

PREFACE

In the curricular structure introduced by this University for students of Post-Graduate degree programme, the opportunity to pursue Post-Graduate course in a subject introduced by this University is equally available to all learners. Instead of being guided by any presumption about ability level, it would perhaps stand to reason if receptivity of a learner is judged in the course of the learning process. That would be entirely in keeping with the objectives of open education which does not believe in artificial differentiation. I am happy to note that university has been recently accredited by National Assessment and Accreditation Council of India (NAAC) with grade 'A'.

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

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

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

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

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Netaji Subhas Open University

Post Graduate Degree Programme

Subject : Commerce (M. Com)

Course : Taxation

Course Code : PGCO - V

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**Netaji Subhas
Open University**

**PG : Commerce
(M. Com)
(New Syllabus)**

Course : Taxation

Course Code : PGCO - V

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Module - 1
Direct Taxation

Unit - 1 □ Exempted Income

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1.4.2 Share of Income from the Firm [Section 10(2A)]

1.5 Exemptions under Section 10(14)

1.6 Summary

1.7 Questions

1.0 Objectives

After studying this unit, we will be able to understand—

- The basic concept of tax and exempt incomes of different types.
- The eligibility to claim deduction u/s 10AA.
- The concept of agricultural income.
- The tax treatment of share of income from firm.
- The different exemptions available u/s 10(14).

1.1 Introduction to Tax

Tax is a compulsory payment made by the people of a country to its government. Whenever, there is any income either by way of profits from business or remuneration for services or from sale or transfer of goods and services, unless it is expressly exempt from tax, tax shall be levied by the government on such income. Tax revenue is one of the best sources of government revenue to meet huge public expenditure. In every form of society,

taxation plays a very significant role to raise fund for smooth running and maintenance of the society. Tax revenue collection is the most favorable choice of any nation since it is not '*quid pro quo*' i.e. nothing is payable in respect of tax revenue collection in consideration thereof to the taxpayers. Thus, charges which are levied on product or services or income or activity are called Tax. Tax is actually a fee charged by the government on product or services, income or activity. There may be of two types of taxes; viz.-

a) Direct Taxes and b) Indirect Taxes.

Direct Taxes: Direct tax is a tax which is levied directly on income, thus when tax is levied directly (from the source) on the income or wealth of a person, then it is called direct tax e.g., income tax, Wealth Tax etc. Wealth tax has been abolished with effect from 28th February 2016. The taxpayer becomes liable to pay direct tax personally and he cannot shift it on the shoulder of others.

Indirect Taxes: The tax which is imposed indirectly on income is called Indirect Tax. Indirect Tax is not directly related to income, but when we buy something, sell something keeping aside the value of the transaction is called Indirect Tax. Thus, whether we are buying a pencil, lozenge or car we have to pay indirect tax. When tax is levied (indirectly) from the users of Goods and/or Services on the price of goods and/or services then it is called indirect tax; viz.-Goods and Services Tax (GST), Excise duty, Customs Duty, etc.

Component of Income Tax Law: Income Tax (IT) Law consists of the following components-

Sr. No.	Components	Brief analysis
1	Income Tax Act, 1961	There are 298 sections and XIV schedules under Income Tax Act, 1961.
2	Finance Acts	Every year the Finance Minister of GOI presents the Budget to the Parliament. Part A of the Budget speech comprises the proposed policies of the Government. Part B contains the detailed tax proposals . Such, proposals become finance act once get these approved by the parliament.
3	Income Tax Rules	The management of direct taxes is looked after by the Central Board of Direct Taxes (CBDT).

4	Circulars and Notifications	Circulars are issued by the CBDT from time to time to deal with certain specific problems and to clarify doubts regarding the scope and meaning of the provisions. Though, the department is bound by the circulars while the assessee can take only the advantages of beneficial circulars.
5	Legal Directions	The study of case law is an important and unavoidable part of the study of income-tax law. Supreme Court is the apex court of our country.

1.2 Exempted Income

There are certain incomes which are not part of the total income. Exempt Incomes are the incomes for which no tax is payable as per Income Tax Law i.e., these incomes are not included in the total income for the purpose of tax liability computation while taxable incomes are liable to tax under the Income Tax Act.

Exempt income is that income on which there is no need to pay tax. Some instances are partner's share in firm's income, agricultural income, daily allowance of MPs and MLAs etc.

1.2.1 Kinds of Exempted Income

Following are various kinds of income that are exempt from tax-

- i. House Rent Allowance.
- ii. Allowance on transportation, children's education, subsidy on hostel fee.
- iii. Exemption on Housing Loan.
- iv. Income defined as per Section 10, Section 54 of the Income Tax Act, 1961.
- v. Leave and Travel Allowance.

1.2.2 Various Sections under Section 10

Section	Particulars
Sec.10A	Deduction relating to newly established undertaking under Section 10A. This section was applicable when an entrepreneur, who starts manufacturing or producing articles or things or provides any services during 01.04.2005 to 31.03.2020.
Sec. 10AA	<p>Section 10AA deals with the deduction related to newly established undertakings which are in Special Economic Zones (SEZ). In April 2000, with a view to fascinating foreign investment in India, the Government proclaimed that tax approval would be provided for businesspersons who set up the definite businesses in Special Economic Zones. Therefore, primarily, SEZs were introduced to roll and continue under the dispensation of the Foreign Trade Policy. However, increasingly, the SEZ Act and SEZ instructions were shaped and made operative from the year 2006.</p> <p>Amount of Exemption = Profit of Unit in SEZ × $\frac{\text{Export Turnover of Unit SEZ}}{\text{Total Turnover of Unit SEZ}}$</p> <p>Amount of Deduction</p> <p>The deduction under this section will be permitted as under for a total period of 15 relevant assessment years.</p> <ul style="list-style-type: none"> ● 100% of export profit is qualified for the deduction for the first five years. ● 50% of export profit is eligible for the deduction for the next five years. ● Sum not surpassing 50% of export profit is qualified for the deduction for the next five years.

Example:

1. Durjoy Manufacturing Ltd. has a Unit at SEZ. The company Provided Total Sales Rs.4, 00, 000/- and Export Sales Rs.3, 00, 000/- and Net Profit Rs.1, 00, 000/- for the previous year 2020-21. Calculate the eligible deduction under section 10AA of the Income tax act, for the assessment year 2021-2022, if the unit was set up and start manufacturing from 22-05-2013.

Solution:

$$\text{Amount of Exemption} = \text{Profit of Unit in SEZ} \times \frac{\text{Export Turnover of Unit SEZ}}{\text{Total Turnover of Unit SEZ}}$$

$$\text{Profit Percentage} = \frac{3, 00, 000}{4, 00, 000} = 75\%$$

$$\text{Profit from Export} = \text{Rs.}1, 00, 000 \times 75\% = \text{Rs.}75, 000$$

Therefore, the exempted amount is Rs. 50% of Rs.75, 000 i.e., Rs. 37, 500/-.

Note: Total Year = 8 (2013-2021). Therefore, Amount will be exempted @ 50%.

2. Charlie Ltd. has a Unit at SEZ. The company Provided Total Sales Rs.10, 00, 000/- and Export Sales Rs.8, 00, 000/- and Net Profit Rs.5, 00, 000/- for the previous year 2020-21. Calculate the eligible deduction under section 10AA of the Income tax act, for the assessment year 2021-2022, if the unit was set up and start manufacturing from 22-05-2015.

Solution:

$$\text{Amount of Exemption} = \text{Profit of Unit in SEZ} \times \frac{\text{Export Turnover of Unit SEZ}}{\text{Total Turnover of Unit SEZ}}$$

	<p>Profit Percentage = 80% (8,00,000/10,00,000)</p> <p>Profit from Export = 5, 00, 000 × 80% = Rs.4, 00, 000</p> <p>Therefore, the exempted amount is Rs.2, 00, 000.</p> <p>Self-Practice Question: Priya Manufacturing Ltd. has a Unit at SEZ and another unit at Domestic Tariff Area (DTA). The company Provides the following details for the previous year 2020-21. Priya Ltd- Total Sales Rs.15, 00, 000/-, Export Sales 14, 50, 000/-, Net Profit Rs.10, 00, 000/-. Unit in DTA- Total Sales Rs.12, 00, 000/-, Export Sales Rs.12, 50, 000/-, Net Profit Rs.8, 00, 000/-. Calculate the eligible deduction under section 10AA of the Income tax act, for the assessment year 2021-2022, in the following situation if the unit was set up and started manufacturing from 22-05-2014.</p> <p>Ans. Rs.66, 670/-.</p>
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1.2.3 Eligibility for deduction under Section 10AA

To avail deduction u/s 10AA of the Income Tax Act., SEZ units are required to fulfil the following conditions-

- i) The businessperson should be enclosed within the provisions of section 2 (j) of the Special Economic Zone Act, 2005.
- ii) Special Economic Zone unit should have commenced its business activity or provision of service, as the case may be, during the earlier year related to any assessment year beginning on or after 1st April 2006.
- iii) Special Economic Zone unit is not designed by any splitting up, or the modernization of the business that is already in existence.

- iv) Special Economic Zone unit is not designed by any transfer of plant or machinery, before used for any purpose, to a new business; and
- v) Units which have already enjoyed the advantage of deduction under section 10A of the Income Tax Act for a constant period of 10 years are not qualified to right deduction under Section 10AA of the Act.

1.3 Income Exempted from Tax as per Section 10

Some of the exempted income under section 10 are given in the table below:

Sl. No.	Section / Sub-sections	Name of Income
1	10(1)	Agricultural Income
2	10(2)	Amount received out of family income, Hindu Undivided Family (H.U.F.)
3	10(2A)	Share of profit of Partner from a firm
4	10(4)(i)	Interest paid to Non-Resident
5	10(4)(ii)	Interest to Non-Resident on Non-Resident (External) Account
6	10(4 B)	Interest paid to a person of Indian Origin and who is Non-Resident
7	10(5)	Leave Travel Concession or Assistance
8	10 (6A), 10(6B), 10 (6BB) and 10(6C)	Tax paid by Government or Indian concern on Income of a Foreign Company [Section 10(6A), (6B), (6BB) and (6C)]
9	10(7)	Commissions/Allowances given by Government to its Employees serving outside India
10	10(8)	Staff of Foreign Countries working in India under Cooperative Technical Assistance Programme
11	10(8A)	Income of a Consultant
12	10(8B)	Income of Employees of Consultant
13	10(9)	Revenue of any member of the family of persons working in India under cooperative technical assistance programme

Sl. No.	Section / Sub-sections	Name of Income
14	Given with the respective income.	Perquisite [Section 10(10)] a. Perquisite received by Government servants [Section 10(10)(i)] b. Perquisite obtained by a Non-Government Employee covered by Payment of Gratuity Act, 1972 [Section 10(10)(ii)]
15	10(10A)	Commutated value of Pension received
16	10(10AA)	Amount received as Leave Encashment on retirement
17	10(10B)	Retrenchment Compensation received by Workmen
18	10 (10BB)	Payment received under Bhopal Gas Leak Disaster (Processing of Claims) Act 1985
19	10(10BC)	Compensation received in case of any disaster
20	10(10C)	Retirement Compensation from a Public Sector Company or any other Company
21	10(10CC)	Tax on Non-monetary Perquisites paid by Employer
22	10(10D)	Amount received under a Life Insurance Policy
23	10(11)	Statutory Provident Fund
24	10(12)	Recognized Provident Fund
25	10(13)	Superannuation Fund
26	10(13A)	House Rent Allowance-HRA
27	10(14)	Special Allowance to Employces
28	10(15)	Interest Incomes
29	10(16)	Scholarship granted to meet cost of education
30	10(17)	Allowance of M.P./M.L.A.
31	10(17A)	Awards Instituted by Government
32	10(18)	Pension received by certain winners of gallantry awards
33	10(19)	Family pension obtained by family members of armed forces including para military forces
34	10(20)	Income of a Local Authority
35	10(21)	Income of Scientific Research Association
36	10(22B)	Income of a News Agency
37	10(23A)	Income of some Professional Institutions

1.4 Agricultural Income [Section 10(1)]

According to Section 10(1), agricultural income earned by the taxpayer in India is exempt from tax. But agricultural income earned abroad is taxable. Agricultural income is distinct under section 2(1A) of the Income-tax Act. As per section 2(1A), agricultural income usually means-

- i) Any rent or income which has been gained from land located in India and is used for the purpose of agriculture.
- ii) Any income derived from such land by farming processes which is included for the purpose of agricultural produce to make the product fit for the market or for the purpose of making the product saleable.
- iii) Any revenue which has been attributable to a farm house which has been subject to contentment of specific conditions and which has been specified in this regard in section 2(1A). Agricultural income can be defined as the income which has derived from trees or seedlings grown in a nursery and this will be considered as agricultural income.

1.4.1 Amount received by a Co-parcener from Hindu Undivided Family (H.U.F.) [Section 10(2)]

Under section 10(2), any amount received by an individual as a member of HUF which is in relation to domestic income, or in case of the other circumstance of impartible estate or amount received out of income of domestic estate by any affiliate of such HUF is exempt from tax.

