 28(vii) Any sum received (or receivable) in cash or in kind, on account of any capital assets (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital assets has been allowed as a deduction under section 35AD
14. Explanation to section 28 Income from speculative transactions. However, it shall be deemed to be distinct and separate from any other business.
15. 41(1)
 - Remission or cessation of liability in respect of any loss, expenditure or trading liability incurred by the taxpayers
 - Recovery of trading liability by successor which was allowed to the predecessor shall be chargeable to tax in the hands of successor. Succession could be due to amalgamation or demerger or succession of a firm succeeded by another firm or company, etc.
 - Any liability which is unilaterally written off by the taxpayer from the books of accounts shall be deemed as remission or cessation of such liability and shall be chargeable to tax.
16. 41(2) Depreciable asset in case of power generating units, is sold,

discarded, demolished or destroyed, the amount by which sale consideration and/ or insurance compensation together with scrap value exceeds its WDV shall be chargeable to tax.

17. 41(3) Where any capital asset used in scientific research is sold without having been used for other purposes and the sale proceeds together with the amount of deduction allowed under section 35 exceed the amount of the capital expenditure, such surplus or the amount of deduction allowed, whichever is less, is chargeable to tax as business income in the year in which the sale took place.
18. 41(4) Where bad debts have been allowed as deduction under Section 36(1)(vii) in earlier years, any recovery of same shall be chargeable to tax.
19. 41(4A) Amount withdrawn from special reserves created and maintained under Section 36(1)(viii) shall be chargeable as income in the previous year in which the amount is withdrawn.
20. 41(5) Loss of a discontinued business or profession could be adjusted from the deemed business income as referred to in section 41(1), 41(3), (4) or (4A) without any time limit.
21. 43CA Where consideration for transfer of land or building or both as stock-in-trade is less than the stamp duty value, the value so adopted shall be deemed to be the full value of consideration for the purpose of computing income under this head.
22. 43D As per RBI Guidelines, Interest on bad and doubtful debts of Public Financial Institution or Scheduled Bank or State Financial Corporation or State Industrial Investment Corporation, shall be chargeable to tax in the year in which it is credited to Profit and Loss A/c or year in which it is actually received, whichever happens earlier.
23. 43D Similarly as per NHB Guidelines, Interest on bad and doubtful debts of housing finance company, shall be chargeable to tax, in the year it is credited to P & L A/c or year in which it is actually received by them, whichever is earlier.

2 Deductions under Sections 30 to 37

Amount deductible, while computing, Profits and Gains of Business or Profession are:-

Section	Nature of expenditure	Quantum of deduction	Assessee
30	Rent, rates, taxes, repairs (excluding capital expenditure) and insurance for premises	Actual expenditure incurred excluding capital expenditure	All assessee
31	Repairs (excluding capital expenditure) and insurance of machinery, plant and furniture	Actual expenditure incurred excluding capital expenditure	All assessee
32	Depreciation on buildings, machinery, plant or furniture, know-how, patents, copyrights, trademarks, licenses, franchises, or any other business or commercial rights of similar nature, being intangible assets (Subject to certain conditions)	Allowed at prescribed percentage on WDV method for each block of assets	All assessee
32AC	Deduction under section 32AC is available if actual cost of new plant and machinery acquired and installed by a manufacturing company during the previous year exceeds Rs. 25/100 Crores, as the case may be.(Subject to certain conditions)	15% of actual cost of new asset acquired and installed (if it exceeds Rs. 25 Crores/100 Crores, as the case may be)	Company engaged in business or manufacturing or production of any article or thing
33AB	Amount deposited in Tea/Coffee/Rubber Development Account by assessee engaged in business of growing and manufacturing tea/Coffee/Rubber in India	Deduction shall be lower of following: a) Amount deposited in account with National Bank for Agricultural and Rural Development (NABARD) or in	All assessee engaged in business of growing and manufacturing tea/Coffee/Rubber



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

		Deposit Account of Tea Board, Coffee Board or Rubber Board in accordance with approved scheme; or b) 40% of profits from such business before making any deduction under section 33AB and before adjusting any brought forward loss. (Subject to certain conditions)	
33ABA	Amount deposited in Special Account with SBI/Site Restoration Account by assessee carrying on business of prospecting for, or extraction or production of, petroleum or natural gas or both in India	Deduction shall be lower of following: a) Amount deposited in Special Account with SBI/Site Restoration Account; or b) 20% of profits from such business before making any deduction under section 33ABA and before adjusting any brought forward loss. (Subject to certain conditions)	All assessee engaged in business of prospecting for, or extraction or production of, petroleum or natural gas or both in India
35(1)(i)	Revenue expenditure on scientific research pertaining to business of assessee is allowed as deduction (Subject to certain conditions).	Entire amount incurred on scientific research is allowed as deduction. Expenditure on scientific research within 3 years before commencement of business (in the nature of purchase of materials and salary of employees other than perquisite) is allowed as deduction in the year of commencement of	All assessee



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

		business to the extent certified by prescribed authority.	
35(1)(ii)	Contribution to approved research association, university, college or other institution to be used for scientific research shall be allowed as deduction (Subject to certain conditions)	175% of sum paid to such association, university, college, or other institution is allowed as deduction.	All assessee
35(1)(iia)	Contribution to an approved company registered in India to be used for the purpose of scientific research is allowed as deduction (Subject to certain conditions)	125% of sum paid to the company is allowed as deduction	All assessee
35(1)(iii)	Contribution to approved research association, university, college or other institution with objects of undertaking statistical research or research in social sciences shall be allowed as deduction (Subject to certain conditions)	125% of sum paid to such association, university, college, or other institution is allowed as deduction	All assessee
35(1)(iv) read with 35(2)	Capital expenditure incurred during the year on scientific research relating to the business carried on by the assessee is allowed as deduction (Subject to certain conditions)	Entire capital expenditure incurred on scientific research is allowed as deduction. Capital expenditure incurred within 3 years before commencement of business is allowed as deduction in the year of commencement of business. <i>Note:</i> i. Capital expenditure	All assessee



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

		excludes land and any interest in land; ii. No depreciation shall be allowed on such assets.	
35(2AA)	Payment to a National Laboratory or University or an Indian Institute of Technology or a specified person is allowed as deduction. The payment should be made with the specified direction that the sum shall be used in a scientific research undertaken under an approved programme.	200% of payment is allowed as deduction (Subject to certain conditions).	All assessee
35(2AB)	Any expenditure incurred by a company on scientific research (including capital expenditure other than on land and building) on in-house scientific research and development facilities as approved by the prescribed authorities shall be allowed as deduction (Subject to certain conditions). Expenditure on scientific research in relation to Drug and Pharmaceuticals shall include expenses incurred on clinical trials, obtaining approvals from authorities and for filing an application for patent.	200% of expenditure so incurred shall be as deduction. <i>Note:</i> i. Company should enter into an agreement with the prescribed authority for co-operation in such research and development and audit of accounts maintained for such facilities; ii. Deduction under this provision would be allowed only up to 31-3-2017.	Company engaged in business of bio-technology or in any business of manufacturing or production of eligible articles or things
35ABB	Capital expenditure incurred for acquiring any license or right to operate telecommunication services shall be allowed as	Deduction would be allowed in equal installments starting from the year in which such payment has been	All Assessee engaged in telecommunication services



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	deduction over the term of the license.	made and ending in the year in which license comes to an end.	
35AC	Expenditure by way of payment of any sum to a public sector company/local authority/approved association or institution for carrying out any eligible scheme or project (Subject to certain conditions).	Actual payment made to prescribed entities. However, a company can also claim deduction for expenditure incurred by it directly on eligible projects.	All assessee. However, deduction for direct expenditure is allowed only to a company
35AD	Deduction in respect of expenditure on specified businesses, as under: a) Setting up and operating a cold chain facility b) Setting up and operating a warehousing facility for storage of agricultural produce c) Building and operating, anywhere in India, a hospital with at least 100 beds for patients d) Developing and building a housing project under a notified scheme for affordable housing e) Production of fertilizer in India (Subject to certain conditions)	150% of capital expenditure incurred for the purpose of business is allowed as deduction provided the specified business has commenced its operation on or after 01-04-2012. <i>Note:</i> If such specified businesses commence operations on or before 31-03-2012 but after prescribed dates, deduction shall be limited to 100% of capital expenditure.	All assessee
35AD	Deduction in respect of expenditure on specified businesses, as under: a) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including	100% of capital expenditure incurred for the purpose of business is allowed as deduction provided specified businesses commence operations on or after the	All assessee (Indian company in case of specified business of laying and operating a cross-country natural gas or crude or petroleum oil pipeline network)



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

storage facilities being an integral part of such network;

b) Building and operating, anywhere in India, a hotel of two-star or above category;

c) Developing and building a housing project under a scheme for slum redevelopment or rehabilitation

d) Setting up and operating an inland container depot or a container freight station

e) Bee-keeping and production of honey and beeswax

f) Setting up and operating a warehousing facility for storage of sugar

g) Laying and operating a slurry pipeline for the transportation of iron ore

h) Setting up and operating a semi-conductor wafer fabrication manufacturing unit

(Subject to certain conditions)

35CCA	Payment to following Funds are allowed as deduction: a) National Fund for Rural Development; and b) Notified National Urban Poverty Eradication Fund	Actual payment to specified funds	All assessee
35CCC	Expenditure (not being cost of land/building) incurred on notified agricultural extension project for the purpose of training,	150% of the expenditure (Subject to certain conditions)	All assessee



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

educating and guiding the farmers shall be allowed as deduction, provided the expenditure to be incurred is expected to be more than Rs. 25 lakhs (Subject to certain conditions).

35CCD	Expenditure incurred by a company (not being expenditure in the nature of cost of any land or building) on any notified skill development project is allowed as deduction (Subject to certain conditions).	150% of the expenditure (Subject to certain conditions) <i>Note:</i> No deduction shall be allowed to a company engaged in manufacturing alcoholic spirits or tobacco products.	Company engaged in manufacturing of any article or providing specified services
35D	An Indian company can amortize certain preliminary expenses (up to maximum of 5% of cost of the project or capital employed, whichever is more) (Subject to certain conditions and nature of expenditures)	Qualifying preliminary expenditure is allowable in each of 5 successive years beginning with the previous year in which the extension of undertaking is completed or the new unit commences production or operation.	Indian Company



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

35D	Non-corporate taxpayers can amortize certain preliminary expenses (up to maximum of 5% of cost of the project) (Subject to certain conditions and nature of expenditures)	Qualifying preliminary expenditure is allowable in each of 5 successive years beginning with the previous year in which the extension of undertaking is completed or the new unit commences production or operation.	Resident Non-corporate assessees
35DD	Expenditure incurred after 31-3-1999 in respect of amalgamation or demerger can be amortized by an Indian Company	Expenditure is allowed as deduction in five equal installments in 5 previous years starting with the year in which amalgamation or demerger took place.	Indian Company
35DDA	Expenditure incurred under Voluntary Retirement Scheme is allowed as deduction.	Each payment under VRS is allowed as deduction in five equal installments in 5 previous years.	All Assessee
35E	Qualifying expenditure incurred by resident persons on prospecting for the minerals or on the development of mine or other natural deposit of such minerals shall be allowed as deduction (Subject to certain conditions).	Eligible expenditure is allowed as deduction in ten equal installments in 10 previous years.	Resident persons
36(1)(i)	Insurance premium covering risk of damage or destruction of stocks/stores	Actual expenditure incurred	All Assessee
36(1)(ia)	Insurance premium	Actual expenditure	All Assessee



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	covering life of cattle owned by a member of co-operative society engaged in supplying milk to federal milk co-operative society	incurred	
36(1)(ib)	Medical insurance premium paid by any mode other than cash, to insure employee's health under (a) scheme framed by GIC of India and approved by Central Government; or (b) scheme framed by any other insurer and approved by IRDA	Actual expenditure incurred	All Assessee
36(1)(ii)	Bonus or commission paid to employees which would not have been payable as profit or dividend if it had not been paid as bonus or commission	Actual expenditure incurred	All Assessee
36(1)(iii)	Interest on borrowed capital (Subject to certain conditions)	Actual interest incurred, except interest to be capitalized with actual cost of capital asset, shall be allowed as deduction	All Assessee
36(1)(iiia)	Discount on Zero Coupon Bonds (Subject to certain conditions)	Pro-rata amount of discount on zero coupon bonds shall be allowed as deduction over the life of such bond	Specified Assessee
36(1)(iv)	Employer's contributions to recognized provident fund and approved superannuation fund [subject to certain limits and conditions]	Actual expenditure incurred	All Assessee
36(1)(iva)	Any sum paid by assessee-	Actual expenditure not	All Assessee –



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	employer by way of contribution towards a pension scheme, as referred to in section 80CCD, on account of an employee.	exceeding 10% of the salary* of the employee *Salary = Basic Pay + Dearness Allowance (to the extent it forms part of retirement benefits)+ turnover based commission	Employer
36(1)(v)	Employer's contribution towards approved gratuity fund created exclusively for the benefit of employees under an irrevocable trust shall be allowed as deduction (Subject to certain conditions).	Actual expenditure not exceeding 8.33% of salary of each employee	All Assessee – Employer
36(1)(va)	Deposit of employee's contributions in their respective provident fund or superannuation fund or any fund set up under Employees' State Insurance Act, 1948	Actual amount received if credited to the employee's account in relevant fund on or before due date specified under relevant Act	All Assessee – Employer
36(1)(vi)	Allowance in respect of animals which have died or become permanently useless (Subject to certain conditions)	Actual cost of acquisition of such animals less realization on sale of carcasses of animals	All Assessee
36(1)(vii)	Bad debts which have been written off as irrecoverable (Subject to certain conditions)	Actual bad debts which have been written off from books of accounts	All Assessee
36(1)(viia)	Deductions for provision for bad and doubtful debts created by certain banks and financial institutions (Subject to certain conditions). Note Deduction in respect of bad	Deductions for provision for bad and doubtful debts shall be limited to following: a) <i>In case of scheduled and non-scheduled banks</i> : Sum not exceeding aggregate of	Banks, Public Financial Institutions, State Financial Corporation, State Industrial Investment Corporations