1.4.2 Share of Income from the Firm [Section 10(2A)]

Section 10(2A), defines that share of profit which has been obtained by a partner of a partnership firm, this portion of profit is exempt from tax in the hands of the partner. Further, in the circumstances where the share of the profit which has been obtained by a partner of LLP from the LLP will be exempt from tax in the hands of such partner.

1.5 Exemptions under Section 10(14)

Exemptions under section 10(14) refer to special allowances to employees provided under the Income Tax Act.

Section 10(14) deals with special allowance, these specific allowances are actually treated in totally different way, this is categorized actually as a special exemption under Section 10 and no tax is being charged. The exception is actually dependent on the amount sanctioned or the actual money which has been operated for the precise purpose, whichever is actually lower.

Some of the special allowances under sub-section (14) of Section 10 of the Income Tax Act include:

- i) **Travelling allowance:** Travelling allowance is an allowance which actually comprises daily compensation which is given for the purpose of covering expenditure while on an official tour or at the time of shifting / moving to a new job location.
- ii) **Travel Grant:** Allowance is approved to the staff for the aim of covering their travel expenditures while on an official tour or during the transfer of employment. It contains expenses incurred in transferring of private belongings, etc.
- iii) **Uniform Allowance:** Uniform allowance is given where in any office it is mandatory to wear uniform while the employees are on duty., the allowance is offered to cover outlays of purchase and preservation of uniform.
- iv) **Conveyance Allowance:** Where it is needed to travel while on duty then a conveyance allowance is being given to the employee, this allowance is provided to cover expenses suffered on official travelling. In our daily regular life, we need to travel from home to office, the cost which will be incurred for travelling from home to office will be borne by the employee.
- v) **Research or Academic Grant:** This exemption is given by education and/or a research institution for uplifting research or academic training, education, etc.
- vi) **Special allowance under Section 10(14)(ii) include:**
 - Climatic allowance comprises reimbursement for working in high altitude or hilly areas.

- For hills of Himachal Pradesh, Uttar Pradesh, Jammu & Kashmir and therefore the North East up to Rs. 800.
- Deductions up to Rs. 7,000/month for Siachen.
- For other high-altitude places deductions up to Rs. 300.
- Grant of Rs. 200 for those working in pre-classified Tribal, Schedule or Agency areas like Karnataka, West Bengal, Madhya Pradesh, Assam, Orissa, Tamil Nadu, Bihar, Uttar Pradesh, and Tripura.
- As per Rule 2BB of Section 10 (14)(ii), soldiers personnel serving within the border area, remote places or in any disturbed areas are provided allowance starting from Rs. 200 to Rs. 1,300/month.
- A grant of Rs. 2,600/month is allowable under Section 10 (14)(ii), provided it's given to a private for delivering responsibilities in unusual fields like Nagaland, Jammu & Kashmir, Himachal Pradesh, Uttar Pradesh, Sikkim, Andhra Pradesh and Manipur.
- Section 10 (14)(ii) exemption is provided to an allowance of Rs. 100/child maximum up to 2 children. A hostel stipend can also be allowed for Rs. 300/month/child up to 2 children maximum.
- Grant of Rs. 3,900/month in Section 10 (14)(ii) is concentrated to those employed in soldiers for counterinsurgency.
- An exemption as per Section 10 (14)(ii) of Rs. 3,250/month is for members of the soldiers serving within the Andaman and Nicobar Islands or Lakshadweep Group of Islands.

Other grants under sub-section (14)(ii) of Section 10 of the tax Act include:

- Rs. 800/month for underground mine workers.
- In highly active areas Rs. 4,200/month for workers.
- For workers in certain enhanced field areas Rs. 1,000/month.
- Transport allowance to physically inactivated employees Rs. 1,600/month.
- Rs. 1,600/month as transport allowance for workers to travel between homes to the office.

1.6 Summary

After Studying this unit, we could understand—the concept of tax; Exempt incomes; Incomes exempt from tax as per section 10; Eligibility for deduction under section 10AA; Agricultural Income under section 10(1); Share of income from firm under section 10(2A) ; Some other exemptions under section 10.

1.7 Questions

A. Multiple Choice Questions (MCQ)

1. A government employee who has been posted abroad and allowances given to them are -
 - a) **Fully exempt**
 - b) Partly exempted
 - c) Fully taxable
 - d) Taxable by the country where the person is posted

2. House rent allowances are-
 - a) Fully exempted
 - b) **Partly exempt**
 - c) Fully taxable
 - d) Taxable by the country where the person is posted

3. HRA in 4 metropolitan cities in India are exempted upto what percentage-
 - a) **50% of salary**
 - b) 40% of salary
 - b) 30% of salary
 - d) None of these

4. Maximum for how many children education allowances is exempted for -
 - a) One Child
 - b) **Two Child**
 - c) Three Child
 - d) None of these

5. The portion of the salary on which income tax is borne by the employer is called-
 - a) Foregoing salary
 - b) **Tax free salary**
 - c) Tax holiday
 - d) None of these

6. ——— deals with exempted incomes.
 - a) Sec.80
 - b) Sec.70
 - c) **Sec.10**
 - d) None of these

7. Income tax is a form of _____.
 - a) **Direct tax**
 - b) Indirect tax
 - c) Value added tax
 - d) None of these
8. As per municipal valuation the rent which has been is called-
 - a) Actual rent
 - b) Fair rent value
 - c) Standard rent
 - d) Municipal value**
9. Rent free accommodation is an example for-
 - a) Allowance
 - b) Compensation
 - c) Perquisite**
 - d) None of these
10. Whether the Dividends which has been received from co-operative society are taxable or not -
 - a) Fully exempted
 - b) Partly exempted
 - c) Taxable**
 - d) Partially taxable

B. Short Answer Type Questions

1. What do you mean by exempted income? Define the various types of exempted incomes
2. Briefly discuss sections 10A and 10AA.
3. Describe in detail the provisions which regulate tax incidence on charitable trusts and industries.
4. Discuss eligibility for deduction under section 10AA.
5. Explain and briefly describe with some examples of income exempt from tax as per section 10.

C. Broad Answer Type Questions

1. There are five incomes which are entirely exempted from tax, briefly describe that five incomes.
2. Allowances received by a member of a State Legislative are exempted, briefly define the provision.
3. A Municipality under section 10(20) is granted exemption, briefly describe those exemptions.

4. Discuss the provisions of the Income-tax Act relating to exemption available to a newly established unit in Special Economic Zone (SEZ).
5. What do you mean by “Casual” and “non-recurring receipts, briefly describe the two terms.

Answer Key (A)

1(a)	2(b)	3(a)	4(b)	5(b)
6(c)	7(a)	8(d)	9(c)	10(c).

Unit-2 □ Taxation of Business Income (Sections 28 to 44D)

Structure

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 - 2.15.1 Inter Source Adjustment (Intra-head adjustment) [Sec. 70]**

- 2.15.2 Inter-Head Adjustment [Sec. 71]**
- 2.15.3 Carry forward and set off of Losses from House Property [Sec. 71B]**
- 2.15.4 Carry forward and set off of Business Losses other than speculation loss [Sec. 72]**
- 2.15.5 Carry forward and set off of Speculation loss [Sec. 73]**
- 2.15.6 Carry forward and set off of losses of Specified business [Sec. 73A]**
- 2.15.7 Losses under the head Capital Gains [Sec. 74]**
- 2.15.8 Losses from activities of Owning and Maintaining Race-Horses [Sec. 74A (3)]**
- 2.15.9 Carry forward and set off of loss in case of change in the constitution of firm or succession- Section 78**
- 2.15.10 Carry forward and set off of loss in case of closely held companies [Section 79]**
- 2.15.11 Carry forward and set off of accumulated business losses and unabsorbed depreciation of the amalgamating company in case of merger/amalgamation-Section 72A**
- 2.15.12 Order of loss to be set off**
- 2.16 Examples of Business Income**
- 2.17 Summary**
- 2.18 Questions**

2.0 Objectives

After going through this unit, we will be able to—

- understand the concept and meaning of income from business or profession;
- conceptualize the different expenses allowed as deduction in computing profits and gains from business;
- understand inadmissible deduction and payments not allowed as deductions;
- come to know the deemed profits chargeable to tax as business income;
- realize the concept and the tax provision for set off and carry forward of losses identify the different examples of business income;

- understand the provision for MAT;
- come to know the Dividend Distribution Tax.

2.1 Introduction

Business income can be defined as the income which we are getting from sale of products or services. If we give an example- Fees received by a person from the regular practice of a profession are business income and chargeable under the head “Profits and Gains of Business or Profession”. Actually, Business income is a type of earning which is classified as ordinary income arising from business for tax purposes.

Profession is generally defined as various activities done by the human being by which they earn a living. To earn a living through profession one needs to have some intellectual skill and special knowledge. Examples of profession are Chartered Accountant, Cost and Management Accountant, Company Secretary in practice, doctor in practice, Lawyer in practice etc. As per section 2(23) profession also includes vocation. Vocation is actually a process or way through which a person passes his/her life. There are some vocations which are included within the meaning of profession. Line, we can give the example of engineers, tax consultants and accountants. If a CMA is practicing then the income of the practicing CMA will be chargeable to income from business and profession. Thus, here we actually get three terms, business, profession and vocation.

2.2 Business

Business is being defined in the following terms. Business is being called either an occupation, profession, or trade, or business is a commercial activity which includes providing goods or services in exchange for profits within the allowed laws of country. By the following definition business can be defined. Business is generally defined as an organization, enterprise or entity which is engaged in professional, commercial or industrial activity.

2.3 Profession

The term profession has not been defined under the Income Tax Act. It refers to an occupation requiring some degree of learning, skill and expertise. The term profession includes vocation as well [Section 2(36)].

2.4 Business Incomes Taxable under the head of ‘Profit and Gains of Business or Profession’ (Section 28).

Section 28 of the Act deals with the income chargeable under the head “Profits and gains of business or profession” where following incomes are chargeable to tax: -

- i)** Profits and gains from any kind of business or profession carried on by assessee during the previous year.
- ii)** Any compensation or other payment due to or received by any person specified in section 28(ii)
- iii)** Income derived by a trade, professional or similar association from specific services performed for its members.
- iv)** Incentives received or receivable by the assessee carrying on export business:
 - a)** Profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947.
 - b)** Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India.
 - c)** Any custom duty or excise duty re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971.
 - d)** Any profit on the transfer of the Duty Entitlement Pass Book Scheme or the Duty-Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992.
 - v)** The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of any profession.
 - vi)** Any interest, salary, bonus, commission or remuneration received by a partner from firm.
 - vii)** Any sum received or receivable under an agreement for not carrying out any activity

in relation to any business or profession or not to share any know-how, patent, copyright, trademark, etc.

- viii) Any sum received by the assessee under a Keyman insurance policy including bonus.
- ix) Fair market value of inventory on the date of its conversion or treatment as capital asset.
- x) Any sum received or receivable in cash or kind, on account of any capital asset being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD.

2.5 Business Income which is not chargeable under the head “Profits and Gains from Business or Profession”

- i) **Rental Income in case of dealer of Property:** Rental Income from House Property is chargeable to tax separately u/s 22 under the head “Income from House Property”. Such income will not be involved here even it is a business of the owner or assessee.
- ii) **Dividend Income:** All dividend income is chargeable to tax u/s 56 under the head “Income from Other Sources”. Such income will not be included here, even if the income is derived from dealing in shares and such shares are held as Stock-in-trade.
- iii) **Income from Letting Out Commercial Asset:** If such letting out of income is permanent in nature, this will not be involved here.
- iv) **Winning from Lotteries, etc.:** Income from lottery, gambling, horse race, etc. are taxable u/s 56 (ib) under the head “Income from Other Sources”. Such income will not be chargeable here even it is a regular business of the assessee.
- v) **Interest received on Compensation or Enhanced Compensation:** Such interest is always chargeable to tax in the year of receipt under the head “Income from Other Sources”, even if it is relating to a regular business activity.

There are certain exceptions in the above-mentioned rules, like the below mentioned incomes will be classified under Profit & Gains of Business or Profession even if the business is not carried on by the assessee during the previous year

- Recovery against any loss, expenditure or trading liability earlier allowed as deduction.
- Sale of capital asset which was used as scientific research.
- Recovery of Bad Debts.