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	debts actually written off under section 36(1)(vii) shall be limited to that amount of bad debts which exceed the provision for bad and doubtful debts created under section 36(1)(viiia).	7.5% of total income (before any deductions under this provision and Chapter VI-A) and 10% of aggregate average advances made by rural branches of such bank; b) <i>In case of Financial Institutions</i> : Up to 5% of total income before any deductions under this provisions and Chapter VI-A; and c) <i>In case of foreign banks</i> : Up to 5% of total income before any deductions under this provisions and Chapter VI-A	
36(1)(viii)	Deduction under this provisions is allowed to following entities in respect of amount transferred to special reserve account: a) Financial Corporation which is engaged in providing long-term finance for industrial or agricultural development or development of infrastructure facility in India; or b) Public company registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of residential houses in India. [Subject to certain conditions]	Deduction shall be allowed to the extent of lower of following: a) Amounts transferred to special reserve account b) 20% of profits derived from eligible business c) 200% of paid-up capital and general reserve (on last day of previous year) <i>minus</i> balance in special reserve account (on first day of previous year)	Specified financial corporations or public company
36(1)(ix)	Expenditure incurred by a	1) Entire revenue	Company



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	company on promotion of family planning amongst employees is allowed as deduction	expenditure is allowed as deduction 2) Capital expenditure shall be allowed as deduction in five equal installment in five years	
36(1)(xii)	Any expenditure incurred by a notified corporation or body corporate constituted or established by a Central, State or Provincial Act, for the objects and purposes authorized by the respective Act is allowed as deduction	Actual expenditure incurred (not being in the nature of capital expenditure)	Notified corporations
36(1)(xiv)	Contribution to Credit Guarantee Trust Fund for micro and small industries is allowed as deduction	Actual expenditure incurred	Public Financial Institutions
36(1)(xv)	Securities Transaction Tax paid	Actual expenditure incurred if corresponding income is included as income under the head profits and gains of business or profession	All Assessee
36(1)(xvi)	Amount equal to commodities transaction tax paid by an assessee in respect of taxable commodities transactions entered into in the course of his business during the previous year is allowed as deduction	Actual expenditure incurred if corresponding income is included as income under the head profits and gains of business or profession	All Assessee
37(1)	Any other expenditure [not being personal or capital expenditure and expenditure mentioned in sections 30 to 36] laid out	Actual expenditure incurred	All Assessee

wholly and exclusively for purposes of business or profession

37(2B)	Expenditure on advertisement in any souvenir, brochure etc. published by a political party shall not be allowed as deduction	Not Allowed	All Assessee
--------	--	-------------	--------------

3. Amount expressly disallowed under the Act

Section	Description
40(a)(i)	Any sum (other than salary) payable outside India or to a non-resident, which is chargeable to tax in India in the hands of the recipient, shall not be allowed to be deducted if it was paid without deduction of tax at source or if tax was deducted but not deposited with the Central Government till the due date of filing of return. However, if tax is deducted or deposited in subsequent year, as the case may be, the expenditure shall be allowed as deduction in that year.
40(a)(ia)	Any sum payable to a resident, which is subject to deduction of tax at source, would attract 30% disallowance if it was paid without deduction of tax at source or if tax was deducted but not deposited with the Central Government till the due date of filing of return. However, where in respect of any such sum, tax is deducted or deposited in subsequent year, as the case may be, the expenditure so disallowed shall be allowed as deduction in that year.
40(a)(ii)	Any sum paid on account of any rate or tax levied on the profits and gains of business or profession is not deductible
40(a)(iia)	Wealth-tax or any other tax of similar nature shall not be deductible
40(a)(iib)	Amount paid by way of royalty, license fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on (or any amount appropriated) a State Government undertaking by the State Government shall not be deductible.
40(a)(iii)	Salaries payable outside India or in India to a non-resident, on which tax has not been paid/deducted at source is not deductible.
40(a)(iv)	Payments to provident fund or other funds for employees' benefit shall not be deductible if no effective arrangements have been made to ensure deduction of at source from payments made from such funds to employees which shall be chargeable to tax as 'salaries'.

- 40(a)(v) Tax paid by the employer on non-monetary perquisites provided to employees is not deductible if the tax so paid is not taxable in the hands of employees by virtue of Section 10(10CC).
- 40(b) Following sum paid by a partnership firm to its partners shall not be allowed to be deducted:
- 1) Salary, bonus, commission or remuneration paid to non-working partners;
 - 2) Remuneration or interest paid to the partners is not in accordance with the terms of the partnership deed;
 - 3) Remuneration or interest to partners is in accordance with the terms of the partnership deed but relates to any period prior to the date of the deed;
 - 4) Interest to partners is in accordance with the terms of the partnership deed but exceeds 12% per annum;
 - 5) Remuneration to partners is in accordance with the terms of the partnership deed but exceeds the following permissible limit:
 - a) On first Rs. 3 Lakhs of book profit or in case of loss – Rs. 1,50,000 or 90% of book profit, whichever is more;
 - b) On the balance of the book profit – 60% of book profit
- 40(ba) Interest, salary, bonus, commission or remuneration paid by Association of Persons or Body of Individuals to its members shall not be allowed as deduction (Subject to certain conditions).
- 40A(2) Any payment to related parties (relatives, directors, partner, member of HUF/AOP, person who has substantial interest in business of the taxpayer, etc.) in respect of any expenditure shall be disallowed to the extent such expenditure is considered excessive or unreasonable by the Assessing Officer having regard to its fair market value.
- 40A(3)/(3A) An expenditure, which is otherwise deductible under any provision of the Act, shall be disallowed if payment thereof has been made otherwise than by account payee cheque/bank draft and it exceeds Rs. 20,000 (Rs. 35,000 in case of payment made for plying, hiring or leasing goods carriages) in a day (Subject to certain conditions and exceptions).
- 40A(7) Provision for payment of gratuity to employees, other than a provision for contribution to approved gratuity fund, shall not be allowed as deduction (Subject to specified conditions).
Gratuity actually paid (or payable) during the year and contribution to approved gratuity fund is allowed as deduction.

- 40A(9) Any sum paid as an employer for setting up or as contribution to any fund, trust, company, AOP, BOI, Society or other institution (other than recognized provident fund, approved superannuation fund, approved gratuity fund or pension scheme referred to in section 80CCD) shall not be allowed as deduction if such contribution or payment is not required by any law.

4. Expenses deductible on actual payment basis

The following expenses shall be allowed as deduction if such expenditure are actually paid on or before the due date of filing of return of income:-

Section Particulars

- 43B(a) Any Tax, Duty, Cess or Fees under any Law
- 43B(b) Any contribution to Provident Fund/Superannuation Fund/Gratuity Fund/Welfare Fund
- 43B(c) Bonus or Commission paid to employees which would not have been payable as profit or dividend
- 43B(d) Interest on Loan or Borrowings from Public Financial Institutions/State Financial Institutions etc.
- 43B(e) Interest on loan or advance from bank
- 43B(f) Payment of Leave Encashment

5. Other provisions

Section Particulars

Provision

- | | | |
|-----|---|---|
| 42 | Special allowance in case of business of prospecting etc. for mineral oil (including petroleum and natural gas) in relation to which the Central Government has entered into an agreement with the taxpayer for the association or participation (Subject to certain conditions). | Following deductions shall be allowed as deductions:
a) Any infructuous exploration expenditure
b) Expenditure on drilling or exploration activities or services, etc.
c) Allowance in relation to depletion of mineral oil, etc. |
| 43A | Special provisions consequential to changes in rate of exchange of Currency (Subject to certain conditions). | Any increase or decrease in the liability incurred in foreign currency (to acquire a capital asset) pursuant to fluctuation in the foreign exchange rates shall be adjusted with the actual cost of such asset only on actual payment of the liability. |



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

43C	Acquisition of any asset (except stock-in-trade) by the taxpayer in the scheme of amalgamation or by way of gift, will etc.	Cost of acquisition of any asset (except stock-in-trade) acquired by the taxpayer in the scheme of amalgamation or by way of gift, will etc. from the transferor (who sold it as stock-in-trade) shall be the cost of acquisition in the hands of transferor as increased by cost of any improvement made
-----	---	---

6. Provisions applicable to Non-Resident/Foreign Company

Section	Particulars	Limit of exemption or Computation of income/deduction	Available to
44B read with 172	Income from shipping business shall be computed on presumptive basis (Subject to certain conditions).	7.5% of specified sum shall be deemed to be the presumptive income	Non-resident engaged in shipping business
44BB	Income of a non-resident engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils shall be computed on presumptive basis (Subject to certain conditions).	10% of specified sum shall be deemed to be the presumptive income	Non-resident engaged in activities connected with exploration of mineral oils
44BBA	Income of a non-resident engaged in the business of operation of aircraft shall be computed on presumptive basis (Subject to certain conditions).	5% of specified sum shall be deemed to be the presumptive income	Non-resident engaged in the business of operating of aircraft
44BBB	Income of a foreign company engaged in the business of civil	10% of specified sum shall be deemed to be the presumptive income	Foreign Company



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with turnkey power projects shall be computed on presumptive basis (Subject to certain conditions).		
44C	Deduction for Head office Expenditure (Subject to certain conditions and limits)	Deduction for head-office expenditure shall be limited to lower of following: a) 5% of adjusted total income* b) Head office exp. as attributable to business or profession of taxpayer in India * In case adjusted total income of the assessee is a loss, adjusted total income shall be substituted by average adjusted total income ** Adjusted total income or average adjusted total income shall be computed after prescribed adjustments i.e. unabsorbed depreciations, carry forward losses, etc.	Non-resident
44DA	Deduction of expenditure from royalty and FTS received under an agreement made after 31-03-2003 which is effectively connected to the PE of non-resident in India (Subject to certain conditions)	Expenditure incurred wholly and exclusively for the business of PE or fixed place of profession in India shall be allowed as deduction.	Non-resident

7. Accounts and Audit

Section	Particulars	Threshold
44AA	Compulsory maintenance of prescribed books of account – Specified Profession (Subject to certain conditions and circumstances)	Persons carrying on specified profession and their gross receipts exceed Rs. 1,50,000 in all the three years immediately preceding the previous year
44AA	Compulsory maintenance of books of account – Other business or profession (Subject to certain conditions and circumstances)	1) If total sales, turnover or gross receipts exceeds Rs. 10,00,000 in any one of the three years immediately preceding the previous year; or 2) If income from business or profession exceeds Rs. 1,20,000 in any one of the three years immediately preceding the previous year
44AB	Compulsory Audit of books of accounts (Subject to certain conditions and circumstances)	1) If total sales, turnover or gross receipts exceeds Rs. 1 Crore in any previous year, in case of business; or 2) If gross receipts exceeds Rs. 25 Lakhs in any previous year, in case of profession.

8. Presumptive Taxation

Section	Nature of business	Presumptive income
44AD	Income from eligible business can be computed on presumptive basis under Section 44AD (Subject to certain conditions).	Presumptive income of eligible business shall be 8 % of gross receipt or total turnover (if turnover of eligible business does not exceed Rs. 1 crore).
44AE	Presumptive income of business of plying, hiring or leasing of goods carriage if taxpayer does not own more than 10 goods carriage (Subject to certain conditions)	Rs. 7,500 for every month during which the goods carriage is owned by the taxpayer

<http://taxguru.in/income-tax/profits-gains-business-profession.html>

Capital Gains

Any Income derived from a Capital asset movable or immovable is taxable under the head Capital Gains under Income Tax Act 1961. The Capital Gains have been divided in two parts under Income Tax Act 1961. One is short term capital gain and other is long term capital gain.

Short Term Capital Gains If any taxpayer has sold a Capital asset within 36 months and Shares or securities within 12 months of its purchase then the gain arising out of its sales after deducting there from the expenses of sale(Commission etc) and the cost of acquisition and improvement is treated as short term capital gain and is included in the income of the taxpayer. The deduction u/s 80C to 80U can be taken from the income from short term capital gain apart from the short term capital gain u/s111A

Taxability of short term capital gains

Section 111A of the Income tax Act provides that those equity shares or equity oriented funds which have been sold in a stock exchange and securities transaction tax is chargeable on such transaction of sale then the short term capital gain arising from such transaction will be chargeable to tax @10% upto assessment year 2008-09 and 15% from assessment year 2009-10 onwards.

The short term capital gains other than those u/s 111A shall be added to the income of the assessee and no such benefit is available on short term capital gains arising in other cases and they will be taxed normally at slab rates applicable to the assessee.

If an assessee does the business of selling and purchasing shares he cannot take advantage of section 111A or section 10(38). In this case income will be treated as business income.

Capital gains in case of depreciable assets

According to section 50 of Income tax act if an assessee has sold a capital asset forming part of block of assets (building, machinery etc) on which the depreciation has been allowed under Income Tax Act, the income arising from such capital asset is treated as short term capital gain.

Where some assets are left in block of assets: If a part of such capital asset forming part of a block of asset has been sold and after deducting the net consideration received from sale of such asset from the written down value of the block of such asset the written down value comes to NIL then the gain arising shall be treated as short term capital gain and in such case where written down value has become NIL no depreciation shall be available on such block of asset even if some assets are physically left in the block of assets.

When no assets are left in block of assets: If the whole of the capital assets forming part of a block of assets have been sold during a year and the assessee has suffered a loss after deducting the net sale consideration from the written down value of the block of assets then such loss shall be treated as short term capital loss and no depreciation shall be allowed from such block of assets.