2.6 Expenses Allowed as Deductions against Profits and Gains of Business or Profession [Section 30-37]

Sl. No.	Expenses Allowed as Deductions	Section/Sub-sections
1	Rent, Rates, Taxes, Repairs and Insurance for Building	30
2	Repairs and insurance of machinery, plant and furniture	31
3	Depreciation	32
4	Investment allowance in Notified Backward Area in Andhra Pradesh, Bihar, Telangana or West Bengal	32AD
5	Tea/Coffee/Rubber Development Account	33AB
6	Site Restoration Fund	33ABA
7	Expenditure on Scientific Research	35
8	Expenditure for Obtaining Right to use Spectrum for Telecommunication Services	35ABA
9	Expenditure for obtaining License to operate Telecommunication Services	35ABB
10	Deduction in respect of Expenditure on Specified Business	35AD
11	Payment to Associations and Institutions for carrying out Rural Development Programs	35CCA
12	Expenditure on Agricultural Extension Project	35CCC
13	Expenditure on Skill Development Project	35CCD
14	Preliminary expenditure incurred by Indian companies and other resident non-corporate	35D

Sl. No.	Expenses Allowed as Deductions	Section/Sub-sections
15	Amortization of expenditure in case of Amalgamation / Demerger	35DD
16	1/5 th of the Expenditure incurred by assessee-employer in connection with Voluntary Retirement Scheme	35DDA
17	Amortization of Expenditure on Prospecting etc., for Development of Certain Minerals	35E
18	Insurance Premium	36(1)(i)
19	Bonus or Commission to Employees	36(1)(ii)
20	Interest on Borrowed Capital for the purpose of business or profession	36(1)(iii)
21	Discount on issue of Zero-Coupon Bonds	36(1)(iiia)
22	Employer's Contribution to RPF or approved superannuation fund	36(1)(iv)
23	Sum paid by employer as contribution towards a pension scheme referred to in sec. 80CCD	36(1)(iva)
24	Sum received from Employees for Contribution to Staff Welfare fund	36(1)(va)
25	Allowance in respect of Dead or Permanently useless Animals	36(1)(vi)
26	Bad debts written off as irrecoverable	36(1)(vii)
27	Provision for Bad and Doubtful Debts relating to Rural Branches of Commercial Banks	36(1)(viia)
28	Transfer to Special Reserve	36(1)(viii)
29	Expenditure incurred by company for promoting Family Planning amongst employees	36(1)(ix)
30	Securities Transaction Tax paid by assessee	36(1)(xv)
31	Commodities Transaction Tax	36(1)(xvi)
32	Expenditure by Co-Operative Society for purchase of Sugarcane	36(1)(xvii)
33	General Deductions as provided in this section	37

2.6.1 Expenditure on Scientific Research-Section 35

Expenditure on scientific research expenditure refers to expenses incurred on scientific research for the development of business and business related activities. It covers any scientific research expenditure, revenue or capital nature, which may help to improve an extension of any business or all the businesses of that class or any scientific research of a medical nature relating to the welfare of the workers employed in that business or all the businesses of that class, as the case may be.

2.6.1-1 Revenue Expenditure

Where an assessee incurs any scientific research expenditure of revenue nature related to his business, such expenditure is allowed as deduction in full (i.e., 100% deduction from the A.Y. 2021-22 onwards) in the year in which it is incurred under section 35(1)(i). Any such expenditure incurred within 3 years immediately preceding the commencement of the business on payment of salary to research personnel engaged in scientific research related to his business carried on by the taxpayer or on purchase of material inputs for such scientific research will be allowed as deduction in the year in which the business is commenced. The deduction will be limited to the amount certified by the prescribed authority.

2.6.1-2 Capital Expenditure

Where an assessee incurs any scientific research expenditure of capital nature related to the business carried on by the assessee, such expenditure is deductible in full (i.e., 100% deduction for the A.Y. 2021-22 onwards) in the previous year in which it is incurred under section 35(1)(iv). However, any capital expenditure which has been incurred prior to the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced and will also qualify for deduction as expenditure for scientific research incurred during the previous year.

While claiming deduction for capital expenditure for scientific research related to the business of the assessee, the following points are to be noted:

- a) **Disallowance of expenditure on land:** There will be no deduction available under section 35 in respect of capital expenditure incurred on the acquisition of any land whether the land is acquired as such or as part of any property.

- b) Carry Forward of Deficiency:** Capital expenditure incurred on scientific research which cannot be absorbed/set off owing to shortfall in business profits of the relevant previous year can be carried forward to the immediately succeeding previous year and shall be treated as the allowance for that year without any time bar for such carry forward.
- c) Disallowance of Depreciation:** No depreciation will be admissible on any capital asset representing scientific research expenditure which has been allowed as a deduction under section 35 whether in the year in which such deduction was allowed or in any other previous year.
- d) Sale of Scientific Research Assets:** Where any capital asset representing scientific research is sold, discarded, demolished or destroyed, either after the cessation of its use for scientific research purpose related to the business or without having been used for other purposes, the tax liability will be applicable as follows:
- i) Where the asset is sold, etc., after the cessation of its use for scientific research purpose, the moneys payable in respect of such asset together with the amount of scrap value, if any, could be brought to tax under section 41(1) and to bring to tax that amount of deductions allowed in earlier years.
 - ii) Where the asset is sold etc. without having been used for other purposes, if the proceeds of sale together with the total amount of the deductions made under section 35 exceed the amount of capital expenditure, the excess or the amount of deduction so made, whichever is less, will be charged to tax as income of the business of the previous year in which the sale took place.

2.6.1-3 Contribution to Outsiders

Where an assessee does not himself carry on scientific research but contributes to others/public institutions, such contributions will be allowed as deduction as follows :

- a) Contribution to Notified Approved Research Association, University, College or Other Institutions :** In terms of section 35(1)(ii), where any amount is paid as contribution by an assessee, related to his business or not and whether the payment is of a revenue nature or of a capital nature, to a research association having its object, the undertaking of scientific research or to a university, college or other institution to be used for scientific research duly approved for this purpose and notified by the Central Government, the amount paid as contribution is allowed as deduction in full (i.e. 100% deduction for the A.Y. 2021-22 onwards).

- b) Contribution to Approved Indian Company for Scientific Research:** In terms of section 35(1)(ia), where an assessee makes payment as contribution to a company registered in India with its main object to provide scientific research and duly approved by the prescribed authority, such payment is allowed as deduction in full (i.e. 100% deduction for the A.Y. 2021-22 onwards).
- c) Contribution to Approved Notified Research Association, University, College or Other Institution:** In terms of section 35(1)(iii), where an assessee pays as contribution to a research association having its object the undertaking of research in social science or statistical research or to a university, college or other institution to be used for research in any social science or statistical research duly approved for this purpose and notified by the Central Government, such contribution is allowed as deduction in full (i.e. 100% deduction for the A.Y. 2021-22 onwards).
- d) Sum paid to National Laboratory, etc.:** By virtue of section 35(2AA), where an assessee pays any sum to a National Laboratory or University or Indian Institute of Technology or a specified person for carrying out programmes of scientific research approved by the prescribed authority, such sum is allowed as deduction in full (i.e., 100% deduction for the A.Y. 2021-22 onwards).
- e) Expenses on In-House Research and Development: By virtue of section 35(2AB),** where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research on in-house research and development facility as approved by the prescribed authority, such expenditure will be allowed in full (i.e. 100% deduction for the A.Y. 2021-22 onwards) provided such expenditure is not in the nature of cost of any land or building.

Example:

ABC Ltd., engaged in the business of manufacturing, gives the following particulars for the year ended 31.3.2021:

- a) Amount paid to notified approved Indian Institute of Science, Ahmedabad for scientific research : Rs. 2,10,000/-
- b) Amount paid to IIT, Guwahati for an approved scientific research programme : Rs. 1,80,000/-
- c) Amount paid to TS Ltd., a company registered in India as scientific research and development company, as approved by the prescribed authority : Rs. 3,00,000/-

- d) Expenditure incurred on in-house research and development facility as approved by the prescribed authority
- i) Revenue expenditure on scientific research : Rs. 2,30,000/-
- ii) Capital expenditure (including cost of acquisition of land & building : Rs. 5,00,000/- on scientific research : Rs. 7,50,000/-

Compute the deduction allowable under section 35 for the A.Y. 2021-22, while computing its income under the head “Profits and gains of business or profession”.

Solution: Computation of allowable deduction under section 35 for the A.Y. 2021-22 of ABC Ltd.

Particulars	Amount of expenditure	Section	% of deduction	Amount of deduction
Payment/Contribution for scientific research-				
Indian Institute of Science, Ahmedabad	2,10,000	35(1)(ii)	100%	2,10,000
IIT, Guwahati	1,80,000	35(2AA)	100%	1,80,000
TS Ltd.	3,00,000	35(1)(iia)	100%	3,00,000
Expenditure on in-house and development-				
Revenue expenditure	2,30,000	35(2AB)	100%	2,30,000
Capital expenditure (excluding cost of acquisition of land & building Rs. 5,00,000/-)	2,50,000	35(2AB)	100%	2,50,000
Total allowable deduction under section 35				<u>11,70,000</u>

2.6.2 Expenditure for obtaining right to use Spectrum for Telecommunication Services- Section 35ABA

Any capital expenditure incurred by an assessee for acquiring any spectrum rights for telecommunication services, is allowable as deduction in equal instalments over the period starting from the previous year in which payment is made for spectrum fee or the year in which business commences where the fee has been paid before the commencement of business and ending with the previous year up to which spectrum fee shall be in force.

Depreciation under section 32 of the Income Tax Act will not be available, towards amount claimed and allowed as deduction under section 35ABA.

The consequence of failure in complying with the provisions of section 35ABA are as follows–

- a) It would be deemed that the deduction is wrongly allowed.
- b) An assessing officer can re-compute the total income of the defaulting assessee and undertake necessary rectification.
- c) The rectification can be done within a period of four years from the end of the previous year in which the failure takes place.
- d) In case of amalgamation or demerger, the provisions of section 35ABA will continue to apply, if the amalgamated or the resulting company is an Indian company.

2.6.3 Expenditure for obtaining License to operate Telecommunication Services- Section 35ABB

Where an assessee incurs any expenditure of capital nature for acquiring any right to operate telecommunication services and for which payment has actually been made to obtain a licence, there shall be allowed for each of the relevant previous years, a deduction equal to the appropriate fraction of the amount of such expenditure. Here ‘appropriate fraction’ means the fraction the numerator of which is one and the denominator of which is the total number of the relevant previous years.

The payment will be allowed as deduction in equal instalments over the period starting from the year in which such payment has been made and ending in the year in which the licence comes to an end. The deduction will be allowed for the previous year relevant to the previous year in which the licence fee is actually paid. Where a deduction for any previous year is claimed and allowed under section 35ABB, then no deduction of the same expenditure shall be allowed u/s 32 for the same previous year or any subsequent previous year.

However, if the licence is sold or transferred and the proceeds of the transfer are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of the transfer, shall be allowed in respect of the previous year in which the licence is transferred. Where, however, the proceeds of the transfer become higher than the amount of the expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred to obtain the licence and the amount of such expenditure remaining unallowed shall be

chargeable to income-tax as profits and gains of the business in the previous year in which the licence has been transferred.

2.6.4 Deduction in respect of Expenditure on Specified Business- Section 35AD

Deduction under section 35AD shall be allowed to an assessee who carries on any of the following specified business:

1. Setting up and operating a cold chain facility;
2. setting up and operating a warehousing facility for storage of agricultural produce;
3. Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
4. The business of building and operating anywhere in India, a hotel of two-star or above category, as classified by the Central Government;
5. Building and operating, anywhere in India, a hospital with at least 100 beds for patients;
6. Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;
7. Developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;
8. Production of fertiliser in India;
9. Setting up and operating an Inland Container Depot or Container Freight Station notified and approved under the Customs Act, 1962;
10. Bee-keeping and production of honey and beeswax; and
11. Setting up and operating a warehousing facility for storage of sugar.
12. Laying and operating a slurry pipeline for the transportation of iron ore;
13. Setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines;
14. Developing or maintaining and operating or developing maintaining and operating a new infrastructure facility.

Business mentioned above is not set up by splitting up, or the reconstruction, of a business already in existence. Where the business is of laying and operating a cross country natural gas or crude or petroleum oil pipelines network it should be owned by a Indian or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act and is duly approved by the Notified Petroleum and Natural Gas Regulatory Board.

Business mentioned in clause (12) or (13) above should commence its operation on or after 1-4-2014.

2.6.4-1 Deduction under section 35AD shall be allowed subject to satisfying the following conditions:

- a) The specified business should not be set up by splitting up, or the reconstruction, of a business already in existence. Moreover, it should not be set up by the transfer of old plant and machinery.
- b) The value of the transferred assets does not exceed 20 per cent of the total value of the machinery or plant used in the business.
- c) Second-hand imported machinery is to be treated as new if such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India and if such machinery or plant is imported into India from any country outside India.
- d) No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

2.6.4-2 Conditions for availing deduction under Section-35AD

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

Expenditure incurred prior to the commencement of operation, wholly and exclusively, for the purpose of any specified business, shall be allowed as deduction during the previous year in which the assessee commences the operation of his specified business, if the amount is capitalized in the books of account of the assessee on the date of commencement of operation.

Any asset in respect of which a deduction is claimed and allowed under section 35AD,

shall be used only for the specified business for a period of 8 years beginning with the previous year in which such asset is acquired or constructed.

Further, if such asset is used for any purpose other than the specified business during the period of 8 years, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head “Profits and gains of business or profession” of the previous year in which the asset is so used.

If deduction is claimed and allowed under section 35AD, the assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA under sections 80HH to 80RRB or under section 10AA for the same or any other assessment year.

Any sum received or receivable on account of any capital asset, in respect of which deduction has been allowed under section 35AD, being demolished, destroyed, discarded or transferred shall be treated as income of the assessee and chargeable to income-tax under the head “Profits and gains of business or profession”.

Any loss computed in respect of the specified business shall not be set off except against profits and gains, if any, of any other specified business. To the extent the loss is unabsorbed, the same will be carried forward for set off against profits and gains from any specified business in the following assessment year and so on (no timelimit for carry forward of such loss).

The books of account of the assessee should be audited.

Example: PQ Ltd. Commenced its three-star hotel business in Hyderabad on 1.4.2019. PQ Ltd. incurred capital expenditure of Rs. 50 lakh during the period from 1.12.2018 to 31.3.2019 exclusively for the purpose of hotel business and capitalised the same in its books of accounts as on 1.4.2019. Further, the company incurred Rs. 2 crore during the P.Y. 2019-20 of which Rs. 1.5 crore was for acquisition of land to be used solely for the purpose of hotel business. The profit of the new hotel business in the P.Y. 2019-20 amounted to Rs. 38 lakh. Compute the income under the head ‘Profits and gains from business or profession’ of PQ Ltd. for the previous year 2019-20 assuming that the company has fulfilled all the conditions specified under section 35AD.

**Solution: Computation of taxable income from business/profession of PQ Ltd.
For the A.Y. 2020-21 (P.Y. 2019-20)**

Particulars	Amount (Rs.)
Profits from specified business of new hotel in Hyderabad (before allowing deduction under section 35AD)	38 lakh
Less: Deduction available under section 35AD:	
Capital expenditure incurred during the P.Y. 2019-20 (excluding the expenditure incurred on acquisition of land), i.e. Rs. 200 lakh - Rs.150 lakh	50 lakh
Capital expenditure incurred prior to 1.4.2019, i.e. prior to commencement of new hotel business	<u>50 lakh</u>
Total deduction available under section 35AD for the A.Y. 2020-21	<u>100 lakh</u>
Loss from specified new hotel business in Hyderabad	(62 lakh)

2.6.5 Payment to Associations and Institutions carrying out Rural Development Programmes- Section 35CCA

Where an assessee incurs any expenditure by way of payment of any sum—

- a) To an association or institution, which has as its object the undertaking of any programme of rural development, to be used for carrying out any programme of rural development approved by the prescribed authority 84; or
- b) To an association or institution, which has as its object the training of persons for implementing programmes of rural development; or
- c) To a rural development fund set up and notified by the Central Government in this behalf; or
- d) To the National Urban Poverty Eradication Fund set up and notified by the Central Government in this behalf,

the assessee shall, subject to the provisions of sub-section (2), be allowed a deduction of the amount of such expenditure incurred during the previous year.

The deduction under clause (a) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution referred to in the said clause unless the assessee furnishes a certificate from such association or institution to the effect that-

- a) The programme of rural development had been approved by the prescribed authority before the 1st day of March, 1983; and
- b) Where such payment is made after the 28th day of February, 1983, such programme involves work by way of construction of any building or other structure (whether for use as a dispensary, school, training or welfare centre, workshop or for any other purpose) or the laying of any road or the construction or boring of a well or tube-well or the installation of any plant or machinery, and such work has commenced before the 1st day of March, 1983.

The deduction under clause (b) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution unless the assessee furnishes a certificate from such association or institution to the effect that—

- a) The prescribed authority had approved the association or institution before the 1st day of March, 1983; and
- b) The training of persons for implementing any programme of rural development had been started by the association or institution before the 1st day of March, 1983.

However, the deduction, to which the assessee is entitled under section 35CCA in respect of any sum paid to an association or institution for carrying out the programme of rural development referred to in sub-section (1), shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to such programme of rural development, or as the case may be, to the association or institution has been withdrawn.

Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under section 35C or section 35CC or section 80G or any other provision of this Act for the same or any other assessment year.

2.6.6 Expenditure on Agricultural Extension Project- Section 35CCC

Where an assessee incurs any expenditure on agricultural extension project notified by the Board in this behalf in accordance with the guidelines as may be prescribed, then, there shall be allowed a deduction of a sum equal to one and one-half times of such expenditure. Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in this section, deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

2.6.7 Expenditure on Skill Development Project- 35CCD

Where a company incurs any expenditure (not being expenditure in the nature of cost of any land or building) on any skill development project notified by the Board in this behalf in accordance with the guidelines as may be prescribed, then, there shall be allowed a deduction of a sum equal to one and one-half times of such expenditure.

Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

2.6.8 Preliminary Expenditure incurred by India Companies and other resident non-corporate assessee- Section 35D

The following categories of assessee are eligible to claim deduction under section 35D—

- a) An Indian Company;
- b) A person, other than the company, resident in India.

Lower of the following amount will be available as the total amount of deduction under section 35D —

- a) Aggregate amount of actual expenditure incurred by the assessee;
- b) 5% of the cost of the project- Cost of the project means the actual cost of fixed assets (i.e., land, building, leaseholds, machinery, plant, fittings, furniture and railway sidings) as on the last day of the previous year of commencement of business or extension of undertaking or setting up of the new unit;
- c) 5% of the capital employed- Capital employed means the total amount of issued share capital; debentures and long-term borrowings as on the last day of the previous year of commencement of business or extension of undertaking or setting up of the new unit.

The total amount of deduction, as calculated above, will be available as a deduction in five equal instalments. The instalments will begin from the previous year in which business is commenced or extension of the undertaking is completed or new unit commences production / operation.

This benefit of amortization under section 35D, however, is continued to be availed where the undertaking of an Indian company which is entitled to amortization is transferred to another Indian company in a scheme of amalgamation or demerger within the 5-year period of amortization. In that event, the deduction in respect of previous year in which the amalgamation or demerger takes place and the following previous year within the 5-year

period, will be allowed to the amalgamated company or resulting company and not the amalgamating company or demerged company.

List of preliminary expenditure allowable as deduction under section 35D

Amortization of preliminary expenditure is available towards eligible expenditure for deduction under section 35D includes-

- a) Expenditure for preparation of the feasibility report and project report.
- b) Expenses incurred for conducting market or other surveys which is necessary for the business of the assessee.
- c) Expenditure for acquiring engineering services relating to the assessee's business.
- d) Legal expenses for drafting of Memorandum of Association and Article of Association of the company.
- e) Expenditure for the printing of Memorandum and Article of Association of the company.
- f) Expenses for drafting, printing, typing and advertisement of the prospectus of the company.
- g) Registration fees paid for registering the company under the Companies Act, 1956.
- h) Expenditure towards the issue of shares/ debenture for public subscription.
- i) Any other prescribed expenditure which is not deductible under any other provisions of the Act.

However, for claiming deduction under section 35D, the assessee (other than a company or co-operative society) should-

- a) Get the accounts audited, for the year/ years during which the preliminary expenditure is incurred, by the practising-chartered accountant, and
- b) Furnish audit report in Form No. 3AE in the first year of claiming the deduction.
- c) Deduction under section 35D will apply to the amalgamated/ demerged company.
- d) The expenditure claimed/ allowed as a deduction under section 35D will not qualify for any other deduction under other provisions of the Act.

2.7 Taxation of Business Income of Companies

For the purposes of taxation of business income of companies, companies are broadly classified as follows:

2.7.1 Indian Company [Section 2 (26)]

Indian Company means a company formed and registered under the companies Act, 1956 and includes-

- a) A company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir and the Union territories specified in (d) below:

- a) A corporation established by or under a Central, State or Provincial Act;
- b) Any institution association or body which is declared by the Board to be a company under section 2(17);
- c) A company formed and registered under any law for the time being in force in the State of Jammu and Kashmir;
- d) A company formed and registered under any law for the time being in force in the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry.

In the aforesaid cases, a company, corporation, institution, association or body will be treated as Indian company if its registered office is situated in India.

2.7.2 Domestic Company [Section 2 (22A)]

Domestic company means an Indian company or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India in accordance with section 194. Domestic companies are further classified into two groups-

- Domestic companies in which public are substantially interested, i.e., Public Company;
- Domestic companies in which public are not substantially interested, i.e., Private Company.

2.7.3 Foreign Company [Section 2 (23A)]

A foreign company means a company which is not a domestic company i.e. not registered under the Indian Companies Act and whose control and management is located outside India and which has not made prescribed arrangement for declaration and payment of dividend within India.

2.7.4 Venture Capital Company

A venture capital company is one which is engaged in providing finance to venture capital undertakings mainly by way of acquiring equity shares of such undertakings, or by advancing loans to such undertakings and is approved by the Government in this behalf.

2.7.5 Computation of Taxable Income and Tax Liability of Companies

The salient features of taxation of companies are discussed below:

- A company is a corporate body that has a separate and distinct legal entity from its shareholders.
- Domestic as well as foreign companies are liable to pay corporate tax under the Income Tax Act irrespective of their quantum of income.
- The taxable income of companies is computed in the same manner as used for other non-corporate assesses.
- New corporate tax rates have become applicable from 1st April 2019 onwards for certain types of corporations. In case of domestic companies, the rate of income-tax shall be 25% of the total income, if the total turnover or gross receipts of the previous year 2019-20 do not exceed four hundred crore rupees and in all other cases the rate of income-tax shall be 30% of the total income.
- However, domestic companies have an option for reduced rate of taxation under section 115BAA, section 115BAB and section 115BA of the Act on fulfilment of certain conditions mentioned therein. The tax rate is 15% in section 115BAB, 22% in section 115BAA and 25% in section 115BA. Surcharge is applicable at a flat rate of 10% in these cases irrespective of the amount of total income. The domestic company who has opted for special taxation regime under section 115BAA, 115BAB and section 115BA is exempted from the provisions of MAT.
- Surcharge at the rate of 7% shall be levied in case of a domestic company (except those opting for taxation under section 115BAA, section 115BAB and section 115BA of the Act), if the total income of the domestic company exceeds one crore rupees but does not exceed ten crore rupees. Surcharge at the rate of 12% shall be levied, if the total income of the domestic company (except those opting for taxation under section 115BAA, section 115BAB and section 115BA of the Act) exceeds Rs. 10 crore.
- However, non-resident or foreign companies will be liable to tax @ 40% ;of their total income plus surcharge @2% of tax where total income exceeds Rs. 1 crore/ @ 5% of tax if total income exceeds Rs. 10 crore plus SAHE @ 4%.
- From the gross total income of corporate bodies so aggregated under different heads other than income from salary [since a company cannot have salary income], the deductions u/s 80 G, 80 GGA, 80 GGC, 80 IA, 80 IAB, 80 IB, 80 IC, 80 ID, 80 IE, 80 JJA and 80 JJAA only are allowable under Chapter VI-A of the Income Tax Act.

2.8 Taxation of Business Income of a Partnership Firm/LLP

The following are the salient features of taxation of income of a partnership firm/LLP:

- The firm/LLP will be taxed as a separate entity, with no distinction between registered and unregistered firms.
- In computing the total income of the firm/LLP, any salary bonus, commission or remuneration, to a partner, shall be deductible subject to certain restrictions.
- While computing the total income of a firm/LLP, the profit or loss as shown by Profit & Loss Account of the firm/LLP shall be adjusted in the same manner as is done in the computation of income under the head Profit and Gains of Business or Profession.
- The share of income of a partner in the income of the firm will not be included in the hands of the partner as it is fully exempt from tax under section 10(2A).
- Where a firm pays interest to any partner, the firm can claim deduction of such interest at a maximum rate of 12% p.a. according to the partnership deed. Interest paid in excess of the above will be disallowed in the hands of the firm.
- Where a firm pays any salary, bonus, commission or remuneration, by whatever name called, to any partner, it will be allowed as deduction in the hands of the firm subject to following conditions :
 - i) The salary is paid to a working partner under section 40(b)(i). For this purpose, 'working partner' means an individual partner who is actively engaged in conducting the business/ profession of the firm. Sleeping partners or financing partners cannot be allowed any remuneration etc. by the firm.
 - ii) The payment is authorized by, and is in accordance with, the terms of the partnership deed.
 - iii) The payment relates to a period which falls after to the date of the partnership deed. In other. words, the deduction for salary to partners cannot be claimed with retrospective date.
 - iv) The amount of remuneration, bonus, commission etc. to all the partners during a previous year should not exceed the limit specified below:

Book Profit	Quantum of Deduction
a) On first Rs. 3,00,000 of book profit or in the case of loss	Rs. 1,50,000 or 90% of book profit, whichever is higher
b) On balance of book profit	60% of book profit

- Income tax is levied on Partnership Firms and LLPs at a flat rate of 30% plus surcharge @ 12% if the total income exceeds Rs. 1 crore plus SAHE @ 4%.
- From the Gross Total Income of the firm/LLP, the deductions u/s 80 G, 80 GGA, 80 GGC, 80 IA, 80 IAB, 80 IB, 80 IC, 80 ID, 80 IE, 80 JJA and 80 JJAA are applicable.

2.9 Inadmissible Deductions - Section 40

While computing income from business or profession, certain expenses are expressly disallowed under section 40 of the Income Tax Act or in other words there are some inadmissible expenses by virtue of section 40 in computing taxable income from business or profession as follows:

2.9.1 Payment of any interest, royalty, fees etc.

a) Section 40(a)(i):

Where any interest, royalty, fees for technical services or other taxable sums other than salary, which is payable outside India or in India to a non-resident or to a foreign company by an assessee, on which tax has not been deducted at source in the relevant previous year or, after deduction, the same is not deposited into the Government treasury on or before due date for filing of return under section 139(1), 100 % of such sum shall be disallowed. However, where in respect of any such sum tax is deducted in subsequent year or paid and deposited after the due date for filing the return of income under section 139(1), such sum shall be deductible in the previous year in which tax is so deducted or deposited, as the case may be.