It was decided by Chandigarh tribunal in (2004) 3 S.O.T. 521/ 83 T.T.J. 1057 if the whole of capital assets in a block have been sold in a year and some gain arises after the sale such gain shall not be treated as short term capital gain if some new asset has been purchased within the same year in the same block of assets and the total value of new and old capital assets in the same block is more than the sale consideration of the assets sold, since the block of asset does not cease to exist in such case as is required u/s 50(2). This can be explained with an example as below:

Written down value of 5 Machinery as on 01-04-2015 500000, 5 machinery sold on 01-05-2015 600000, New Machinery purchased on 01-06-2015 250000

now in above cases the difference between the w.d.v and sale value i.e Rs 100000 cannot be treated as short term capital gain in the year 2008-09 since new machinery has been purchased in the same block of asset afterwards in the same year and the total of new and old machinery is more than the sale value of the machineries sold as a result the block of asset continue to exist.

Short term capital gain where land & building are sold together: Sometimes it happens that in a block of assets namely land & building, the whole of land & building is sold together. In such cases the capital gain on land and building should be calculated separately.

The Supreme Court has held in (1967) 65ITR 377 that depreciation is available on the value of building and not on the value of plot. Considering the above decision of Supreme Court, the Rajasthan High court in (1993)201 ITR 442 has held that Plot and building are different assets. If the assessee has purchased plot more than 3 years back and constructed building on it less than 3 years back then the gain arising on sale of plot shall belong term capital gain and the benefit of indexation shall be given on it whereas the gain arising on sale of building shall be short term capital gain and will be added to the income of the assessee. Therefore both should be calculated separately.

Where the plot has been purchased more than three years back and the building has been constructed on it less than 3 years back, it is advisable that in the sale deed the sale value of plot and building should be shown separately for more clarity and if the consolidated sale value of the Plot and building has been written in the sale deed then the valuation of plot and building should be done separately from a registered valuer.

Capital asset transferred by the partner to the partnership firm: As per section 45(3) of the Income Tax Act 1961 if any partner in a firm transfers his asset to the firm then the capital gain on such asset as arising to the partner shall be calculated by presuming the sale value of such asset as is shown in the books of accounts of the firm and not the market value of the asset.

whether such gain is treated as long term or short term will be decided as below:

- a) If the depreciation has been claimed on the asset transferred to the firm then in view of section 50(2) the gain arising there from will be treated as short term capital gain.
- b) If the partner has been the owner of the asset for more than 36 months and no depreciation has been claimed on it then the gain arising from such asset shall be treated as long term capital gain.

Capital gain in case of Dissolution of a Firm: As per section 45(4) of the Income Tax Act where any partnership firm or AOP or BOI is dissolved and the Capital assets of the such firm or AOP or BOI are transferred by way of distribution of assets to the partners at the time of

Dissolution in such case the gain arising from such transfer to the partners will be treated as capital gain and the firm will be liable for paying tax on it in the year of distribution of the assets. For the purpose of section 48 the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.

2. Long Term Capital Gain: A Capital Asset held for more than 36 months and 12 months in case of shares or securities is a long term capital asset and the gain arising therefrom is a long term capital gain. Long term capital gains are arrived at after deducting from the net sale consideration of the long term capital asset the indexed cost of acquisition and the indexed cost of improvement of the asset.

The Central govt notifies cost inflation index for every year. The indexed cost of acquisition is calculated by multiplying the actual cost of acquisition with C.I.I of the year in which the capital asset is sold and divided by C.I.I of the year of purchase of capital asset. Similarly the indexed cost of improvement can be calculated by using the C.I.I of the year in which the capital asset is improved. Where the capital asset was acquired before the year 1981 then the cost of acquisition shall be the fair market value or the actual cost of its acquisition which ever is higher. The Fair market value of a capital asset can be known by the valuation of the registered valuer.

The cost inflation index table as notified is here below:

Financial Year	Cost Inflation Index	Financial Year	Cost Inflation Index
1981 – 82	100	1997 – 98	331
1982 – 83	109	1998 – 99	351
1983 – 84	116	1999 – 00	389
1984 – 85	125	2000 – 01	406
1985 – 86	133	2001 – 02	426
1986 – 87	140	2002 – 03	447
1987 – 88	150	2003 – 04	463
1988 – 89	161	2004 – 05	480
1989 – 90	172	2005 – 06	497
1990 – 91	182	2006 – 07	519
1991 – 92	199	2007 – 08	551
1992 – 93	223	2008 – 09	582
1993 – 94	244	2009 – 10	632
1994 – 95	259	2010 – 11	711
1995 – 96	281	2011 – 12	785
1996 – 97	305	2012-13	852

Financial Year	Cost Inflation Index	Financial Year	Cost Inflation Index
2013-2014	939	2014 – 2015	1024

<https://cadiary.org/cost-inflation-index-capital-gain/>

If a capital asset has been subjected to depreciation then no indexation benefit is allowed on sale of such capital asset in view of section 50(2) as discussed above.

Capital gain from Plot and building should be separately calculated: As discussed above plot and building are separate assets and the capital gain on above should be calculated separately. If the plot is purchased more than 3 years back and building has been constructed within 3 years the capital gain on plot will be considered as long term and the capital gain on building will be treated as short term capital gain.

Taxation of Long term capital gains:

The long term capital gains are taxed @ 20% after the benefit of indexation as discussed above. No deduction is allowed from the long term capital gains from section 80C to 80U. But in case of individual and HUF where the income is below the basic exempted limit the shortage in basic exemption limit is adjusted against the long term capital gains.

Section 112(1) provides that any capital gain arising from a long term capital asset being the listed securities which are sold outside the stock exchange the long term capital gain shall be calculated on such securities as below:

- Tax arrived at @ 20% on such long term capital gain after indexation u/s 48 or
 - Tax arrived at @ 10 % on such long term capital gain without indexation
- Whichever is less.

The long term capital gain on equity shares or units of equity oriented mutual fund which are sold in the stock exchange and on which securities transaction tax is paid, is exempt u/s 10(38).

Section 50C:

Section 50C has been introduced with effect from 01-04-2003 and is a very important section while calculating capital gain on land & building. Section 50C provides that Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed *or assessable* by stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed *or assessable* shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

It means that the capital gain will be calculated by considering the sale value of the capital asset as equal to the value adopted or assessed by the stamp valuation authority for that capital asset if the actual sale value is less than the value assessed by stamp valuation authority.

If the assessee claims that the value adopted by the stamp valuation authority exceeds the fair market value then the assessing officer may refer to the valuation officer for valuation of the fair

market value of the asset. If the fair market value declared by the valuer is more than the value adopted or assessed or assessable by the stamp valuation authority, the value so adopted assessed or assessable by the stamp valuation authority will be taken as full value of consideration of the capital asset.

CBDT vide its circular No 8/2002 dt 27-08-2002 has declared that if the valuation officer has declared the fair market value of the capital asset less than the value adopted, assessed or assessable by the stamp valuation authority then the capital gain shall be calculated on the value so declared by the valuer.

After the adding of word assessable u/s 50C in 2009 now it has become clear that even those immovable properties in which no sale deed is entered into and which have been sold on a full and final agreement will be within the ambit of section 50C.

<http://taxbymanish.blogspot.in/2012/01/short-note-on-capital-gain.html>

http://www.moneycontrol.com/news/tax-report/calculate-your-capital-gains-tax4-steps_176908.html

Income from Other Sources

It is residuary head of Income which must satisfy the following conditions:-

1. There must be an income;
2. This income is NOT exempt under the IT Act 1961; and
3. This income is not chargeable to tax under the other heads of income viz. "Salary", "House property", "Business or Profession" and "Capital Gains".

Example of Income from Other Sources

Some examples of certain incomes normally taxed under this head are given below:-

- Interest on bank deposits, loans or company deposits,
- Dividend;
- Family pension (received by legal heirs of an employee),
- Income from sub-letting of house property by a tenant,
- Agricultural income from agricultural land situated outside India,
- Interest received from IT Dept. on delayed refunds,
- Remuneration received by Members of Parliament,
- Casual receipts and receipts of non-recurring nature,
- Insurance commission,
- Examiner-ship fees received by a teacher (not from employer),
- Income from royalty,
- Director's commission for standing as guarantor to bankers,
- Winnings from Lotteries, Crossword Puzzles, Horse Races and Card Games,
- Interest on securities,
- Income from letting out of machinery, plant or furniture, etc.
- Any sum exceeding Rs. 50,000/- received without consideration shall be treated as income provided that the sum of money is not received from any relative or on the occasion of marriage of the individual or under a will or inheritance etc. <http://finotax.com/income-tax/info/income-os>

Deductions allowed under 'income from other sources'

The income, chargeable under the head 'income from other sources,' shall be computed after making the following deductions

- In the case of interest on securities, any reasonable sum, paid by way of commission or remuneration to a banker or to any other person for the purpose of realizing such dividend or interest on behalf of the assessee;
- In the case of income, received by the assessee from his employees as contributions to any provident fund or Superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees, which is chargeable to income tax under the head "Income from other sources" deductions so far, as may be in accordance with provisions of S 36(1) (va).
- In the case of income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income -- tax under the head "Profits and gains of business or profession or where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income tax under the head "Profits and gains of business or profession", deductions, so far as may, be in accordance with the provisions of clause (a), clause (3) of Section 30, Section 31, and subsections (1) and (2) of Section 32 and subject to the provisions of S 38.
- In the case of income in the nature of family pension, a deduction of a sum equal to thirty three and one third per cent of such income or fifteen thousand rupees, whichever is less.
- Any other expenditure (not being capital expenditure) laid out or used wholly and exclusively for the purpose of making or earning such income.

http://www.moneycontrol.com/tax/other_source/deductions-allowed-under-incomeother-sources_628527.html

UNIT 3 TOTAL INCOME AND TAX COMPUTATION:

Income from other person included in assessee's total income

Clubbing of income means Income of other person included in assessee's total income, for example: Income of husband which is shown to be the income of his wife is clubbed in the income of Husband and is taxable in the hands of the husband. Under the Income Tax Act a person has to pay taxes on his income. A person cannot transfer his income or an asset which is his one of source of his income to some other person or in other words we can say that a person cannot divert his income to any other person and says that it is not his income. If he do so the income shown to be earned by any other person is included in the assessee's total income and the assessee has to pay tax on it.

SECTION	NATURE OF TRANSACTION	CLUBBED IN THE HANDS OF	CONDITIONS/EXCEPTIONS	RELEVANT REFERENCE
60	Transfer of Income without transfer of Assets.	Transferor who transfers the income.	Irrespective of: 1. Whether such transfer is revocable or not. 2. Whether the transfer is effected before or after the commencement of IT Act.	1. Income for the purpose of Section 64 includes losses. [P. Doriswamy Chetty 183 ITR 559 (SC)] [also see Expl. (2) to Section 64] 2. Section 60 does not <u>apply</u> if corpus itself is transferred. [Grandhi Narayana Rao 173 ITR 593 (AP)]
61	Revocable transfer of Assets.	Transferor who transfers the Assets.	Clubbing not applicable if: 1. Trust/transfer irrevocable during the lifetime of beneficiaries/transferee or 2. Transfer made prior to 1-4-1961 and not revocable for a period of 6 years. Provided the transferor derives no direct or indirect benefit from such income in either case.	Transfer held as revocable 1. If there is provision to re-transfer directly or indirectly whole/part of income/asset to transferor; 2. If there is a right to reassume power, directly or indirectly, the transfer is held revocable and actual exercise is not necessary. [S. Raghbir Singh 57 ITR 408 (SC)] 3. Where no absolute right is given to transferee and asset can revert to transferor in prescribed circumstances, transfer is held revocable. [Jyotendrasinhji vs. S. I. Tripathi 201 ITR 611 (SC)]



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

64(1)(ii)	Salary, Commission, Fees or remuneration paid to spouse from a concern in which an individual has a substantial* interest.	Spouse whose total income (excluding income to be clubbed) is greater.	Clubbing not applicable if: Spouse possesses technical or professional <u>qualification</u> and remuneration is solely attributable to application of that knowledge/qualification.	1. The relationship of husband and wife must subsist at the time of accrual of the income. [Philip John Plasket Thomas 49 ITR 97 (SC)] 2. Income other than salary, commission, fees or remuneration is not clubbed under this clause
64(1)(iv)	Income from assets transferred directly or indirectly to the spouse without adequate consideration.	Individual transferring the asset.	Clubbing not applicable if: The assets are transferred; 1. With an agreement to live apart. 2. Before marriage. 3. Income earned when relation does not exist. 4. By Karta of HUF gifting co-parcenary <u>property</u> to his wife. L. Hirday Narain vs. ITO 78 ITR 26 (SC) 5. Property acquired out of pin money. R.B.N.J. Naidu vs. CIT 29 ITR 194 (Nag.)	1. Income earned out of Income arising from transferred assets not liable for clubbed. [M.S.S. Rajan 252 ITR 126 (Mad)] 2. Cash gifted to spouse and he/she invests to earn interest. [Mohini Thaper vs. CIT 83 ITR 208 (SC)] 3. Capital gain on sale of property which was received without consideration from spouse [Sevential M. Sheth vs. CIT 68 ITR 503 (SC)] 4. Transaction must be real. [O.N. Mohindroo 99 ITR 583 (Delhi)]
64(1)(vi)	Income from the assets transferred to son's wife.	Individual transferring the Asset.	<u>Condition:</u> The transfer should be without adequate consideration.	Cross transfers are also covered [C.M.Kothari 49 ITR 107 (SC)]
64(1)(vii),(viii)	Transfer of assets by an individual to a person or AOP for the immediate or deferred benefit of his: (vii) – Spouse. (viii) – Son's wife.	Individual transferring the Asset.	<u>Condition:</u> 1. The transfer should be without adequate consideration.	1. Transferor need not necessarily have taxable income of his own. [P. Murugesan 245 ITR 301 (Mad)] 2. Wife means legally wedded wife. [Executors of the will of T.V. Krishna Iyer 38 ITR 144 (Ker)]
64(1A)	Income of a minor child [Child includes step child, adopted child and minor married daughter].	1. If the marriage subsists, in the hands of the parent whose total income is greater;	Clubbing not applicable for:— 1. Income of a minor child <u>suffering</u> any <u>disability</u> specified u/s. 80U. 2. Income on account of manual work done by the minor child. 3. Income on account of any activity involving application of skills, talent or specialized knowledge and	1. Income out of property transferred for no consideration to a minor married daughter, shall not be clubbed in the parents' hands. [Section 27] 2. The parent in whose hands the minor's income is clubbed is entitled to an



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

		or;2. If the marriage does not subsist, in the hands of the person who maintains the minor child.3. Income once included in the total income of either of parents, it shall continue to be included in the hands of some parent in the subsequent year unless AO is satisfied that it is necessary to do so (after giving that parent opportunity of being heard)	experience.	exemption up to Rs. 1,500 per child. [Section 10(32)]
64(2)	Income of HUF from property converted by the individual into HUF property.	Income is included in the hands of individual & not in the hands of HUF.	Clubbing applicable even if: The converted property is subsequently partitioned; income derived by the spouse from such converted property will be taxable in the hands of individual.	Fiction under this section must be extended to computation of income also. [M.K. Kuppuraj 127 ITR 447 (Mad)]

* An individual shall deemed to have substantial interest in a concern for the purpose of Section 64(1)(ii)

IF THE CONCERN IS A COMPANY	IF THE CONCERN IS OTHER THAN A COMPANY
Person's beneficial shareholding should not be less than 20% of voting power either individually or jointly with relatives at any time during the Previous Year. (Shares with fixed rate of dividend shall not be	Person either himself or jointly with his relatives is entitled in aggregate to not less than 20% of the profits of such concern, at any time during the previous year.

considered)

Note :The clubbed income retains the same head under which it is earned.

<http://taxguru.in/income-tax/clubbing-of-income-under-the-income-tax-act-1961.html>

Aggregation of Income

Aggregation of income under the class 'Income from Ordinary Sources'

- (1) Subject to other provisions of this section, the income from each source falling under a head of income for a financial year shall be aggregated and the income so aggregated shall be the income from that head for the financial year.
- (2) The income from the transfer of each investment asset during the financial year, as computed under section 49, shall be aggregated and the net result of such aggregation shall be the income from the capital gains, for the financial year.
- (3) The income from capital gains shall be aggregated with the unabsorbed preceding year capital loss, if any, and the net result of such aggregation shall be the current income under the head "Capital gains".
- (4) The income under the head "Capital gains" shall be treated as "nil" if the net result of aggregation under sub-section (3) is negative and the absolute value of the net result shall be the amount of "unabsorbed current capital loss", for the financial year.
- (5) The income from each business other than speculative business referred to in sub-section (3) of section 31 shall be aggregated and the income so aggregated shall be the income from the non-speculative business.
- (6) The income from each speculative business shall be aggregated and the income so aggregated shall be the gross income from the speculative business.
- (7) The gross income from the speculative business shall be aggregated with unabsorbed preceding year speculative loss, if any, and the net result of such aggregation shall be the income from the speculative business.
- (8) The aggregate of from the speculative business shall be treated as nil, if the "nil" result of aggregation in sub-section (7) is negative and the absolute value of the net result of aggregation shall be the amount of unabsorbed current speculative loss for the financial year.
- (9) The aggregate of income from the speculative business and income from the nonspeculative business shall be the income under the head "income from business".
- (10) The income from the activity of owning and maintaining horses for the purpose of horse race shall be aggregated with unabsorbed preceding year horse race loss, and the net result of such aggregation shall be the income from activity of owning and maintaining horse race and it shall be taken to be "nil", if the net result of such aggregation is negative and the absolute value of net result shall be the amount of unabsorbed current horse race loss for the financial year.
- (11) The income of every kind referred to in section 58, other than income from the activity of owning and maintaining horses for the purpose of horse race, shall be aggregated with income from the activity of owning and maintaining horse race and the

income so aggregated shall be the income under the head " income from residuary sources".

Aggregation of income from Ordinary Sources

- (1) The current income from ordinary sources shall be the aggregate of
 - (a) income under the head "income from employment";
 - (b) income under the head "income from house property";
 - (c) income under the head "income from bussiness";
 - (d) income under the head "capital gains", and;
 - (e) income under the head "income from residuary sources".
- (2) The current income from ordinary sources shall be aggregated with the unabsorbed preceding year loss from the ordinary sources, if any; and the net result of the aggregation shall be the gross total income from ordinary sources, for the financial year.
- (3) The gross total income from ordinary sources, for the financial year, shall be treated as "nil" if the net result of the aggregation under sub-section (2) is negative; and the absolute value of the net result shall be the amount of unabsorbed current loss from ordinary sources, for the financial year.

Aggregation of income from special sources.

- (1) The income from a special source referred to in Part III of the First Schedule shall be the current income from the special source for the financial year.
- (2) The current income from the special source referred to in sub-section (1) shall be aggregated with the unabsorbed preceding year loss from the special source, if any; and the income so aggregated shall be the gross total income from the special source, for the financial year.
- (3) Where the gross total income from the special source referred to in sub-section (2) is negative, such income shall be treated as "nil" and the absolute value of the net result shall be the amount of unabsorbed current loss from the special source for the financial year.
- (4) The gross total income from special source in respect of each special source computed under sub-sections (2) and (3) shall be aggregated and the net result of the aggregation shall be the total income from special sources for the financial year. Aggregation of income from Special Sources.

<http://bba.pz10.com/2013/06/aggregation-of-income.html>

1. Set Off of Loss from one Source against Income from another source under the same head of income.[Sec.70]
2. Set Off of Loss from one Head against income from another. [Sec.71]
3. Carry forward and set off of Loss under the head 'Income from House Property'. [Sec.71 B]
4. Carry Forward and Set Off of Business Losses [Sec.72]
5. Losses in Speculation Business [Sec.73]
6. Losses under the head "Capital Gains". [Sec.74]

7. Losses from certain specified sources falling under the head 'Income from Other Sources'. [Sec.74 A]
8. Table showing Set Off and Carry Forward of Losses

Introductions:

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

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

Step-2 : Inter-head adjustment in the same assessment year and will be applied only if a loss cannot be set off under *Step-1*.

Step-3 : Carry Forward of Loss is applied only if a loss cannot be set off under *Step-1 & Step-2*

1. Set off of loss from one source against income from another source under the same head of income [sec. 70]

If the net result for any assessment year in respect of any source falling under any head of income, other than "Capital gains", is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head. **Exceptions :**

1. Loss from speculation business ;
2. Long-Term Capital Loss ;
3. Loss from the activity of owning and maintaining race houses ;
4. Loss can not be set off against winnings from lotteries, crossword puzzles, etc. ;
5. Loss from sale of Securities.

2. Set off of loss from one head against income from another [sec. 71]

If the Net Result of the computation under any head of income, *other than "Capital gains"*, is a loss , the same can be set off against the income from other heads subject to the following exceptions...

1. Loss from speculation business can not be set off against any other income
2. Long-Term Capital Loss ; which can only set off against "Capital Gain".
3. Loss from the activity of owning and maintaining race houses ; which can not be set off against any other income.
4. Loss can not be set off against winnings from lotteries, crossword puzzles, etc. ;
5. Loss from sale of Securities.
6. Business Loss can not be set off against Salary Income.

3. Carry Forward And Set Off Of Loss Under The Head "Income From House Property". [Sec. 71 B]

Any Loss under the head "Income from house property" cannot be wholly set off against income from any other head. If such Loss can not be set off, then the whole loss shall be carried forward to the following assessment year and—

- (i) be set off against the income from house property for that assessment year; and
- (ii) the loss, if any, which has not been set off wholly shall be carried forward to the following assessment year not more than (8) eight assessment years immediately succeeding the assessment year for which the loss was first computed.

4. Carry forward and set off of business losses. [sec. 72]

The right of carry forward and set off of loss arising in a business or profession is subject to the following restrictions :

1. Loss can be set off only against Business Income : A loss to the assessee under the head “Profits and gains of business or profession”, and such loss cannot be or is not wholly set off against income under any head of income and he has no income under any other head, the whole loss shall be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him ;

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on :

2. Loss can be carried forward for 8 Years : No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

3. Return of Loss should be submitted in Time : A Loss cannot be carried forward unless it is determined in pursuance of a Return Filed within the time allowed.

5. Losses In Speculation Business [Sec. 73]

1. Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains of another speculation business.

2. Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off, the whole loss where the assessee had no income from any other speculation business, shall be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains of any speculation business and

(ii) The loss which cannot be wholly so set off shall be carried forward to the following assessment year and so on.

3. No loss shall be carried forward under this section for more than 4 [four] assessment years immediately succeeding the assessment year for which the loss was first computed.

4. Return of Loss should be submitted in Time : A Loss cannot be carried forward unless it is determined in pursuance of a Return Filed within the time allowed.

6. Losses under the head “capital gains” [sec. 74]

1. In case of any Loss under the head “Capital gains”, the whole loss shall be carried forward to the following assessment year, and—

(a) Any loss relates to a short-term capital asset shall be set off against income, from “Capital gains”.

(b) Any loss relates to a long-term capital asset shall be set off against income from “Capital gains” assessable for that assessment year in respect of any other capital asset other than a short-term capital asset;

(c) if the loss cannot be wholly so set off shall be carried forward to the following assessment year and so on.]

2. No loss shall be carried forward for more than (8) eight assessment years immediately succeeding the assessment year for which the loss was first computed.

7. Losses from certain specified sources falling under the head “income from other sources” [sec. 74a]

The amount of loss incurred by the assessee in the activity of owning and maintaining race horses in any assessment year shall not be set off against income from any source other than the activity of owning and maintaining race horses in that year and shall be carried forward to the following assessment year and—

(a) it shall be set off against the income from the activity of owning and maintaining race horses assessable for that assessment year :

(b) if the loss cannot be wholly so set off shall be carried forward to the following assessment year and so on; so, however, that no portion of the loss shall be carried forward for more than 4 assessment years immediately succeeding the assessment year.

8. Table Showing Set off And Carry Forward of Losses

Head of income under which Loss is incurred	Whether loss can be set off within the same year		Whether Losses can be carried forward and set off in subsequent years.		Time limit for carry forward and set off of losses
	Under the same head	Under any other Head	Under the same head	Under any other Head	
1. Income from Salaries	NA	NA	NA	NA	NA
2. Income from House Property	Yes	Yes	Yes	No	8 years
3. Profit and gain from Business or Professions :					
a. Non-speculation Business	Yes	Yes	Yes	No	8 years
b. Speculation Business	Yes	No	Yes	No	8 years
c. Unabsorbed Depreciation	Yes	Yes	Yes	No	N.A.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

d. Unabsorbed Investment or Development allowance.	Yes	Yes	Yes	Yes	8 years
4. Capital Gain (Short-Term)	Yes	No	Yes	No	8 years
5. Capital Gain (Long -Term)	Yes	No	Yes	No	8 years
6. Income from Other Sources:					
a. Lotteries, Crossword, Puzzle, Card Games, Gambling, or betting of any form.	Yes	No	No	No	NIL
b. Loss from activity of owning and maintaining Race Horses	Yes	No	Yes	No	4 Years
c. Other Income	Yes	Yes	No	No	NIL

<http://incometaxmanagement.com/Pages/Gross-Total-Income/Set-Off-Carry-Forward-Losses/Set-Off-and-Carry-Forward-of-Losses.html>

Deductions from Total Income

Introductions

1. Deductions in respect of certain Payments.

1. Deduction in respect of Life Insurance Premia, Deferred Annuity, Contribution to PF, etc. [Sec. 80 C]
2. Deduction in respect of Contribution to certain Pension Funds [Sec.80CCC]
3. Deduction in respect of Contribution to Pension Scheme of Central Government or any other Employers [Sec. 80 CCD]
4. Deduction in respect of Health or Medical Insurance Premia [Sec.80D]
5. Deduction in respect of Maintenance Including Medical Treatment of a Dependent who is a person with Disability [Sec. 80 DD]
6. Deduction in respect of Medical Treatment , etc. [Sec. 80 DDB]
7. Deduction in respect of Interest of Loan taken for Higher Education [Sec.80 E]
8. Deduction in respect of Donations to certain Funds, Charitable Institutions , etc. [Sec. 80 G]
9. Deduction in respect of Rents Paid [Sec. 80 GG]

2. Deductions in respect of certain Incomes

1. Deduction in respect of Profit and Gains from Industrial Undertaking or Enterprises engaged in infrastructure Development [Sec. 80 IA]
2. Deduction in respect of Profit and Gains from Industrial Undertakings or enterprises engaged in development of Special Economic Zone. [Sec. 80 IAB]
3. Deduction in respect of Profit & Gain from certain Industrial Undertaking other than Infrastructure Development Undertaking [Sec.80-IB]
4. Special Provisions in respect of Certain Undertaking or Enterprises in certain special category States. [Sec. 80-IC]

5. Deduction in the case of Hotels and Convention center in NCR [Sec.80ID]
 6. Deduction in respect of certain undertaking in North-Eastern States [Sec.80-IE].
 7. Deduction In Respect Of Profit And Gains From Business Of Collecting And Processing Of Bio-Degradable Waste. [Sec. 80-JJA]
 8. Deduction In Respect Of Employment Of New Workmen [Sec. 80-JJAA]
 9. Deduction In Respect Of Certain Income Of Offshore Banking Units And International Financial Services Center. [Sec. 80-LA]
 10. Deduction In Respect Of Income Of Co-Operative Societies. [Sec. 80P]
 11. Deduction In Respect Of Royalty Income, Etc., Of Authors Of Certain Books Other Than Text-Books [Sec. 80-QQB]
 12. Deduction In Respect Of Royalty On Patents [Sec. 80-RRB]
- 3. Other Deductions**
1. Deduction In Case Of A Person With Disability [Sec. 80 U]

<http://incometaxmanagement.com/Pages/Gross-Total-Income/Tax-Deductions/Deductions-from-Total-Income.html>

Rebates and Reliefs

Rebate of Income Tax for Resident Individuals [Sec. 87A]

1. Applicability: Resident Individual.

2. Income Limit: Total Income does not exceed ` 5,00,000 (i.e Assessee who are in 10% tax slab).

3. Amount of Rebate: 100% of Tax Amount or ` 2,000, whichever is less.

Relief for Salaried Employees [Sec. 89]

1. Applicability for claiming Relief u/s 89:

- (a) The Employee's Salary is paid in arrears or in advance, and he receives Salary for more than 12 months in one financial year, or,
- (b) He is in receipt of Profit in lieu of Salary u/s 17(3).