Example:

B Ltd. paid technical fees of Rs. 50,000 to a foreign national in the P.Y. 2017-18 without deducting tax at source or after deduction of tax, the same has not been deposited to the Government on or before the due date of filing return under section 139(1). However, in the previous year 2018-19, B Ltd. deducted tax at source on technical fees and deposited the same in the same previous year into the government exchequer. Show the tax treatment of the above for the relevant previous years in the hands of B Ltd.

Solution:

Since B Ltd. failed to deduct tax at source for paying technical fees to a foreign national or after deduction of tax, the same has not been deposited to the Government on or before the due date of filing return under section 139(1), 100 % of such sum of technical fees i.e. Rs. 50,000 shall not be allowed as deduction in computing income from business of B Ltd. for the assessment year 2018-19 (previous year 2017-18).

For the previous year 2018-19, since B Ltd. duly deducted tax at source and deposited the same with the Government, the sum of Rs. 50,000 will be allowed as deduction in computing income from business of B Ltd. for the assessment year 2019-20 (previous year 2018-19).

b) Section 40(a)(ia):

Where any salary, interest, royalty, fees for technical services or other taxable sums, which is payable in India to a resident by any assessee, on which tax has not been deducted at source in the relevant previous year or, after deduction, the same is not deposited into the Government treasury on or before due date for filing of return under section 139(1), 30 % of such sum shall be disallowed. However, where in respect of any such sum tax is deducted in subsequent year or paid and deposited after the due date for filing the return of income under section 139(1), such sum shall be deductible in the previous year in which tax is so deducted or deposited, as the case may be.

However, by virtue of first proviso to section 201(1), the payer of such sum to resident without tax deducted at source or after deduction tax has not been deposited with the Government, shall not be deemed to be an assessee-in-default in respect of such tax if the recipient resident :

- a) has furnished his return of income under section 139;
- b) has taken into account such sum for computing income in such return of income;
- c) has paid the tax due on the income declared by him in such return of income, and
- d) furnishes a certificate to this effect from an accountant in such form as may be prescribed.

If the above conditions are satisfied, then for the purposes of section 40(a)(ia) the payer of such sum shall be deemed to have deducted tax at source and deposited the tax on the date of furnishing the return by the resident recipient.

Example:

On 15.6.2018, A Co. Ltd. paid Rs. 80,000 as commission to D Co. Ltd. (an Indian company) but failed to deduct tax at source or after deducting tax at source failed to deposit the same with the Government on or before the due date of filing return under section 139(1).

However, A Co. Ltd. deducted tax at source on commission paid to D Co. Ltd. and deposited the same with the Government in the previous year 2019-20 duly.

Show tax treatment of the above in the hands of A Co. Ltd. for the relevant previous years.

Solution:

Previous year 2018-19: Since A Co. Ltd. failed to deduct tax at source for paying commission to an Indian company or after deduction of tax, the same has not been deposited to the Government on or before the due date of filing return under section 139(1), 30 % of such sum of commission i.e., Rs. 80,000 x 30% = Rs. 24,000 shall not be allowed as deduction in computing income from business of A Co. Ltd. for the assessment year 2019-20 (previous year 2018-19).

Previous year 2019-20: Since A Co. Ltd. deducted tax at source and also deposited the same with the Government in the previous year 2019-20 on or before the due date of filing return under section 139(1), the sum of Rs. 24,000 being 30% of the commission of Rs. 80,000 will be allowed as deduction in computing income from business of A Co. Ltd. for the assessment year 2020-21 (previous year 2019-20).

Example:

Suppose in the above case, though A Co. Ltd. failed to deduct tax at source or after deduction failed to deposit with the Government in the previous year 2018-19, D Co. Ltd. i.e. the recipient of commission income duly paid its advance tax on its total income for the previous year 2018-19 including commission income from A. Co. Ltd. and also submitted its return of income for the previous year 2018-19 duly under section 139(1). Also, A Co. Ltd. has received a certificate in prescribed form to this effect from a chartered accountant.

Show the tax treatment for subsequent payment of tax by recipient of commission (D Co.Ltd.).

Solution:

After payment of tax by D Co. Ltd., the recipient of commission, A Co. Ltd. cannot be treated as an assessee-in-default in terms of first proviso to section 201(1), as the following conditions are satisfied:

- a) D Co. Ltd, the recipient of commission from A Co. Ltd. has submitted its return of income duly under section 139(1);
- b) D Co. Ltd. has taken into account the commission income in its return of income;
- c) D Co. Ltd. has paid tax duly on its total income including commission income;
- d) A Co. Ltd. has a certificate in prescribed form to this effect from a chartered accountant.

It is, therefore, assumed that A Co. Ltd. has deducted and deposited tax duly as per section 40(a)(ia) and accordingly the sum of Rs. 24,000 being 30% of the commission of Rs. 80,000 will be allowed as deduction in computing income from business of A Co. Ltd. for the assessment year 2019-20 (previous year 2018-19).

c) Salary Payable outside India without Tax Deduction [Section 40(a)(iii)]

Section 40(a)(iii) is applicable if salary is paid outside India or paid to a non-resident and tax has not been paid to the Government nor deducted at source under the Income-tax Act.

2.9.2 Default pertaining to Non-Deduction / Non-Deposit of Equalisation Levy [Section 40(a)(ib)]

Any consideration paid or payable (to a non-resident for a specified service on which equalisation levy is applicable) will be disallowed in the following cases:

- a) Equalisation levy is deductible and such levy has not been deducted.
- b) Equalisation levy is deductible (and it is so deducted) but it is not deposited [on or before the due date of submission of return of income under section 139(1)].

If, however, equalisation levy is deducted/deposited in a subsequent year, the aforesaid consideration shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid.

2.9.3 Disallowance of royalty, licence fees, etc., in case of State Government Undertakings [Section 40(a)(iib)]

The following shall not be allowed as deduction–

- a) Any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge (by whatever name called), which is levied exclusively on a State Government undertaking by the State Government.
- b) Any amount which is appropriated (directly or indirectly) from a State Government Undertaking by the State Government.

2.9.4 Tax on Non-Monetary Perquisite paid by the Employer [Section 40(a)(v)] -

The provisions of section 40(a)(v) are given below –

- a) The employer provides non-monetary perquisites to employees.
- b) Tax on non-monetary perquisites is paid by the employer.

- c) The tax so paid by the employer is not taxable in the hands of employees by virtue of section 10(10CC).
- d) While calculating income of the employer, the tax paid by the employer on non-monetary perquisites is not deductible under section 40(a)(v).

2.9.5 Payments to partners of a firm or LLP- Section 40(b)

In the case of any firm assessable as such or a limited liability partnership (LLP) the following amounts shall not be deducted in computing the income from business of any firm/LLP:

- a) Any salary, bonus, commission, remuneration by whatever name called, to any partner who is not a working partner. (In the following discussion, the term ‘remuneration’ is applied to denote payments in the nature of salary, bonus, commission);
- b) Any remuneration paid to the working partner or interest to any partner which is not authorised by or which is inconsistent with the terms of the partnership deed;
- c) Any interest payment authorised by the partnership deed falling after the date of such deed to the extent such interest exceeds 12% simple interest p.a.
- d) Any remuneration paid to a partner, authorised by a partnership deed and falling after the date of the deed in excess of the following limits:

On the first Rs 3 lakh of book profit or in case of loss, the limit would be the higher of Rs 1,50,000 or 90% of book profit and on the balance of book profit, the limit would be 60%.

Example:

A firm has paid Rs. 8,00,000 as remuneration to its partners for the P.Y.2017-18, in accordance with its partnership deed, and it has a book profit of Rs. 10 lakh. Determine the remuneration allowable as deduction under section 40(b).

Solution:

The allowable remuneration calculated as per the limits specified in section 40(b) will be as follows:

On first Rs. 3 lakh of book profit [Rs.3,00,000 × 90%]	Rs. 2,70,000
On balance Rs. 7 lakh of book profit [Rs. 7,00,000 × 60%]	Rs. <u>4,20,000</u>
Remuneration allowable as deduction under section 40(b)	<u>Rs. 6,90,000</u>

Thus, the excess amount of remuneration of Rs. 1,10,000 (i.e., Rs. 8,00,000 – Rs. 6,90,000) would be disallowed as per section 40(b).

2.10 Expenses or Payments not Deductible in Certain Circumstances- Section 40A

While computing income under the head 'Profits and gains from Business or Profession', certain expenses or payments are liable to be disallowed under section 40A of the Act as discussed below:

2.10.1 Amounts not deductible in respect of Payment to Relatives [Section 40A(2)]

Amount paid to relatives or associates will be disallowed under section 40A(2), if the following conditions are satisfied:

- a) the payment is in respect of any expenditure;
- b) the payment has been made or is to be made to a specified person in respect of such expenditure;
- c) the payment for the expenditure is considered excessive or unreasonable having regard to:
 - i) The fair market value of the goods, services or facilities; or
 - ii) The legitimate business needs of the assessee's business or profession; or
 - iii) The benefit derived by or accruing to the assessee from the payment.

If the above conditions are fulfilled, the Assessing Officer can disallow the expenditure to the extent it is considered excessive or unreasonable by the above objective standards or otherwise.

For the purposes of section 40A(2), the following cases are to be considered –

- a) Payment made by an individual to his or her relative including husband, wife, brother or sister or any lineal ascendant or descendant of that individual.
- b) Payment made by a company to a director of the company or any relative of the director.
- c) Payment made by a firm/AOP/HUF to a partner/member or a relative of partner/member.
- d) Payment made to an individual who has a substantial interest in the business of the payer or a relative of such individual.
- e) Payment made to a company who has a substantial interest in the business of the payer, any director of such company or relative of such director.
- f) Payment made to a firm/AOP/HUF who has a substantial interest in the business of the payer or partner/ member of such person or relative of partner/member.

Example:

Z Ltd. made a payment of Rs. 17,000 to a relative of its director for a piece of work done. However, the same work is available to be completed and done in the open market for Rs. 11,000 only. Show the tax treatment of the above.

Solution:

Since the work was done by Z Ltd. by the relative of its director in excess of the reasonable cost in the open market, the excess payment of Rs. 6,000 (17000-11,000) shall be disallowed by virtue of section 40A(2).

2.10.2 Payment exceeding Rs. 10,000 (Rs. 35,000 if an assessee makes payment for Plying, Hiring or Leasing Goods Carriages) otherwise than through prescribed modes [Section 40A(3)]

According to section 40A(3) if an assessee incurs any expenditure in respect of which payment or agreement payments made in a day otherwise than by an account payee cheque or bank draft or use of electronic system through bank account or any other prescribed modes like use of credit card, debit card, net banking, RTGS, NEFT etc. exceeds Rs. 10,000 (Rs. 35,000 if an assessee makes payment for Plying, Hiring or Leasing Goods Carriages), such expenditure or payment shall not be allowed as deduction.

Exceptions to the above rule provided under Section 40A(3)

- a) Payment made to a bank (including private sector banks, co-operative bank, credit societies), LIC, etc.
- b) Payment made to Government.
- c) Payment through banking system.
- d) Payment made by book adjustment by an assessee in the account of the payee against money due to the assessee for any goods supplied or services rendered by him to the payee.
- e) Payment made to a cultivator, grower or producer in respect of the purchase of agricultural or forest produce or product of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming or fish or fish products or products of horticulture or apiculture (even if these products have been subjected to some processing provided the processing has been done by the cultivator, grower or the producer of the product).
- f) Payment made to a producer in respect of the purchase of the products manufactured or processed without the aid of power in a cottage industry.

- g) Payment made to a person who ordinarily resides or carries on business in a village not served by any bank.
- h) Payment of terminal benefits, such as gratuity, retrenchment compensation, etc., not exceeding Rs. 50,000.
- i) Payment made by an assessee by way of salary to his employee after deducting tax and when such employee is temporarily posted for a continuous period of 15 days or more in a place other than his normal place of duty or on a ship and does not maintain any account in any bank at such place or ship.
- j) Payment required to be made on a day on which the banks were closed either on account of holiday or strike.
- k) Payment made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person.
- l) Payment made by an authorised dealer or a money changer against purchase of foreign currency or traveller's cheques in the normal course of his business.

Example:

ABC Ltd. purchased goods on credit from PQ Ltd. on June 13, 2019 for Rs. 63,000 for which ABC Ltd. made the following payments to PQ Ltd.:

- i) Rs. 5,000 in cash on July 5, 2019;
- ii) Rs. 22,000 by a bearer cheque on July 31, 2019;
- iii) Rs. 36,000 by an account payee cheque on August 2, 2019.

Solution:

- i) Nothing will be disallowed for of the payment of Rs. 5,000 in cash as the payment does not exceed Rs. 10,000.
- ii) 100% of Rs. 22,000 will be disallowed under section 40A(3) as it was paid by bearer cheque.
- iii) Nothing will be disallowed for the payment of Rs. 36,000 as it was paid by account payee cheque.