Due to the above reasons, his Income is assessed at a **rate higher** than that at which it would otherwise have been assessed.

2. Eligible Receipts: The Assessee is entitled to claim Relief u/s 89 for the following receipts —

- (a) Arrears of Salary.
- (b) Advance Salary.
- (c) Leave Encashment while in service. [**Circular No.431/12-09-1985**]
- (d) Gratuity or Voluntary Retirement Compensation.
- (e) Any other Profit in lieu of Salary.
- (f) Family Pension specified in Sec.57, received in arrears.

3. Claim of Relief: The Relief should be claimed by the Employee by way of declaration in the prescribed

Form 10E. Such claim can be made to the Employer at the time of making TDS. The Employer is bound to consider the claim of relief u/s 192(2A).

4. VRS vs. Relief: When an Assessee claims exemption u/s 10(10C) for VRS Compensation, he is **not** eligible for Relief u/s 89(1)

www.shrigurukripsa.com/...upload=12.%20Rebate%20and%20Relief.pdf...

Tax Deduction at Source:

Tax deducted at source is one of the modes of collecting Income-tax from the assesses in India. Such collection of tax is effected at the source when income arises or accrues. Hence where any specified type of income arises or accrues to any one, the Income-tax Act enjoins on the payer of such income to deduct a stipulated percentage of such income by way of Income-tax and pay only the balance amount to the recipient of such income.

The tax so deducted at source by the payer has to be deposited in the Government treasury to the credit of Central Govt. within the specified time. The tax so deducted from the income of the recipient is deemed to be payment of Income-tax by the recipient at the time of his assessment.

Income from several sources is subjected to tax deduction at source. Presently this concept of T.D.S. is also used as an instrument in enlarging the tax base. Some of such income subjected to T.D.S. are salary, interest, dividend, interest on securities, winnings from lottery, horse races, commission and brokerage, rent, fees for professional and technical services, payments to non-residents etc. It is always considered as an Advance tax which is paid to the government when we are being paid for provision made by us in the form of products or services.

<http://www.saraltaxoffice.com/resources/tds.php>

Computation of total income of individuals and firms: Tax liability of an Individual and firm

Following is the statement of calculating the taxable income and tax.

Particulars	Amount
Income from Salary	
Add: Income from House Property	
Add: Profit and Gain from Business and Profession	
Add: Capital Gains	
Add: Income from Other Sources	
Gross Total Income	
Less: Deductions	
Taxable Income	
Tax on Taxable Income	
Add: Surcharge	
Tax and Surcharge	
Add: Education Cess	
Total Tax	
Less: Advance Tax	
Less: T.D.S	
Tax Payable at the time of submission of Income	

<http://www.studymode.com/essays/Computation-Of-Taxable-Income-Of-Individual-532663.html>

Definition of Firm, Partner [Section 2(23)]

The Income-tax Act, 1961, does not define the term "Firm". Section 2(23) which deals with definition simply states that Firm, Partner and Partnership have the meanings respectively assigned to them in the Indian Partnership Act, 1932, as a person^{1[2]} but the expression Partner shall also include any person who being a minor, has been admitted to the benefits of partnership.

Thus, under the scheme of income-tax, Firm has a distinct assessable personality. However, for a definition of firm we have to refer back to the provisions of *Indian Partnership Act, 1932*. As per Section 4 of *The Indian Partnership Act, 1932*, Partnership is the relationship between persons who have agreed to share the profits of a business carried on by all or any of them. Persons who have entered into partnership with one another are called partners individually and a firm collectively. Section 5 states that the relation of partnership arises from contract and not from status.^{2[3]}

2. Firm cannot be a partner: The word person in section 4 of Partnership Act contemplates only natural or artificial *i.e.*, legal persons. Therefore only individuals or companies can be partners. A firm is not person and as such is not entitled to enter into partnership with another firm or Hindu undivided family or an individual.^{3[4]}

But, however, if on true reading of the instrument of partnership, it is found that the constituent members of a firm and not the firm itself have entered into partnership and that fact is borne out both by the recital and the fact that the partnership deed has been signed by the constituent members of the two firms, the refusal to register the firm on the ground that there was no valid partnership is erroneous.

3. HUF as a partner: Though Hindu undivided family is included in the definition of person in section 2(31) of the Income-tax Act, 1961, but it is not a juristic person for all purpose. HUF is not like a corporation or limited company, and it has, therefore, no legal entity different from, and separate from the members who comprise the Hindu undivided family.^{4[6]}

However, it was held that there is no legal bar in members of the HUF entering into partnership. Mere mention of a partner as representing as Karta of a family will not make a HUF as a partner.

When a Karta or a Manager of HUF enters into a contract of partnership with a stranger, the other members of the family do not *ipso facto* become partners in the firm. In such a case, family

^{1[2]} See Section 2(31) states: 'Person' includes: (i) an individual; (ii) HUF; (iii) a, company; (iv) a firm, etc.

^{2[3]} **From the analysis of the above definition of the partnership it will be seen that it contains three elements:** (i) There must be at least two or more persons who must have entered into in agreement. (ii) The agreement must be to carryon business and share profits. (iii) The business must be carried on by all or any of the persons concerned, acting for all.

^{3[4]} *Dulichand Laxminarayan v CIT* (1956) 29 ITR 535 (SC)

^{4[6]} *Ram Laxman Sugar Mills v CIT* (1967) 66 ITR 613 (SC)].

as a unit does not become a partner. The other members of the family are not parties of the firm so constituted and as such the other members cannot demand an inspection of the account books of the firm nor bring about dissolution of the firm or winding up the business.^{5[9]} The Karta can join others in partnership in dual capacity *i.e.* in his individual capacity as well as Karta of the HUF.^{6[10]}

4. Firm should carry on business and share profits: The next point that will be noticed is that these persons must run a business. Then, the business must be run by them with the intention of realizing profits. Then, it is not sufficient if the profits are intended to be taken' exclusively by one of the partners. The agreement must be that everyone of the partners should share the profits. Then, there must be an agreement between the parties that the business would be run by all or by one of them acting for all. However in *Mandsaur Starch and Chemicals v CIT*^{7[11]} it was held that if there is no intention to carry on business, then there is no partnership under section 4 of the Partnership Act.

Other instances of carrying on of business:

- (i) Financing others business was held as carrying on of business.^{8[12]}
- (ii) Activity of catering and providing facilities for indoor and outdoor games.^{9[13]}
- (iii) Sharing of profits by sub-partnership formed by divided members of the family through Karta as partner in the main firm.^{10[14]}
- (iv) Taking coal mine on lease and then leasing it out to agent.^{11[15]}

Instances where it was held that business was not carried on:

- (i) Where entire business of the colliery was leased out.^{12[16]}

5. Business Classification under the Income-tax Act not conclusive: The important thing to be noted is that the activity must come within the purview of the term as used in the Partnership Act. The term business is of wide import and represents some organized activity. Therefore, so long there is some real, substantive, systematic and organized course of activity or conduct with a set purpose, it would constitute business.

6. Co-ownership and partnership are different: Co-ownership should not be confused with an agreement of partnership. There might be some common characteristics between both of

^{5[9]} *CIT v Bagyalakshmi & Co* (1956) 55 ITR 660 (SC).

^{6[10]} *CIT v Raghavji Anandji & Co.* (1975) 100 ITR 246 (Bom).

^{7[11]} (1981) 127 ITR 727 (MP)

^{8[12]} *CIT v Degaon Gangareddy G Ramkishan & Co.* (1978) 111 ITR 93 (AP)

^{9[13]} *A.N. Rangappa & Sons v CIT*(1984) 145 ITR 250 (Kar)

^{10[14]} *Shiv Narain Agarwal v CfT,* (1983) 139 ITR 999 (All)

^{11[15]} *CIT v Pure Dhansar Coal Co.,* (1985) 154 ITR 857 (Pat)

^{12[16]} *CIT v Koya & Khas Koya Colliery Co.,*(1985) 156 ITR 206 (Pat)

them, but basically both are quite different *e.g.*, two co-owners may appoint a common manager for facility of cultivation and management of their farms without entering into a partnership and the fact that the profits or even the losses are distributed in accordance with the shares of the two owners does not necessarily establish a partnership within the meaning of the Partnership Act.

7. Position of Firm under the Income-tax Act: Legally, a partnership firm does not have a separate entity from that of the partners constituting the firm as the partners are the owners of the firm. However, a firm is treated as a separate tax-entity under the Income-tax Act. Salient features of the assessment of a firm are as under:

(1) A firm is treated as a separate tax entity.

(2) While computing the income of the firm under the head 'Profits and gains of business or profession', besides the deductions which are allowed u/S 30 to 37, *special deduction* is allowed to the firm on account of *remuneration to working partners and interest paid to the partners*. However, it is subject to certain limits laid down u/S 40(b).

(3) Share of profit which a partner receives from the firm (after deduction of remuneration and interest allowable) shall be fully exempt in the hands of the partner. However, only that part of the interest and remuneration which was allowed as a deduction to the firm shall be taxable in the hands of the partners in their individual assessment under the head 'profits and gains of business or profession'.

(4) The firm will be taxed at a flat rate of 35%^{13[17]} plus surcharge @ 2.5%^{14[18]} plus education cess @ 2% after allowing deduction for interest on capital and loan of the partners and remuneration to working partners.

(5) The firm will be assessed as a firm provided conditions mentioned under section 184 are satisfied. In case these conditions are not satisfied in a *particular assessment year*, although the firm will be assessed as firm, but no deduction by way of payment of interest, salary, bonus, commission or remuneration, by whatever name called, made to the partner, shall be allowed in computing the income chargeable under the head "profits and gains of business or profession" and such interest, salary, bonus, commission or remuneration shall not be chargeable to income-tax in the hands of the partner.

8. Assessment of firm: From point (5) above, it may be concluded that if the firm satisfies the conditions laid down under Section 184, the firm shall be eligible for deduction on account of interest, salary, etc. while computing its income under the head business and profession. However, it will be subject to the maximum of the limit specified under Section 40(b). On the other hand, if such conditions are not satisfied, no deduction shall be allowed to the firm on account of such interest, salary, bonus, etc.

Besides the above, as per Section 184(5), if there is any such failure on the part of the firm as

^{13[17]} 30% for assessment year 2006-07.

^{14[18]} 10% for assessment year 2006-07.

mentioned in Section 144, the firm shall not be eligible for any deduction on account of any interest to the partners or remuneration to the working partners.

9. Essential conditions to be satisfied by a firm to be assessed as firm and to be eligible for deduction of interest, salary, etc. to the partners [Section 184]

(A) In the first assessment year the following conditions must be satisfied by the firm:

- (1) *Partnership is evidenced by an instrument i.e. there is a written document giving the terms of partnership.*
- (2) *The individual share of the partners are specified in that instrument*
- (3) *Certified copy^{15[19]} of partnership deed must be filed*

(B) In the subsequent assessment years: Once the firm is assessed as a firm for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or the share of the partners.

Where any such change had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year.

Circumstance where the firm will be assessed as a firm but shall not be eligible for deduction on account of interest, salary, bonus, etc.:

In the following two cases, the firm shall be assessed as a firm but shall not be eligible for any deduction on account of interest to a partner and remuneration to a working partner although the same are mentioned in the partnership deed:

- (a) Where there is, on the part of the firm, any such failure as is mentioned in section 144 (relating to the best judgment assessment). [Section 184(5)]
- (b) Where the firm does not comply with the conditions mentioned under section 184 discussed above. [Section 185]

10. Computation of Total Income of the firm

As discussed above, the total income of the partnership firm will be determined as a separate entity and it will be computed under various heads of income. However, while computing taxable profits under the head '*profits and gains of business or profession*', a deduction is allowable to the firm on account of interest and remuneration payable to the partners. Deduction of interest to a partner is allowable u/S 36 and remuneration to a working partner will be allowed u/S 37.

^{15[19]} *What a certified copy means:* The Explanation to Section 184(2) lays down the implication of the term certified copy of the instrument which is to accompany the return. The certified copy means that the copy of the instrument of partnership is to be certified in writing by all the partners except minors. It means that the copy of the deed should carry the expression certified to be true copy and below that it should carry the signature with date of all the major partners.

Section 40(b) deals with the amounts which are not deductible in case of a firm assessable as such. Therefore, deductions on account of interest and remuneration to the partners can be claimed under Sections 36 or 37, as the case may be, but it will be subject to the conditions prescribed by Section 40(b), which are as under:

- (1) Payment of salary, bonus, commission or remuneration by whatever name called, to a non-working partner shall not be allowed as deduction.
- (2) Payment of *remuneration to working partners* and *interest to any partner* will be allowed as deduction only when it is authorised by and is in accordance with partnership deed.
- (3) Payment of remuneration/interest, although authorised by the partnership deed but which relates to a period prior to the date of such partnership deed, shall not be allowed.
- (4) Interest payable to a partner, although authorised by the partnership deed shall be allowable as a deduction subject to a maximum of 12% (18% up to 31-5-2002) simple interest per annum. If the partnership deed provides for interest at less than 12% p.a., the deduction of interest shall be allowed to the extent provided by the partnership deed.
- (5) The payment of remuneration to working partner, although relates to a period after the date of the partnership deed and authorised by the partnership deed, shall be allowed as a deduction only to the extent of the following limits:

10A. Remuneration paid to individual who is a partner in representative capacity: In the case of *Rashik Lal & Co v CIT*^{16[20]} the Supreme Court held that if commission is paid to a member of HUF who is a partner in a firm representing his HUF, such commission paid cannot be regarded as payment to HUF and such commission shall be in his individual capacity and will thus be hit by the provisions of section 40(b). However, the Supreme Court in the case of *K.S. Subbaiah Pillai v CIT*^{17[21]} (SC) held that where the remuneration is paid by a business, which is financed by the joint family, the issue as to whether such amount should be considered in the hands of the joint family or in the individual assessment has to be decided on the facts as to whether such amount is payable because of the personal qualification and exercise of individual exertion, or whether it is because of investment of family funds in the business of the company .