Example:

P Ltd. purchased goods on credit from a relative of a director on February 12, 2019 for Rs. 60,000 (market value: Rs. 53,000). The amount was paid in cash on March 18, 2019 by P Ltd. Show the tax treatment of the above.

Solution:

Out of the payment of Rs. 60,000, Rs. 7,000 (being the excess payment to a relative, i.e. 60,000 - 53,000) shall be disallowed under section 40A(2). As the payment was made in cash and the amount exceeds Rs. 10,000, 100% of the balance payment (i.e., Rs. 53,000) shall be disallowed under section 40A(3).

2.10.3 Disallowance in respect of Provision for Unapproved Gratuity Fund [Section 40A(7)]

In terms of section 40A(7), it is provided that no deduction would be allowable to any taxpayer carrying on any business or profession on account of provision for gratuity made towards payment of gratuity to the employees on their retirement or on termination of employment, as the case may be, unless the contribution is made to an approved gratuity fund for the exclusive benefits of employees under an irrevocable trust. Thus, deduction under section 40A(7) shall be allowed only when-

- a) the amount of gratuity has actually become payable during the previous year to the employees' (provided deduction has not been claimed under clause (b) below); or
- b) when a provision has been made for payment of a sum by way of any contribution towards an approved gratuity fund.

Therefore, no deduction shall be allowed in respect of any provision made for the payment of gratuity to the employees, even though the assessee may be following the mercantile system of accounting, unless it is a provision for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund.

In other words, any provision for unapproved gratuity fund (for meeting future liability) is not deductible.

Example:

Mr. A retired from the service of D Ltd. on June 30, 2019. The company paid gratuity of Rs. 1,70,000, according to the provisions of the Payment of Gratuity Act, 1972. D Ltd. does not maintain any provision for gratuity account. Show the tax treatment of the above.

Solution:

Where gratuity is actually paid during the previous year or where gratuity has become payable during the previous year, it is deductible if no deduction has been claimed on the basis of provisions earlier. Consequently, Rs. 1,70,000 is allowed as deduction for the assessment year 2020-21 in the hands of D Ltd.

2.10.4 Amount not deductible in respect of contributions to Non-Statutory Funds [Section 40A(9)]

Any sum paid by the assessee as an employer by way of contribution towards Recognised Provident Fund, or Approved Superannuation Fund or an Approved Gratuity Fund, is deductible to the extent it is required by any law.

If the following conditions are satisfied, then contribution or payment is not deductible by section 40A(9) :

- a) The contribution/payment is made by an assessee as an employer.
- b) It is paid towards setting up (or formation of) any trust, company, association of persons, body of individuals, society or it is paid by way of contribution to any fund.
- c) The contribution or payment is not required by any law.

2.10.5 Certain Deductions to be Allowed only on Actual Payment Basis [Section 43B]

Section 43B is applicable only if the taxpayer maintains books of account on the basis of mercantile system of accounting. The provisions of section 43B are given below:

The following expenses (which are otherwise deductible under the other provisions of the Income-tax Act) are deductible on payment basis:

- a) any sum payable by way of tax, duty, cess or fee (by whatever name called under any law for the time being in force);
- b) any sum payable by an employer by way of contribution to provident fund or superannuation fund or any other fund for the welfare of employees;
- c) any sum payable as bonus or commission to employees for service rendered;
- d) any sum payable as interest on any loan or borrowing from a public financial institution (i.e., ICICI, IFCI, IDBI, LIC and UTI) or a State financial corporation or a State industrial investment corporation;
- e) interest on any loan or advance taken from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank;
- f) any sum payable by an employer in lieu of leave at the credit of his employee; and
- g) any sum payable to the Indian Railways for the use of railway assets.

The above expenses are deductible in the year in which payment is actually made. However, if the aforesaid payment is actually made on or before the due date of submission of return of income, deduction can be claimed under section 43B on accrual basis.

2.11 Deemed Profits - Section 41

By virtue of the provisions of section 41 of the Income Tax Act, the following receipts are chargeable to tax as business income notwithstanding that the business or profession to which the receipts relate ceases to exist in the year in which these are received:

- a) Remission or Cessation of Trading Liability [Section 41(1)]
- b) Balancing Charge on Assets of an undertaking engaged in Generation or Generation and Distribution of Power [Section 41(2)]
- c) Profit on Sale of Capital Assets used for Scientific Research [Section 41(3)]
- d) Recovery out of Bad Debts Allowed as a Deduction [Section 41(4)]
- e) Amount withdrawn from Special Reserve Created and Maintained by certain Financial Institutions [Section 41(4A)]
- f) Adjustment of Loss [Sec. 41(5)]
- g) Recovery after Discontinuance of Business or Profession [Sec. 176(3A), (4)]

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

2.11.1 Remission or Cessation of Trading Liability[Section 41(1)]

- i) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by an assessee and subsequently, during any previous year, the assessee concerned i.e. the assessee under whose hand the allowance or deduction was made earlier has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or
- ii) Where the 'successor in business' of the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the assessee or some benefit in respect of the trading liability by way of remission or cessation thereof, the amount obtained by the successor in business or

the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to tax as the income of that previous year.

For the purposes of this section, “successor in business” means-

- a) where there has been an amalgamation of a company with another company, the amalgamated company;
- b) where the first-mentioned person i.e. the assessee concerned is succeeded by any other person in that business or profession, the other person;
- c) where a firm carrying on a business or profession is succeeded by another firm, the other firm;
- d) where there has been a demerger, the resulting company.

Example:

ABC & Co. purchased on credit goods worth Rs. 85,000 from Fancy Traders in the year 2018-19. However, ABC & Co. did not make payment to Fancy Traders owing to some dispute as to the quality of goods supplied by Fancy Traders. ABC & Co. debited the amount of Rs. 85,000 in its Profit & Loss Account for the year ended 31.3.2019 and the same was allowed as business expenses. Later, on 15.9.2020 Fancy Traders made a settlement with ABC & Co. by receiving a cash of Rs. 60,000 as full and final recovery of the dues. Show the tax treatment of the above

Solution:

Here, the remission of Rs. 25,000 (Rs. 85,000-Rs. 60,000) in the liability of ABC & Co. shall be treated as deemed income from business of ABC & Co. for the previous year 2020-21.

2.11.2 Balancing Charge on Assets of an undertaking engaged in Generation or Generation and Distribution of Power [Section 41(2)]

Where any building, machinery, plant or furniture which is owned by the assessee in respect of which depreciation is claimed under section 32(1)(i) and which was or has been used for the purposes of business of generation or generation and distribution of power is sold, discarded, demolished or destroyed and the ‘Moneys Payable’ in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the ‘written down value’, then, so much of the excess as does not exceed the difference between the ‘actual cost’ and the ‘written down value’ shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture became due.

Where the moneys payable in respect of the building, machinery, plant or furniture referred to in this sub-section become due in a previous year in which the business for the purpose of which the building, machinery, plant or furniture was being used is no longer in existence, the provision of this sub-section shall apply as if the business is in existence in that previous year.

2.11.3 Profit on Sale of Capital Assets used for Scientific Research [Section 41(3)]

Where an asset representing expenditure of a capital nature for scientific research purposes is sold, without having been used for other purposes, and the proceeds of the sale together with the total amount of the deductions made under section 35 exceed the amount of the capital expenditure, the excess or the amount of the deductions so made, whichever is the less, shall be chargeable to income-tax as income of the business or profession of the previous year in which the sale took place.

However, where the moneys payable in respect of any asset referred to in this sub-section become due in a previous year in which the business for which capital expenditure for scientific research was made is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

Example:

X Co. Ltd. purchased a machine costing Rs. 1,40,000 in the P.Y. 2017-18 to be used for scientific research purposes and the same amount was allowed as deduction under 35 in the P.Y. 2017-18. Later, X Co. Ltd. sold the machinery for Rs. 54,000 on 23.2.2020. Show the tax treatment of the above.

Solution:

Here, the sale proceeds of Rs. 54,000 shall be treated as deemed business income of X Co. Ltd. for the P.Y. 2019-20.

2.11.4 Recovery of Bad Debts allowed as a deduction [Section 41(4)]

Where an amount has been allowed as deduction in respect of a bad debt or part of debt under section 36(1)(vii), and thereafter an amount is subsequently recovered on any such debt or part which is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed income from business or profession of the previous year in which it is recovered. The applicability of deemed income for such recovery shall not be affected even if the business or profession in respect of which the deduction has been allowed is in existence in that year or not.

Example:

Z Ltd. sold goods worth Rs. 60,000 on credit to a customer in the P.Y. 2016-17. The customer did not pay the amount to Z Ltd. and accordingly Z Ltd. write off Rs. 60,000 as bad debt in its Profit & Loss Account for the year ended 31.3.2017. However, the Assessing Officer while assessing the taxable income of Z Ltd. for the A.Y. 2017-18 allowed Rs. 35,000 only as bad debt and disallowed the rest amount of Rs. 25,000 as recoverable in future. Later, in the P.Y. 2019-20, Z Ltd. finally recovered Rs. 42,000 from the defaulting customer. Show the tax treatment of the above.

Solution:

Here, the excess amount of bad debt recovery of Rs. 17,000 [$42,000 - (60,000 - 35,000)$] being the excess of debt recovered over the debt and the amount allowed as bad debt shall be treated as deemed income from business of Z Ltd. by virtue of section 41(4) for the P.Y. 2019-20 in which such recovery was made.

2.11.5 Amount withdrawn from Special Reserve created and maintained by certain Financial Institutions [Section 41(4A)]

Where a deduction has been allowed in respect of any special reserve created and maintained under clause (viii) of sub-section (1) of section 36 by certain financial institution, banking company, co-operative bank and a housing finance company etc., any amount subsequently withdrawn from such special reserve shall be deemed to be the profits and gains of business or profession and accordingly be chargeable to tax as the income of the previous year in which such amount is withdrawn even if the business is not in existence in that previous year.

2.11.6 Adjustment of Loss of a business [Section 41(5)]

The Income Tax Act does not allow a business loss to be carried forward for set off after 8 years. However, there is an exception provided by section 41(5). This exception is applicable if the following conditions are satisfied:

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

The unabsorbed loss pertaining to the year in which business/profession was discontinued is permitted to be set off against notional business income under section 41(1), (3), (4) or (4A) even after 8 years. It can be set off even if the return of loss under section 139(3) is not submitted in time.

2.11.7 Recovery after Discontinuance of Business or Profession [Section 176(3A), (4)]

There may be income received after the discontinuance of the business or profession which will also be treated as deemed income of the previous year in which it is received. Where any business or profession is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the person who carried on the business or profession had such sum been received before such discontinuance.

2.12 Deductions from Gross Total Income

Under Chapter VIA of the Income Tax Act, several deductions are available to different assesseees from gross total income. However, the following deductions are available in respect of gross total income under the head ‘Income from Business or Profession’:

2.12.1 Deduction in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development- Section 80-IA

Deduction under this section is available in respect of the following businesses;

- a) provision of infrastructural facility;
- b) telecommunication services;
- c) industrial park or special economic zones;
- d) power generation, transmission and distribution;
- e) undertaking set up for reconstruction of a power unit; and
- f) a cross-country natural gas distribution network

2.12.1-1 Provision of Infrastructural Facility:

The infrastructure facilities refer to all toll roads, bridges or rail systems and housing and other activities that are related to highway projects. Water projects like water treatment system, irrigation project, sanitation, and sewerage system or solid waste management system and travelling means including a port, airport, inland waterway or inland port or navigational channel in the sea can also avail this deduction.

The deduction for the infrastructure facilities is applicable to a company that is owned by an Indian company or a company that is owned by an authority, board, corporation or institution that comes under the Central or State Act.

For a new infrastructure facility, there should be an agreement made to the Government, local authority or statutory body for developmental purposes.

100 per cent of the profit of the business of providing infrastructural facility is allowable as deduction for 10 years commencing from the initial assessment year in which the enterprise begins operating and maintaining the infrastructure facility.

2.12.1-2 Telecommunication Services:

Telecommunication services include all agencies that provide telecommunication services such as basic or cellular for radio paging, domestic satellite service or network of trunking, broadband network and internet services. The time limit for providing telecommunication services is from 1st April 1995 to 1st April 2005 to be eligible for deduction under section 80-IA subject to satisfying following conditions:

- a) It is not developed by splitting up or reconstruction of a business that has already been in use.
- b) It is not developed by the transfer of machinery or plant that has already been in use.

In case of telecommunication services, deduction under section 80-IA is available at 100 per cent of profit for the first 5 years commencing from the initial assessment year and at 30 per cent for the next 5 years thereof.

2.12.1-3 Industrial Parks or Special Economic Zones:

In case of an undertaking which develops or operates industrial parks or special economic zones has to satisfy the following conditions to get the benefit of deduction under section 80-IA:

- a) The undertaking develops and operates or maintains and operates an industrial park or from the assessment year 2002-03 a special economic zone notified for this purpose in accordance with any scheme framed and notified by the Central Government;
- b) The industrial park must start its operating during April 1, 2006 and March 31, 2011 and it should be notified by the Central Government under the Industrial Park Scheme, 2008 or the special economic zone must start operating during April 1, 1997 and March 31, 2005;
- c) From the assessment year 2006-07, the return of income should be furnished on or before the due date of submission of voluntary return of income under section 139(1).