10B. Clarification: In some cases, the partnership deed does not specify the amount of remuneration payable to each individual working partner. It just mentions that the remuneration to working partners will be the amount of remuneration allowable under the provisions of Section 40(b). Similarly, some partnership deeds mention that the amount of remuneration to working partners will be as mutually agreed between the partners at the end of the year.

In respect of the above, the CBDT has given a clarification that from assessment year 1997-98 no deduction u/s 40(b) will be admissible unless the partnership deed either specifies

^{16[20]} (1998) 229 ITR 458 (SC)

^{17[21]} (1999) 237 ITR 11

the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration.

11. Computation of Book Profit [Explanation 3 to Section 40(b)]

Book-Profit, as stated above, will be computed as under:

Step 1: Compute the income of the firm under the head 'profit and gains of business or profession' as per Sections 28 to 44D *i.e.* start with the net profit as per profit and loss account and make additions and deductions as per Sections 28 to 44D already explained under the chapter Business or Profession. Interest paid/payable to partners in excess of 12%/18% shall also be disallowed as per section 40(b).

Step 2: Add aggregate amount of remuneration paid/payable to all the partners (whether working or non-working) of the firm, if it has been debited to profit and loss account. The aggregate of Step-1 and Step-2 is Book Profit.

12. Provisions regarding set off and carry forward of losses of firms

There are no special provisions for set off and carry forward of losses of firms. These are the same as applicable in case of other assesses.

12A. Carry forward and Set off of losses in case of change in constitution of firm [Section

78]: (1) Where a change has occurred in the constitution of a firm, due to retirement of a partner or death of a partner, the firm shall not be entitled to carry forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year. [Section 78(1)]

(2) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, no person other than the person incurring the loss shall be entitled to have it carried forward and set off against his income. [Section 78(2)]

13. Treatment of share of profit, interest and remuneration received by a partner from a firm

1. Share of profit in the hands of the partner shall be fully exempt under Section 10(2A).
2. Interest received/receivable by a partner shall be included in the Total Income of the partner under the head 'Profits and gains of business or profession' to the extent deduction of interest was allowed to the firm as per Section 40(b), which cannot exceed 12% per annum.
3. Remuneration to a working partner shall also be included in the Total Income of the partner under the head 'profits and gains of business or profession' to the extent deduction of remuneration was allowed to the firm as per Section 40(b)^{18[22]}.

^{18[22]} For example, if the partner was paid a remuneration of Rs. 60,000 by the firm, but as per section 40(b) deduction was allowed to the firm on account of such remuneration to the extent of Rs. 50,000, Rs. 50,000 only will be included in the Total Income of the partner. Balance Rs. 10,000 may be treated as share of profit which is exempt.

14. Change in constitution of a firm [Section 187]

Where at the time of making an assessment under section 143 or section 144, it is found that a change has occurred in the constitution of a firm, the assessment shall be made *on the firm as constituted at the time of making the assessment*.

When is there a change in the constitution of the firm [Section 187(2)]: There is a change in the constitution of the firm-

- (a) if one or more of the partner cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change; or
- (b) where all the partners continue with a change in their respective shares or in the shares of some of them.

Where a partnership deed provides that death shall not result into the dissolution of the firm, such provision is lawful under section 42 of the Partnership Act; on the death of the partner, a partnership is not dissolved and the business is continued by the reconstituted partnership, then only one assessment is to made for the entire year.^{19[23]}

15. A firm will not be deemed to be dissolved on retirement of a partner even if the partnership deed says so: A perusal of section 187(2)(a) of the Income-tax Act, 1961, shows that by legal fiction for the purposes of the Income-tax Act, if even one of the partners continues to remain in the firm then the firm will not be deemed to be dissolved. Hence, even if the partnership deed says that the firm will stand dissolved on the retirement of a partner, for the purposes of the Income-tax Act, it will not be deemed to be dissolved in view of section 187(2)(a).^{20[24]}

16. Dissolution of a firm due to death of any partner will not be considered as change in the constitution of the firm [Proviso to section 187]

However, in the case of *CIT v Jai Mewar Wine Contractors*^{21[25]} it was held that even if the partnership deed is silent on the contingency of death of a partner, it need not dissolve the firm as it was pointed out that a clause for continuation of the partnership without dissolution may not be express and it may be inferred from the conduct of the partners consequent on the death. The only exception in this case shall be where there are only two partners so that death of one cannot avoid dissolution.

17. Succession of one firm by another firm [Section 188]

Where a firm carrying on a business or profession is succeeded by another firm, *and the case is not one covered by section 187*, separate assessments shall be made on the predecessor firm and

^{19[23]} *CIT v Empire Estate*, (1996) 218 ITR 355 (SC)

^{20[24]} *CIT v Ratanlal Garib Das*, (2003) 261 ITR 200 (All)

^{21[25]} (2001) 251 ITR 785 (Raj)

the successor firm in accordance with the *provisions of section 170*.

As per section 170 the predecessor firm shall be assessed in respect of the income of the previous year in which succession took place up to the date of succession. The successor firm shall be assessed in respect of the income of the previous year after the date of succession.

18. Final dissolved or business discontinued [Section 189]

Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to above from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

19. Tax treatment of LLP

UK LLP Act, Section 10 lays down that a trade, profession or business carried on by an LLP, with the view to profit, will be treated as carried on in partnership by its members and not by the LLP itself. Thus, any asset held by an LLP, or any tax chargeable on gains made will be treated as held by the partners, or gains made by the partners, and not by the LLP itself. In other words, an LLP enjoys a pass through status and is not taxable as such; the taxation liability falls on the partners in their individual capacity. In the USA, too, LLPs enjoy a pass through status for the purposes of taxation. The profits or losses of the LLP pass through the business and are reported on each partner's personal returns.

The committee^{22[26]} recommended the same pass through status for LLPs in India. However, the committee recognized that it has neither consulted, nor got the views of the Ministry of Finance (Department of Revenue) in this regard. While recommending a taxation regime similar to that obtaining in the USA and UK, the committee urged the Department of Company Affairs to incorporate such a regime in consultation with the tax authorities concerned.

The partners of an LLP, which is carrying on a business in partnership with a view to profit, are treated for the purpose of income tax and capital gains tax as if they were partners carrying on business in partnership, despite the fact that an LLP is a body corporate. It also provides that

^{22[26]} Naresh Chandra Committee Report.

property of LLP will be treated for those purposes as property of its partners. This ensures that the partners will be individually liable to tax on their share of the profits of the trade, profession or business carried on by the LLP. Further, the assets of LLP will be treated as assets held by partners for the purpose of taxing capital gains. This ensures that the partners of LLP, rather than the LLP itself, will be liable to tax for capital gains on the disposal of LLP assets. This approach brings LLPs in line with the approach adopted for partnerships, which similarly treats assets as held by the partners rather than by the partnership.^{23[27]}

20. Unlimited Liability Is Major Disadvantage - The major disadvantage of partnership is the unlimited liability of partners for the debts and liabilities of the firm. Any partner can bind the firm and the firm is liable for all liabilities incurred by any firm on behalf of the firm. If property of partnership firm is insufficient to meet liabilities, personal property of any partner can be attached to pay the debts of the firm.

20A. Partnership Firm is not a legal entity - It may be surprising but true that a Partnership Firm is not a legal entity. It has limited identity for purpose of tax law. As per Section 4 of Indian Partnership Act, 1932, 'partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. Under partnership law, a

partnership firm is not a legal entity, but only consists of individual partners for the time being. It is not a distinct legal entity apart from the partners constituting it.^{24[28]}

20B. Firm Legal Entity For Purpose Of Taxation - For tax law, income-tax as well as sales tax, partnership firm is a legal entity.^{25[29]} Though a partnership firm is not a juristic person, Civil Procedure Code enables the partners of a partnership firm to sue or to be sued in the name of the firm.^{26[30]} A partnership firm can sue only if it is registered

^{27[1]} Student – 4th Year, Hidayatullah National Law University, Raipur, Email – mayank_hnlu@yahoo.co.in

http://www.taxmann.com/datafolder/Flash/Flashart22-9-09_6.htm

^{23[27]} <http://news.indiamart.com/news-analysis/global-tax-norms-lik-15085.html>

^{24[28]} *Malabar Fisheries Co. v. CIT* (1979) 120 ITR 49

^{25[29]} *State of Punjab v. Jullender Vegetables Syndicate* - 1966 (17) STC 326 (SC), *CIT v. A W Figgies* - AIR 1953 SC 455, *CIT v. G Parthasarthy Naidu* (1999) 236 ITR 350

^{26[30]} *Ashok Transport Agency v. Awadhesh Kumar* 1998(5) SCALE

UNIT IV PREPARATION OF RETURN OF INCOME:

SARAL

ITR Forms for 2010-11 AY:

[Click here to Download ITR Forms](#)

Central Board of Direct Taxes [CBDT] has notified new return forms for Assessment year 2010-11. The new return forms are continued to be termed as ITR and known to be Return of Income.

The notification NOTIFICATION NO. 33/2010, DATED 11-05-2010 amended the earlier ITR forms and made the relevant changes in Rule 12 of Income Tax

The latest forms come with some minor changes to last year formats, such as Removal of FBT schedule, Improved ITR-1 (Saral II) format, etc

Introduction to ITR Forms:

The ITR forms starts from ITR 1 (Saral II) to ITR 7 (as of 2010-11 AY). In the form, individuals and HUFs will be required to furnish information with regard to transactions that are reported through annual information returns (AIR). Large transactions like investment in real estate and mutual funds running into lakhs is automatically reported to the department by banks and other authorities using the investor's permanent account number (PAN).

Similarly, large expenditure incurred by an individual is also reported to the department through AIR. Therefore, if an individual tries to hide his income he can be caught through AIR reporting from various agencies, a tax official said. What the new stipulation does is that it makes it mandatory for the tax assesses themselves to submit the same information to the IT department. A senior finance ministry official said that the earlier idea was to use the cash flow statement to get information both on the source of funds as well as expenditure.

For individuals, the four forms, **Saral II (ITR - 1), ITR-2, ITR-3 and ITR-4**, will continue to remain.

Companies also have the same two forms **ITR 6 and 7**. Either should be used as per applicability. The Firms, AOP and BOI's should go for only Form ITR - 5. This has made all earlier confusions on status to form relation ZERO.

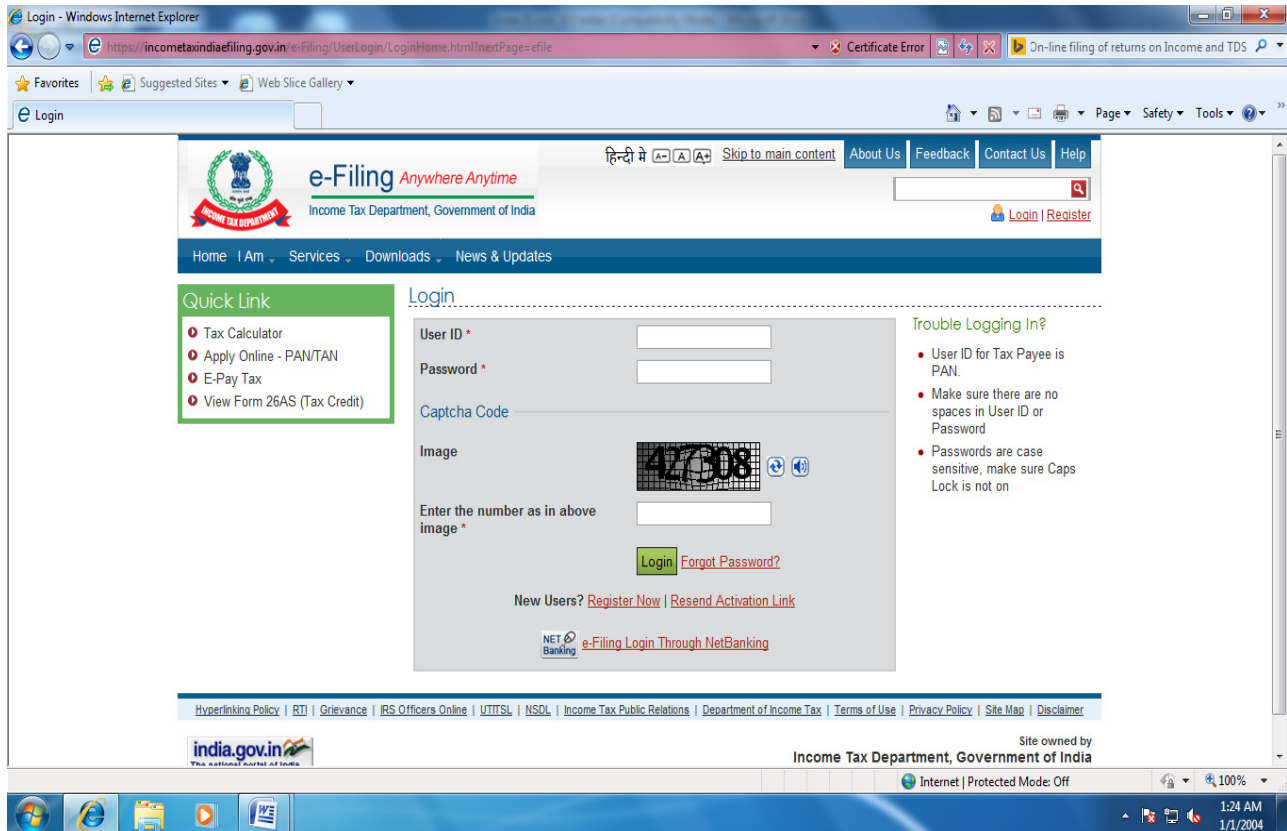
ITR-8, which was Exclusive Return on Fringe Benefits has been omitted, as FBT has been abolished.