If return is not submitted or return is submitted belatedly, deduction under this section is not available; and

- d) Deduction under section 80-IA is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

If all the aforesaid conditions are satisfied, 100 per cent of profit is deductible for 10 years commencing from the initial assessment year which means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking starts its operating and developing industrial park.

2.12.1-4 Power Generation and Distribution Undertaking:

In case of an undertaking engaged in power generation and distribution, deduction under section 80-IA is available if the following conditions are satisfied:

- a) The undertaking should be a new undertaking and it should not be formed by splitting up or the reconstruction of a business already in existence;
- b) It should not be formed by transfer of machinery or plant previously used for any purpose;
- c) The undertaking must be set up in any part of India for the generation or generation and distribution of power and it begins the operation at any time during April 1, 1993 and March 31, 2017;
- d) The return of income should be furnished on or before the due date of submission of return of income given by section 139(1), otherwise no deduction under this section will be available.
- e) Deduction for this purpose under section 80-IA is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

If all the aforesaid conditions are satisfied, 100 per cent of the profit is deductible for 10 years commencing from the initial assessment year (Initial assessment year means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking generates power or commences transmission or distribution of power).

2.12.1-5 Reconstruction of Power Unit:

Deduction for reconstruction of power unit by an industrial undertaking is available if the following conditions are satisfied:

- a) The undertaking set up for this purpose should be owned by an Indian company and set up for reconstruction or revival of a power generating plant;
- b) The undertaking so set up should be formed before November 30, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before December 31, 2005 by the Central Government;
- c) Such undertaking begins to generate or transmit or distribute power before March 31, 2011.
- d) The return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If the return is not submitted within the time frame mentioned under section 139(1), deduction under this section is not enjoyable;
- e) Deduction for this purpose under section 80-IA is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

If all the aforesaid conditions are satisfied, 100 per cent of the profits deductible for 10 years commencing from the initial assessment year (Initial assessment year means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking generates power or commences transmission or distribution of power).

2.12.1-6 Laying and Operating Cross-Country Natural Gas Distribution Network-

Deduction in respect of business of laying and operating cross-country natural gas distribution network including pipelines and storage facilities carried on by an undertaking shall be available under section 80-IA if the following conditions are satisfied:

- a) Such business is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;
- b) It has been approved by the Petroleum and Natural Gas Regulatory Board and notified by the Central Government;
- c) One-third of its total pipeline capacity is available for use on common carrier basis by any person other than the assessee or an associated person;
- d) It starts functioning on or after April 1, 2007 and fulfils such other conditions as may be prescribed;
- e) Such undertaking should not be formed by way of reconstruction or splitting up or by transfer to a new business of old plant and machinery (subject to certain exceptions);

- f) The return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If the return is not submitted within the time frame mentioned under section 139(1), deduction under this section is not enjoyable;
- g) Deduction for this purpose under section 80-IA is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

If the above conditions are satisfied, 100 per cent deduction will be available for 10 consecutive assessment years out of 15 years beginning from the year in which an undertaking lays and begins to operate the cross-country natural gas distribution network.

2.12.2 Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings- Section 80-IB

Deduction under this section is available to various undertakings as follows:

- a) business of industrial undertaking
- b) operation of ship (presently deduction is not allowed for such operation)
- c) hotels
- d) industrial research
- e) production of mineral oils
- f) developing and building housing projects
- g) integrated handling, storage and transportation of food grains units
- h) multiplex theatres
- i) convention centre
- j) operating and maintaining hospital in rural area; and
- k) hospital located in certain areas.

2.12.2-1 Business of industrial undertaking:

For claiming deduction under section 80-IB in respect of business of industrial undertaking, the following conditions are to be satisfied:

- a) The industrial undertaking should be a new undertaking and it should not be formed by transfer of machinery or plant used previously for any purpose.
- b) It should not manufacture or produce articles specified in the Eleventh Schedule.
- c) It must start manufacturing between a specified period and should employ 10 or more workers in a manufacturing process carried on with the aid of power and should employ

20 or more workers in a manufacturing process carried on without the aid of power. This condition is applicable only for industrial undertaking and not for cold storage, ship or hotel.

- d) The deduction in case of an assessee whose gross total income includes any profits and gains from any business of an industrial undertaking, shall be of the following amount:
- i) Where the industrial undertaking is located in an industrial Backward State:
- For the initial 5 assessment years – 100% of the profit and gains derived from such undertaking and
 - Thereafter, for the next 5 assessment years – 25% of the profits and gains derived from such industrial undertaking. (30% in case of a company) (25% for 7 assessment years in case of co-operative society)
- ii) Where the industrial undertaking located in an industrial Backward district:
- For the initial 5 assessment years – 100% of the profit and gains derived from such undertaking and
 - Thereafter, for the next 5 assessment years – 25% of the profits and gains derived from such industrial undertaking. (30% in case of a company) (25% for 7 assessment years in case of co-operative society)

The deduction is available to an Industrial Undertaking, which fulfils all the following conditions:

- It is not formed by splitting up, or the reconstruction of a business in existence.
- It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

However, the following exceptions are available:

- In case of imported old plant and machinery
- 20% of total value of plant and machinery can be old.
- The undertaking employs ten or more workers in a manufacturing process carried on with the aid of power or employs twenty or more workers in a manufacturing process carried on without the aid of power.

2.12.2-2 Hotel industry

The following conditions are to be satisfied for getting deduction under this section:

- a) The business of hotel is not formed by splitting up or the reconstruction, of a business

already in existence or by the transfer to a new business of a building used at a hotel or of any machinery or plant previously used for any purpose;

- b) The business of the hotel is owned and carried on by an Indian company with a paid-up capital of Rs. 5,00,000 or more;
- c) The business of hotel is located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may specify for the purpose;
- d) It starts operation at any time during the period April 1, 1990 and March 31, 1994.
- e) Deduction for this purpose under section 80-IB is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of deduction is allowed at 50 per cent of profit for the first 10 years in respect of hotel located in hilly area or rural area or a place of pilgrimage or in a notified area and 30 per cent of profit for the first 10 years in case of any other hotel.

2.12.2-3 Carrying of Industrial Research

Deduction under section 80-IB for carrying of industrial research is available if the following conditions are satisfied:

- a) The taxpayer is a company registered in India with its main objective to carry on scientific and industrial research and development duly approved by the prescribed authority (Secretary, Department of Scientific and Industrial Research);
- b) Deduction for this purpose under section 80-IB is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of deduction allowable is 100 per cent of profit from such business if the company is approved by the prescribed authority before April 1, 1999 for 5 years beginning with the initial assessment year and is 100 per cent of profit from such business if the company is approved by prescribed authority after March 31, 2000 but before April 1, 2007 for 10 years beginning with the initial assessment year.

2.12.2-4 Undertaking for Carrying of Business of Mineral Oils

To avail deduction under this section, the following conditions are to be satisfied:

- a) The undertaking should be a new business and it should not be formed by transfer of old machinery or plant;
- b) It should commence commercial production of mineral oils in North-Eastern Region comprising the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram,

Nagaland, Sikkim and Tripura before April 1, 1997 or anywhere in India after March 31, 1997 and for refining of mineral oils after September 30, 1998 but before April 1, 2012 or commencing production of natural gas on or after April 1, 2009.

- c) It should employ 10 or more workers in a manufacturing process carried on with the aid of power and should employ 20 or more workers in a manufacturing process carried on without the aid of power.
- d) Deduction for this purpose under section 80-IB is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of deduction allowable is 100 per cent of profit for the first 7 years commencing with the year in which the undertaking commences commercial production of mineral oil or refining of mineral oil.

2.12.2-5 Undertakings Engaged in Developing and Building Housing Projects

Undertakings engaged in developing and building housing projects shall be eligible to claim deduction under this section if the following conditions are satisfied:

- a) The project should be approved by a local authority before March 31, 2008;
- b) The size of the plot used for this purpose should of minimum one acre;
- c) It should start development and construction of housing project after September 30, 1998 and should complete the project with the specified time;
- d) The built-up area of the shops and commercial establishments included in the housing project should not exceed 5 per cent of the aggregate built-up area of the project or 2,000 sq. ft.;
- e) If the allottee is a person other than an individual, not more one residential unit will be allotted to the same allottee and in case of individual allottee only one unity should be allotted to the individual or his spouse/minor children;
- f) Deduction for this purpose under section 80-IB is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of deduction available is 100 per cent of the profit derived from such housing project.

2.12.2-6 Undertaking engaged in Business of Processing, Preservation and Packaging of Fruits and Vegetable including Storage and Transportation of Food Grains

The deduction under this section in respect of such operations carried on by an

undertaking is available where the undertaking derives profits from such operations of processing, preservation, packaging etc. of fruits and vegetables.

The amount deduction available is 100 per cent of profits for first 5 years and 30 per cent of profits for next 5 years in case the undertaking is owned by a company and 100 per cent of profits for first 5 years and 25 per cent of profits for next 5 years in case the undertaking is owned by any other person.

2.12.2-7 Undertaking carrying on Multiplex Theatres

Deduction under this section is available if the following conditions are satisfied:

- a) Such multiplex theatre is construction at any time during April 1, 2002 and March 31, 2005;
- b) Such business is not formed by splitting up or the reconstruction, of a business already in existence or by the transfer of any machinery or plant previously used for any purpose;
- c) Such multiplex theatre is not located at a place within the municipal jurisdiction of Kolkata, Chennai, Delhi and Mumbai;
- d) The taxpayer of such business must file alongwith the return of income, the report of audit in the prescribed manner;
- e) Deduction for this purpose under section 80-IB is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of deduction available is 50 per cent of the profits from such business for 5 years beginning with the initial assessment year in which the cinema hall starts its operation on a commercial basis.

2.12.2-8 Undertaking operating convention centre (i.e., a building of a prescribed authority comprising of convention halls to be used for the purpose of holding conferences and seminars, with specific size, number and other amenities and facilities)

Deduction under this section is available if the following conditions are satisfied:

- a) Such convention centre is constructed at any time during April 1, 2002 and March 31, 2015;
- b) The business of convention is not formed by splitting up or the reconstruction, of a business already in existence or by the transfer of any machinery or plant previously used for any purpose;

- c) The taxpayer of such business must file along with the return of income, the report of audit in the prescribed manner;
- d) Deduction for this purpose under section 80-IB is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of deduction is available is 50 per cent of profits earned by the assessee from the business of building, owning and operating a convention centre for 5 years commencing from the initial assessment year.

2.12.2-9 Undertaking operating and maintaining a hospital in rural area

The deduction under this section will be available if the following conditions are satisfied:

- a) The assessee owns an undertaking for deriving profits from the business of operating and maintaining hospital in a rural area;
- b) Such rural hospital is situated during October 1, 2004 and ending on March 31, 2008. And contains at least 100 beds for patients;
- c) The construction of such hotel is as per the regulations of the local authority;
- d) The deduction for this purpose under section 80-IB is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

Amount of deduction available under this deduction is 100 per cent of the profits of such business for 5 years commencing with the initial assessment year.

2.12.3 Special provisions in respect of certain undertakings or enterprises in Himachal Pradesh, Sikkim, Uttaranchal and North Eastern States - Section 80-IC

The deduction under section 80-IC has been inserted w.e.f. the assessment year 2004-2005.

To avail deduction under section 80-IC, the undertaking must satisfy the following:

- a) The undertaking must not be formed by splitting up or reconstruction of existing business or not formed by transfer of old plant and machinery.
- b) The undertaking should be set up in certain special category of states like Sikkim, Himachal, Uttaranchal and North-Eastern States i.e., Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura and it should have specified manufacture/production of articles/goods other than those mentioned in Thirteenth Schedule.

- c) The amount of deduction is 100 per cent of profits and gains of the industrial undertaking for 10 years commencing from the initial assessment year in case of undertaking set up in Sikkim.
- d) The amount of deduction is 100 per cent of profits and gains of the industrial undertaking for 5 years commencing with the initial assessment year and 25 per cent (30 per cent in the case of a company) for the next 5 years in case of undertaking set up in Himachal or Uttaranchal.
- e) The amount of deduction is 100 per cent of profits and gains of the industrial undertaking for 10 years commencing from the initial assessment year in case of undertaking set up in North-Eastern States i.e., Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.
- f) Deduction for this purpose under section 80-IC is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

2.12.4 Deduction from profits and gains from business of hotels/convention centres in North-Central Region (NCR) area- Section 80-ID

Deduction under this section is available if the following conditions are satisfied:

- a) The taxpayer is operating business of hotel located in specific NCR area;
- b) The business of the taxpayer must not be formed by splitting up or reconstruction of existing business or not formed by transfer of old plant and machinery;
- c) The taxpayer must submit alongwith the return of income, the audit report in the prescribed manner;
- d) The deduction for this purpose under section 80-ID is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of allowable deduction is 100 per cent of the profits of such business for 5 years commencing with the initial assessment year.