[Click here to access Relyon's Online ITR Filing.](#)

<http://www.saraltaxoffice.com/resources/itreturnforms.php>

On-line filing of returns on Income and TDS, Provision & Procedure of compulsory online filing of returns for specified assesses.

<https://incometaxindiaefiling.gov.in/e-Filing/UserLogin/LoginHome.html?nextPage=efile>



The screenshot shows the e-Filing login page. The header includes the e-Filing logo and the text 'Anywhere Anytime'. Below the header is a navigation menu with links for Home, I Am, Services, Downloads, and News & Updates. The main content area features a 'Login' section with the following fields and options:

- User ID ***: Input field
- Password ***: Input field
- Captcha Code**: Input field with a captcha image showing the number '47008'
- Enter the number as in above image ***: Input field
- Login**: Button
- Forgot Password?**: Link
- New Users? Register Now | Resend Activation Link**: Links
- NET Banking e-Filing Login Through NetBanking**: Link

On the right side, there is a 'Trouble Logging In?' section with the following instructions:

- User ID for Tax Payee is PAN.
- Make sure there are no spaces in User ID or Password
- Passwords are case sensitive, make sure Caps Lock is not on

The footer contains various links such as Hyperlinking Policy, RTI, Grievance, IRS Officers Online, UTITSL, NSDL, Income Tax Public Relations, Department of Income Tax, Terms of Use, Privacy Policy, Site Map, and Disclaimer. The page is owned by the Income Tax Department, Government of India.

<https://incometaxindiaefiling.gov.in/e-Filing/Registration/RegistrationHome.html>

Recovery of tax and refund of tax

From the taxpayer's point of view, this may mean a refund of tax. From the tax authorities' point of view, it may mean the collection of tax which is in arrears.

http://www.moneycontrol.com/glossary/taxes/recoverytax_3062.html

If you have ever received a state tax refund after you deducted state income taxes you paid, or deducted mortgage interest that was later adjusted by your lender, you may have a recovery to report to the Internal Revenue Service. If you take a deduction for an item but later receive a refund or adjustment of the item that reduces the amount you deducted, you must account for the difference in the year you receive the adjustment. You'll need to report the recovery as income because you previously claimed a tax benefit for a greater amount.

Step 1

Review your tax return from the previous year. If you claimed a standard deduction for your filing status, you don't need to recover any adjustments. However, if you itemized deductions on Schedule A, you'll need to calculate the recovery amount to report as income on your current year return.

Step 2

Find the difference between the itemized deductions you claimed and the standard deduction for your filing status from the previous year. For example, if the standard deduction for your status was Rs. 10,000 and you claimed Rs. 12,000 in itemized deductions, the difference is Rs. 2,000. In this scenario, you received a Rs. 2,000 benefit by claiming itemized deductions.

Step 3

Add your total recoveries. If the amount is less than the difference between your itemized deductions and the standard deduction, you'll need to report the full amount of your recoveries as income. However, if your recoveries exceed the difference, you'll only need to report the amount that meets the difference. For example, if the difference between deduction types is Rs. 2,000 and you recover Rs. 3,000, you'll only report Rs. 2,000 as recovery income. Step 4

Claim recoveries as income. If your recovery involves a state tax refund you received, claim the amount on line 10 of your current year Form provided.

<http://budgeting.thenest.com/recover-tax-deduction-previous-year-25064.html>

Appeals and penalties

Appeals procedures of income tax:

This article has been is to focus on the provision and procedures relating to Filing the Appeals. One Law Dictionary defines 'appeal' as a proceeding taken to rectify an erroneous decision of a court by submitting the question to a higher court, or court of appeal. Right to appeal under income tax law is a creation of statute and not an inherent right. Appeal can be filed only against orders listed in the Income

Income tax liability is determined at the level of Assessing Officer first. A tax payer aggrieved by various actions of Assessing Officer can appeal before Commissioner of Income Tax (Appeals). Further appeal can be preferred before the Income Tax Appellate Tribunal. On substantial question of law, further appeal can be filed before the High Court and even to the Supreme Court. With the ladder up approach appeal procedures are explained below:

1. Appeal Before Commissioner (Appeals)
2. Appeal Before Income Tax Appellate Tribunal

3. Appeal Before High Court
4. Appeal Before Supreme Court

Appeal before commissioner (appeals):

Heading	Particulars
When appeal can be filed before Commissioner (appeals)	<p>When a tax payer is adversely affected by Orders as under passed by various Income tax authorities:</p> <ol style="list-style-type: none"> 1. Order against tax payer where the tax payer denies liability to be assessed under Income Tax Act; 2. Intimation issued under Section 143(1) making adjustments to the returned income 3. Scrutiny assessment order u/s 143(3) or an ex-parte assessment .order u/s 144 4. Re-assessment order passed after reopening the assessment u/s 147/150 5. Search assessment order u/s 153A or 158BC 6. Rectification Order u/s 154/155 7. Order u/s 171 recording finding about partition of Hindu undivided family(HUF) 8. Order u/s 115VP(3) refusing approval to opt for tonnage-tax 9. Order determining refund u/s 237 10. Order u/s 201(1)/206C(6A) deeming person responsible for deduction of tax at source as assessee in default on failure to deduct/ collect tax at source 11. Order imposing penalty u/s 221/271 /271A/271AAA/ 271F/271FB/272A/272AA/272BB/275(1A)/158BFA(2)/271B/ 271BB/271C/271CA/271D/271E
Form of appeal	<p>Form No. 35 – Containing details of “Relief claimed in appeal” , “Statement of Facts”, “Grounds of appeal”</p> <p>Signed and verified by the individual tax payer himself or by a person duly authorised by him holding valid power of attorney</p>
Payment of accepted tax liability must before filing appeal	<p>An appeal will be admitted by Commissioner (Appeals) only if tax as per the returned income has been paid prior to filing of appeal</p>
Appeal fees:	<p>If Total Income determined:</p>



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	<p>Less than Rs. 1,00,000/- – Rs. 250</p> <p>More than Rs.1,00,000/- but less than Rs.2,00,000/ – Rs 500</p> <p>More than Rs. 2,00,000/ – Rs. 1000</p>
Time for filing appeal	<p>Within 30 days from the date of service of notice of demand relating to assessment or penalty order.</p> <p>The Commissioner (Appeals) may admit an appeal after the expiration of period of 30 days, if he is satisfied that there was sufficient cause for not presenting the appeal within the period of 30 days.</p>
Appeal procedure	<p>On receipt of Form no. 35, Commissioner of Income-tax (Appeals) fixes date and place for hearing the appeal by issuing notice to the tax payer and the Assessing Officer, against whose order appeal is preferred. The tax payer has a right to be heard either personally or through an Authorized Representative.</p>
Filing of additional evidence	<p>During appeal proceedings, the tax payer is not entitled to produce any evidence, whether oral or documentary other than what was already produced before the Assessing Officer. Unless:</p> <ol style="list-style-type: none">1) Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or2) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to be produced by the Assessing Officer; or3) Where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or4) Where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal. <p>Normally, additional evidences are to be accompanied with an application stating the reasons for their admission, after which the Commissioner (Appeals) may admit the same after recording reasons in writing for its admission. Before taking into account the additional evidence filed, Commissioner (Appeals) is to provide reasonable opportunity to the Assessing Officer. For examining the additional evidence or the witness as well as to produce evidences to rebut additional evidences filed by the tax payer.</p>
Appeal	<p>After the hearing is concluded, Commissioner (Appeals) passes order in</p>

decision	writing, disposing of the appeal and stating the decision on each ground of appeal with reasons. In case of assessment and penalty, Commissioner (Appeals) may confirm, reduce or enhance it.
-----------------	---

Appeal before income tax appellate tribunal (it at)

Heading	Particulars
When appeal can be filed before ITAT	<p>Tax payer can file appeal before the Income Tax Appellate Tribunal against the following orders:</p> <ol style="list-style-type: none"> 1) Order by Commissioner(Appeals) u/s 250/154/271/271A/272A; 2) Order by Commissioner u/s 12AA on registration application by a charitable or religious trust 3) Order by Commissioner u/s 263 revising Assessing Officer's order considered prejudicial to the interest of revenue; 4) Order by Commissioner u/s 154 to rectify an order u/s 263 5) Penalty order passed by Commissioners u/s 271 or section 272A; 6) Penalty order passed by Chief Commissioner u/s 272A; 7) Order passed by Assessing Officer u/s 143(3)/147 in pursuance of direction of Dispute;
Form of appeal	Form No. 36 – To be filed in triplicate and is to be accompanied by two copies of order appealed against
Appeal fees:	<p>Total Income as computed by Assessing Officer:</p> <p>Less than Rs.1 lakh – Rs. 500</p> <p>More than Rs. 1 lakh but less than Rs. 2 lakh – Rs. 1,500</p> <p>More than Rs. 2 lakh – 1% of assessed income, subject to maximum of Rs.10,000</p> <p>Where the subject matter of appeal relates to any other matter, fee of Rs 500/- is to be paid. An application for stay of demand is to be accompanied by fee of Rs. 500</p>



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

Time for filing appeal	Within 60 days of the date on which order appealed against is communicated to the taxpayer or the Commissioner
Memorandum of cross objections	The tax payer or the Assessing Officer on receipt of notice that an appeal has been filed before the Appellate Tribunal against order of Commissioner (Appeals) by the other party can, within 30 days of receipt of notice, file a memorandum of cross objections in Form No. 36A. Such memorandum of cross objections can be filed even if no appeal is filed by the tax payer or the Assessing Officer himself.
Appeal procedure	<p>The appellant or the respondent, as the case may be, may submit a paper book in duplicate containing documents or statements or other papers referred to in the assessment or appellate order, which it may wish to rely upon. The paper book duly indexed and page numbered is to be filed at least a day before the hearing of the appeal along-with proof of service of copy of the same on the other side at least a week before.</p> <p>The Appellate Tribunal fixes the date for hearing the appeal and notifies the parties specifying date and place of hearing of the appeal. A copy of memorandum of appeal is sent to the respondent either before or along with such notice. The appeal is heard on the date fixed and on other dates to which it may be adjourned. If the appellant does not appear in person or through an authorized representative when appeal is called on for hearing, the ITAT may dispose of the appeal on merits after hearing the respondent.</p>
Filing of additional evidence	The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the Tribunal.
Appeal decision	<p>Normally appeals are heard by a Bench comprising one judicial member and one accountant member. Appeals where total income computed by the Assessing Officer does not exceed Rs. 5 lakh may be disposed of by single member Bench. The President of ITAT is empowered to constitute Special Bench consisting of three or more than three members for disposal of any particular case, one of whom would necessarily be a judicial member and one an accountant member</p> <p>The Bench normally pronounces its orders in Court.</p>

Appeal before high court

Appeal against Appellate Tribunal's order lies with the High Court, Where the High Court is satisfied that the case involves a substantial question of law. Appeal to the High Court against Appellate Tribunal's order can be filed by the tax payer or the Chief Commissioner/Commissioner within 120 days of receipt of the order and in the form of memorandum of appeal, precisely stating the substantial question of law involved. If the High Court is satisfied that a substantial question is involved, it would formulate that question. High Court hears the appeal only on the question of law so formulated; however, the respondents can argue at the time of hearing that case does not involve such question of law. Appeal filed before High Court is heard by bench of not less than two Judges and decision is by majority.

Appeal before supreme court

Appeal against High Court's order in respect of Appellate Tribunal's order lies with the Supreme Court in those cases, which are certified to be fit one for appeal to the Supreme Court. Special leave can also be granted by the Supreme Court under Article 136 of the constitution of India against the order of the High Court.

<http://taxguru.in/income-tax/income-tax-appeal-filing-procedure.html>

PENALTIES

[AY 2014-15 and AY 2015-16]

<i>Section</i>	<i>Nature of default</i>	<i>Penalty leviable</i>
(1)	(2)	(3)
140A(3)	Failure to pay wholly or partly— (a) self-assessment tax/fringe benefit tax, or (b) interest, or (c) both under section 140A(1)	Such amount as Assessing Officer may impose but not exceeding tax in arrears
158BFA(2)	Determination of undisclosed income of block period	Minimum : 100 per cent of tax leviable in respect of undisclosed income Maximum: 300 per cent of tax leviable in respect of undisclosed income.
221(1)	Default in making payment of tax	Such amount as Assessing Officer may impose but not



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

		exceeding amount of tax in arrears
234E	Failure to file statement within time prescribed in section 200(3) or in proviso to section 206C(3)	Rs. 200 for every day during which failure continues but not exceeding tax deductible/collectible
271(1)(b)	Failure to comply with a notice under section 115WD(2)/115WE(2)/142(1) or section 143(2) or failure to comply with a direction under section 142(2A)	Fixed at Rs. 10,000 for each failure
271(1)(c)	Concealment of particulars of income or fringe benefits or furnishing of inaccurate particulars of income or fringe benefits	Minimum : 100 per cent Maximum : 300 per cent of tax sought to be evaded in addition to tax payable
271(4)	Distribution of profits by registered firm otherwise than in accordance with partnership deed and as a result of which partner has returned income below the real income	Not exceeding 150 per cent of difference between tax on partner's income assessed and tax on income returned, in addition to tax payable
271A	Failure to keep, maintain, or retain books of account, documents, etc., as required under section 44AA	Rs. 25,000
271AA	(1) Failure to keep and maintain information and documents required by section 92D(1) or 92D(2) (2) Failure to report such transaction (3) Maintaining or furnishing incorrect information or document	2% of value of each international transaction/or specified domestic transaction entered into
271AAA	Where search has been initiated before 1-7-2012 and undisclosed income found	10% of undisclosed income
271AAB	Where search has been initiated on or after 1-7-2012 and undisclosed income found	(a) 10% of undisclosed income of the specified previous year if assessee admits the undisclosed income; substantiates the manner in which it was derived; and on or before the specified date pays the tax, together with interest thereon and furnishes the return of income for the specified previous



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

		year declaring such undisclosed income <i>(b)</i> 20% of undisclosed income of the specified previous year if assessee does not admit the undisclosed income, and on or before the specified date declare such income in the return of income furnished for the specified previous year and pays the tax, together with interest thereon; <i>(c)</i> Minimum 30% and maximum 90% of undisclosed income of the specified previous year if it is not covered by <i>(a)</i> or <i>(b)</i> above
271B	Failure to get accounts audited or furnish a report of audit as required under section 44AB	One-half per cent of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, which-ever is less
271BA	Failure to furnish a report from an accountant as required by section 92E	Rs. 1,00,000
271BB	Failure to subscribe any amount to units issued under scheme referred to in section 88A(1)	20 per cent of such amount
271C	Failure to deduct tax at source, wholly or partly, under sections 192 to 196D (Chapter XVII-B) or failure to pay wholly or partly tax u/s 115-O(2) or second proviso to section 194B	Amount equal to tax not deducted or paid
271CA	Failure to collect tax at source as required under Chapter XVII-BB	Amount equal to tax not collected
271D	Taking or accepting certain loans and deposits in contravention of provisions of section 269SS	Amount equal to loan or deposit taken or accepted
271E	Repaying any loan or deposit specified in section 269T in contravention of its provisions	Amount equal to loan or deposit repaid
271F	Failure to furnish return as required by section 139(1) or by its provisos before the end of the relevant assessment year	Rs. 5,000
271FA ¹	Failure to furnish an annual information return as required under section 285BA(1) ²	Rs. 100 per day of default
	Failure to furnish annual information return	Rs. 500 per day of default



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	within the period specified in notice u/s 285BA(5)	
271FB	Failure by an employer to furnish the return of fringe benefits as required under section 115WD(1)	Rs. 100 for every day of default
271G ³	Failure to furnish any information or document as required by section 92D(3)	2% of the value of the international transaction/specified domestic transaction for each failure
271H ⁴	Failure to deliver/cause to be delivered a statement within the time prescribed in section 200(3) or the proviso to section 206C(3), or furnishes incorrect information in the statement	W.e.f. 1-10-2014 Assessing Officer may direct payment of penalty. Penalty shall not be less than Rs. 10,000 but may extend to Rs. 1,00,000
272A(1)	Refusal or failure to : (a) answer questions (b) sign statement (c) attend to give evidence or produce books of account, etc., in compliance with summons under section 131(1)	Rs. 10,000 for each failure/default
272A(2)	Failure to : (a) furnish requisite information in respect of securities as required under section 94(6) ; (b) give notice of discontinuance of business or profession as required under section 176(3) ; (c) furnish in due time returns, statements or certificates, deliver de-claration, allow inspection, etc., under sections 133, 134, 139(4A), 139(4C), 192(2C), 197A, 203, 206, 206C, 206C(1A) and 285B; (d) deduct and pay tax under section 226(2) (e) file a copy of the prescribed statement within the time specified in section 200(3) or the proviso to section 206C(3) (up to 1-7-2012)	Rs. 10,000 for each failure/default. (In respect of penalty for failure, in relation to a declaration mentioned in section 197A, a certificate as required by section 203 and returns u/ss 206 and 206C and statements under section 200(3) or proviso to section 206C(3), penalty shall not exceed amount of tax deductible or collectible)



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	(f) file the prescribed statement within the time specified in section 206A(1)	
272AA(1)	Failure to comply with section 133B	Not exceeding Rs. 1,000
272B	Failure to comply with provisions of section 139A/139A(5)(c)/(5A)/(5C)	Rs. 10,000
272BB(1)	Failure to comply with section 203A	Rs. 10,000 for each failure/default
272BB(1A)	Quoting false tax deduction account number/tax collection account number/tax deduction and collection account number in challans/certificates/statements/documents referred to in section 203A(2)	Rs. 10,000

Note : No penalty is imposable for any failure under sections 271(1)(b), 271A, 271AA, 271B, 271BA, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FB, 271G, 271H, 272A(1)(c) or (d), 272A(2), 272AA(1), 272B, 272BB(1), 272BB(1A) and 272BBB if the person or assessee proves that there was reasonable cause for such failure (section 273B).

Section 273AA provides that a person may make application to the Principal Commissioner/Commissioner for granting immunity from penalty, if (a) he has made an application for settlement under section 245C and the proceedings for settlement have abated; and (b) penalty proceeding have been initiated under this Act. The application shall not be made after the imposition of penalty after abatement.

OFFENCES AND PROSECUTIONS

<i>Section</i>	<i>Nature of default</i>	<i>Punishment (rigorous imprisonment)</i>	<i>Fine</i>
(1)	(2)	(3)	(4)
275A	Contravention of order made under section 132(1) (Second Proviso) or 132(3) in case of search and seizure	Up to 2 years	No limit
275B	Failure to afford necessary facility to authorised officer to inspect books of account or other documents as required under section 132(1)(iib)	Up to 2 years	No limit
276	Removal, concealment, transfer or delivery of	Up to 2 years	No limit



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

	property to thwart tax recovery		
276A	Failure to comply with provisions of section 178(1) and (3) re : company in liquidation	6 months to 2 years	—
276AB	Failure to comply with provisions of sections 269UC, 269UE and 269UL re : purchase of properties by Government ⁵	6 months to 2 years	No limit
276B	Failure to pay to credit of Central Government (i) tax deducted at source under Chapter XVII-B (non-cognizable offence under section 279A), or (ii) tax payable u/s 115-O(2) or second proviso to section 194B	3 months to 7 years	No limit
276BB	Failure to pay the tax collected under the provisions of section 206C	3 months to 7 years	No limit
276C(1)	Wilful attempt to evade tax, penalty or interest (non-cognizable offence under section 279A)—		
	(a) where tax sought to be evaded exceeds Rs. 1 lakh (Rs. 25 lakh w.e.f. 1-7-2012)	6 months to 7 years	No limit
	(b) in other cases	3 months to 3 years (2 years w.e.f. 1-7-2012)	No limit
276C(2)	Wilful attempt to evade payment of any tax, penalty or interest (non-cognizable offence under section 279A)	3 months to 3 years (2 years w.e.f. 1-7-2012)	No limit
276CC	Wilful failure to furnish returns of fringe benefits under section 115WD/115WH or return of income under section 139(1) or in response to notice under section 142(1)(i) or section 148 or section 153A (non-cognizable offence under section 279A)—		
	(a) where tax sought to be evaded exceeds Rs. 1 lakh (Rs. 25 lakh w.e.f. 1-7-2012)	6 months to 7 years	No limit
	(b) in other cases	3 months to 3 years (2 years w.e.f. 1-7-2012)	No limit
276CCC	Wilful failure to furnish in due time return of total income required to be furnished by notice u/s 158BC(a)	3 months to 3 years	No limit



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

276D ⁶	Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)	Up to 1 year	⁷ Rs. 4 to Rs. 10 for every day of default
277	False statement in verification or delivery of false account, etc. (non-cognizable offence under section 279A)		
	(a) where tax sought to be evaded exceeds Rs. 1 lakh (Rs. 25 lakh w.e.f. 1-7-2012)	6 months to 7 years	No limit
	(b) in other cases	3 months to 3 years (2 years w.e.f. 1-7-2012)	No limit
277A	Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act	3 months to 3 years (2 years w.e.f. 1-7-2012)	No limit
278	Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax (non-cognizable offence under section 279A)		
	(a) where tax, penalty or interest sought to be evaded exceeds Rs. 1 lakh (Rs. 25 lakh w.e.f. 1-7-2012)	6 months to 7 years	No limit
	(b) in other cases	3 months to 3 years (2 years w.e.f. 1-7-2012)	No limit
278A	Second and subsequent offences under section 276B, 276C(1), 276CC, 277 or 278	6 months to 7 years	No limit
280(1)	Disclosure of particulars by public servants in contravention of section 138(2) [Prosecution to be instituted with previous sanction of Central Government under section 280(2)]	Up to 6 months (simple/rigorous)	No limit

Notes :

1. No person is punishable for any failure under section 276A, 276AB or 276B if he proves that there was reasonable cause for such failure (*vide* section 278AA).
2. (a) Prosecution for offences under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277, section 277A and section 278 to be instituted with previous sanction of Principal Director General/Principal Chief Commissioner/Principal Commissioner/Director General/Chief

Commissioner/Commissioner, except where prosecution is at the instance of the Commissioner (Appeals) or the appropriate authority (*vide* section 279).

(b) The offences under Chapter XXII can be compounded (either before or after the institution of proceedings) by Principal Director General/Director General or Principal Chief Commissioner/Chief Commissioner.

3. Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine and every person, referred to in sub-section (1) of section 278B, or the director, manager, secretary or other officer of the company referred to in sub-section (2) of section 278B shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

4. With effect from 1-4-2008 under section 278AB a person may apply to the Principal Commissioner/Commissioner for granting immunity from prosecution, if he has applied for settlement under section 245C and the proceedings have abated under section 245HA. The application shall not be made after institution of prosecution proceedings after abatement.

Note: 1. With effect from assessment year 2015-16 "annual information return" has been changed to "statement of financial transaction or reportable account" and word "return" has been changed to "statement".

2. With effect from assessment year 2015-16 a new section 271FAA has been inserted to provide for a penalty of Rs. 50,000 for furnishing inaccurate statement of financial transaction or reportable account in certain cases.

3. With effect from 1-10-2014 TPO can also levy penalty.

4. Section 271H as amended with effect from 1-10-2014 provides that penalty shall be levied by Assessing Officer.

5. Non-operative with effect from 1-7-2002.

6. With effect from October 1, 2014, if a person wilfully fails to produce accounts and documents as stated or wilfully fails to comply with the direction given, he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine (quantum of fine has not been specified)7. No limit w.e.f. 1-10-2014.

<http://www.incometaxindia.gov.in/Charts%20%20Tables/Penalties%20and%20Prosecutions.htm>

<http://money.cnn.com/pf/money-essentials-income-tax-penalties-alt/index.html>

REFERENCES

- <http://abcaus.in/articles/income-tax/gross-total-income.html>
- <http://bba.pz10.com/2013/06/aggregation-of-income.html>
- <http://budgeting.thenest.com/recover-tax-deduction-previous-year-25064.html>
- <http://finotax.com/income-tax/info/income-os>
- <http://incometaxmanagement.com/Pages/Gross-Total-Income/Salaries/Chat-Showing-Computation-of-Salary-Income.html>
- <http://incometaxmanagement.com/Pages/Gross-Total-Income/Set-Off-Carry-Forward-Losses/Set-Off-and-Carry-Forward-of-Losses.html>
- <http://incometaxmanagement.com/Pages/Gross-Total-Income/Tax-Deductions/Deductions-from-Total-Income.html>
- <http://money.cnn.com/pf/money-essentials-income-tax-penalties-alt/index.html>
- <http://taxbymanish.blogspot.in/2012/01/short-note-on-capital-gain.html>
- <http://taxguru.in/income-tax/clubbing-of-income-under-the-income-tax-act-1961.html>
- <http://taxguru.in/income-tax/income-tax-appeal-filing-procedure.html>
- <http://taxguru.in/income-tax/profits-gains-business-profession.html>
- http://www.business-standard.com/article/pf/how-to-calculate-tax-on-house-property-income-114031200127_1.html
- <http://www.caclubindia.com/forum/what-is-the-maximum-marginal-rate-under-income-tax--12693.asp>
- <http://www.charteredclub.com/residential-status/>
- <http://www.incometaxindia.gov.in/Charts%20%20Tables/Penalties%20and%20Prosecutions.htm>



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD

INSTITUTE OF MANAGEMENT & TECHNOLOGY

(A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

- <http://www.investmetyogi.com/exemptions-under-section-10-of-income-tax-act/>
- <http://www.mbaknol.com/tax-management/profits-and-gains-of-business-or-profession/Source: Scribd.com>
- http://www.moneycontrol.com/glossary/taxes/recoverytax_3062.html
- http://www.moneycontrol.com/news/tax-report/calculate-your-capital-gains-tax4-steps_176908.html
- http://www.moneycontrol.com/tax/other_source/deductions-allowed-under-incomeother-sources_628527.html
- <http://www.saraltaxoffice.com/resources/it.php>
- <http://www.saraltaxoffice.com/resources/itreturnforms.php>
- <http://www.saraltaxoffice.com/resources/tds.php>
- <http://www.studymode.com/essays/Computation-Of-Taxable-Income-Of-Individual-532663.html>
- http://www.taxmann.com/datafolder/Flash/Flashart22-9-09_6.htm
- <https://answers.yahoo.com/question/index?qid=20091029144005AAwhMI3>
- https://en.wikipedia.org/wiki/Income_tax
- https://en.wikipedia.org/wiki/Income_tax_in_India
- <https://incometaxindiaefiling.gov.in/e-Filing/Registration/RegistrationHome.html>
- <https://incometaxindiaefiling.gov.in/e-Filing/UserLogin/LoginHome.html?nextPage=efile>
- www.shrigurukripa.com/...upload=12.%20Rebate%20and%20Relief.pdf
- <https://cadiary.org/cost-inflation-index-capital-gain/>
- <http://www.saraltaxoffice.com/resources/it.php>
-