2.12.5 Deduction for certain undertakings in North-Eastern States-Section 80-IE

Deduction under this section is available if the following conditions are satisfied:

- a) The taxpayer begins manufacture or production goods or undertakes substantial expansion during April 1, 2007 and March 31, 2017;

- b) The eligible services for this purpose are hotel (2-star or above), nursing home (25 beds or more), old age homes, vocational training institutes for hotel management, catering and food crafts, entrepreneurship development, nursing and paramedical, civil aviation related training, fashion designing and industrial training, IT related training centres, IT hardware manufacturing units and bio-technology;
- c) No deduction under section 80-IE will be available in respect of manufacture or production of tobacco, pan masala, plastic carry bags of less than 20 microns or goods produced by petroleum oil and gas refineries;
- d) The above operations should take place in any North-Eastern States like Arunachal Pradesh, Assam, Mizoram, Manipur, Meghalaya, Nagaland, Sikkim and Tripura;
- e) Such business of the taxpayer must not be formed by splitting up or reconstruction of existing business or not formed by transfer of old plant and machinery;
- f) The taxpayer must submit alongwith the return of income, the audit report in the prescribed manner;
- g) The deduction for this purpose under section 80-IE is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of allowable deduction is 100 per cent of the profits of such business for 10 years commencing with the previous year in which such undertaking begins to manufacture /produce the specific articles or things or complete substantial expansion.

2.12.6 Deduction in respect of profits and gains from the business of collecting and processing of biodegradable waste- Section 80JJA

- a) The deduction under section 80JJA is available if the gross total income of an assessee includes any profits and gains derived from the business of collecting, processing and treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure;
- b) Deduction under section 80JJA is not available unless it is claimed in the return of income;
- c) Such activity of collection and processing of bio-degradable waste should be the part of business of the taxpayers;

The amount of deduction available under this section is 100 per cent of profit from the above activities or Rs. 5 lakh, whichever is less.

2.12.7 Deduction in respect of employment of new workmen- Section 80JJAA

The deduction under this section is available if the following conditions are satisfied:

- a) The taxpayer is an Indian company;
- b) Income of the taxpayer includes any profits and gains derived from any industrial undertaking engaged in the manufacture or production of article or thing;
- c) The industrial undertaking is not formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking;
- d) The taxpayer company must submit along with the return of income the audit report in the prescribed format containing such particulars as may be prescribed;
- e) The deduction for this purpose under section 80JJAA is available only if it is claimed in the return of income. As such, if the assessee fails to make a claim in his return of income of this deduction, no deduction will be allowed.

The amount of deduction available under this section is 30 per cent of “additional wages” paid to the new “regular workmen” employed by the assessee in the previous year. The deduction is available for 3 assessment years including the assessment year relevant for the previous year in which such employment is provided.

2.12.8 Deduction in respect of certain income of Offshore Banking Units and International Financial Services Centre -Section 80LA

The deduction under section 80LA is available if the following conditions are satisfied:

- a) The taxpayer is a scheduled bank and having an offshore banking unit in a special economic zone; or a foreign bank and having an offshore banking unit in a special economic zone; or a unit of International Financial Services Centre;
- b) The gross total income of the taxpayer includes any income from the offshore banking unit in a Special Economic Zone; any income from the business referred to in section 6(1) of the Banking Regulation Act, with an undertaking located in Special Economic Zone or any other undertaking which develops, develops and operates or operates and maintains a Special Economic Zone; any income from any unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a centre in a Special Economic Zone.
- c) An audit report in the prescribed format must be furnished along with the return of income and a copy of permission obtained under section 23(1)(a) of Banking Regulation Act should also be furnished as annexure with the return of income;

- d) No deduction under section 80LA will be available unless it is claimed in the return of income.

The amount of deduction available under section 80LA is 100 per cent of the income from the above business for 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission has been obtained under section 23(1)(a) of Banking Regulation Act or permission of SEBI or under any other law and is 50 per cent for the next 5 years.

2.13 Provision for MAT (Minimum Alternate Tax)- Section 115JB

Section 115JB of the Income Tax Act provides that where the income-tax payable by domestic or foreign company on the total income computed under the normal provision of Income Tax Act, 1961 is found less than 15% of the book profit (applicable from the assessment year 2021-22 but earlier the rate was 18.5%), such book profit shall be deemed to be the total income of the assessee company and it shall be regarded as MAT liability of the company under section 115JB. The domestic company shall be liable to pay tax on such income (book profit) at the rate of 15% plus surcharge @7% if total income exceeds Rs. 1 crore (@ 12% if total income exceeds Rs. 10 crore) plus education cess as applicable. In the case of foreign companies, MAT liability shall be 15% of book profits plus surcharge @2% if total income exceeds Rs. 1 crore (@ 5% if total income exceeds Rs. 10 crore) plus education cess as applicable.

2.13.1 Adjustments to be made in computing Book Profit:

MAT liability is computed on the basis of book profit which is determined by making some adjustments with the net profit as determined as per normal provisions of the Income tax Act as follows:

I. Items to be added back:

- a) Income tax paid or payable and the provision made therefor (here income-tax includes dividend distribution tax/ tax on distributed income, interest, surcharge and education cess);
- b) Amount carried forward to any reserves, by whatever name called, other than any amount transferred to Special Reserve under section 33AC;
- c) Amounts set aside to provision for meeting liabilities other than ascertained liabilities;
- d) Amount or provision for losses of subsidiary companies;
- e) Amount of dividend paid or proposed;

- f) Amount of expenditure relatable to any income to which section 10 [other than section 10(38)], 11 or 12 apply;
- g) Amount of depreciation charged;
- h) Amount of deferred tax and provision made therefor;
- i) Amount set aside as provision for diminution in the value of any asset;
- j) Amount standing in Revaluation Reserve relating to revaluation of asset on retirement or disposal of such asset, if the same is not credited to Profit & Loss Account

II. Items to be deducted:

- a) Amount withdrawn from any reserve or provision and credited to Profit & Loss Account;
- b) Amount of income to which section 10 [other than section 10(38)], or 11 or 12 apply, if such amount is credited to Profit & Loss Account;
- c) Amount of depreciation debited to Profit & Loss Account (excluding depreciation on account of revaluation of assets);
- d) Amount withdrawn from the revaluation reserve and credited to Profit & Loss Account, to the extent it does not exceed the amount of depreciation on revaluation of assets;
- e) Amount of loss brought forward or unabsorbed depreciation, whichever is lower, as per books of accounts. The loss shall, however, not include depreciation. If either of the above is 'NIL', no deduction is to be made;
- f) Amount of profit of sick industrial unit/company commencing from the previous year in which the company became sick and ending with the assessment year during which the entire net worth becomes positive;
- g) Amount of deferred tax, if credited to Profit & Loss Account

2.13.2 MAT Credit under section 115JAA

When any amount of tax is paid as per provisions of MAT by an assessee being a company, then a credit in respect of excess tax so paid over the normal provision of the Act shall be allowed to the assessee in accordance with the provision of section 115JAA as follows:

- 1) Allowable Tax Credit = Difference of MAT paid and income tax payable under normal provision of Income tax Act, 1961. (However, no interest shall be paid on this tax credit by the revenue.)
- 2) Such tax credit shall be carried forward for set off during 10 assessment years immediately succeeding the assessment year in which such credit is become allowable.

- 3) Tax credit shall be allowed for set off in a year when tax becomes payable on the total income in accordance with the normal provisions of the Act.
- 4) Set off shall be allowed to the extent of difference between tax on the total income (under normal provision) and tax which would have been payable by the assessee u/s 115JB for that assessment year.

Example:

PQ Ltd. earned a net profit of Rs. 31,75,000 after debiting/crediting the following in its Profit & Loss A/c for the year ended 31.03.2021:

- | | |
|--|----------|
| a) Items debited: Provision for income-tax | 6,24,000 |
| Transfer to General Reserve | 1,56,000 |
| Provision for gratuity | 1,05,000 |
| Securities Transaction Tax | 63,000 |
| Proposed dividend | 1,11,400 |
| Provision for losses of subsidiary company | 76,000 |
| Expenditure to earn agricultural income | 28,500 |
| Expenditure to earn LTCG exempt u/s 10(38) | 49,300 |
| Expenditure to earn dividend income | 11,000 |
| Depreciation (incl. depreciation of Rs. 1,18,000 on revaluation) | 3,29,000 |
| b) Items credited: Amount credited to P&L A/c from Special Reserve | 1,23,700 |
| Amount credited to P&L A/c from Revaluation Reserve | 1,45,000 |
| Agricultural income | 2,85,000 |
| LTCG exempt u/s 10(38) | 2,00,000 |
| Dividend income | 38,000 |
- a) Other information: The company had brought forward business loss of Rs. 1,49,000 and unabsorbed depreciation of Rs. 1,23,000. You are required to examine the applicability of sec. 115JB of the I. T. Act, 1961 assuming the total income computed under the normal provision of Income Tax Act is Rs. 16,05,000 for the said previous year.

Solution:

Computation of book profit of PQ Ltd. under section 115JB for the assessment year 2021-22

	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
Net profit as per P&L A/c			31,75,000
Add: Net profit to be increased as per sec.15JB			
Provision for income-tax		6,24,000	
Transfer to General Reserve		1,56,000	
Provision for gratuity		1,05,000	
Proposed dividend		1,11,400	
Provision for losses of subsidiary company		76,000	
Expenditure to earn agricultural income		28,500	
Expenditure to earn dividend income		11,000	
Depreciation		<u>3,29,000</u>	<u>14,40,900</u>
			46,15,900
Less: Net profit to be decreased as sec. 115JB			
Amount credited to P&L A/c from Special Reserve		1,23,700	
Amount credited to P&L A/c from Revaluation Reserve (to the extent of depreciation on revaluation)		1,18,000	
Agricultural income		2,85,000	
Dividend income		38,000	
Depreciation (excl. depreciation on revaluation of assets)	(3,29,000-1,18,000)	2,11,000	
Brought forward business loss of Rs. 1,49,000 or unabsorbed depreciation of Rs. 1,23,000, whichever is loss		<u>1,23,000</u>	<u>8,98,700</u>
Book Profit			37,17,200

	Amount (Rs.)
Applicability of section 115JB (Rs.)	
15 % of Book Profit, i.e., Rs. 37,17,200x15%	5,57,588
Add: Education cess incl. SAHE of 4% (Surcharge not applicable)	<u>22,303</u>
Tax liability under sec.115JB	<u>5,79,891</u>
Tax payable on total income as per normal prov. of income-tax @30% i.e. Rs. 16,05,000x30%	4,81,500
Add: Education cess incl. SAHE of 4%	<u>19,260</u>
Tax Payable under normal prov. of Income Tax Act, 1961	<u>5,00,760</u>

Here, it is observed that the tax liability under the normal provision of Income Tax Act, 1961 (Rs. 5,00,760) is less than 15% of book profit incl. surcharge and education cess computed under section 115JB (Rs. 5,79,891). Thus, the book profit so computed (Rs. 37,17,200) shall be deemed to be the total income of PQ Ltd. for the year ended 31.03.2021 and tax payable as per MAT provision shall be Rs. 5,79,891 including education cess as applicable.

However, tax credit shall be available to PQ Ltd. under Section 115JAA at Rs. 79,131 being the excess of MAT paid over the tax liability under the normal provision of income-tax, i.e. Rs. (5,79,891 - 5,00,760).

2.14 Dividend Distribution Tax

Dividend distribution tax refers to tax on dividend income distributed by a company to its shareholders. The dividend income is the amount received by an investor, whether it is an individual or HUF or a company assessee, on account of holding shares in a company. It is income from other sources in the hands of the recipient shareholders.

Earlier the companies paying and distributing dividends were obliged to pay tax on behalf of the shareholders. However, the Finance Act, 2020 has completely changed the method of dividend distribution taxation. Dividend distribution tax which was tax on dividend declared and paid by companies to their shareholders under Section 115-O of the Income Tax Act has been discontinued with effect from 1st April, 2020. The dividend paying companies are not liable to pay dividend tax on dividend distribution on or after 1st April, 2020.

Accordingly, all dividends received on or after 1 April 2020 is taxable in the hands of the recipient investors/shareholders and the company paying and distributing dividends are not liable to pay tax on dividend distributed. The recipient shareholders are now liable to pay tax on dividend income on the basis of their slab system of taxation.

However, the domestic companies paying dividends are liable to deduct tax at source while paying dividend on or after 1.4.2020 under Section 194 @ 10% on dividend distributed to the resident shareholders if the aggregate amount of dividend paid to a shareholder during a financial year exceeds Rs. 5,000. The recipient shareholders shall have to pay tax on dividends on the basis of their residential status, relevant slab rates applicable under the Act.

The domestic companies are also liable to deduct tax at source under Section 195 in accordance with the relevant DTAA for payment of dividend to non-resident shareholders on or after 1.4.2020. Dividend income of non-resident shareholders shall be chargeable to tax @ 20% of the dividend income from a domestic company without any deduction.

Dividend received by shareholders from a foreign company is taxable as income from other sources and shall be chargeable to tax as per the normal rate of tax based on slab system of taxation applicable to the shareholders. Dividend received from a foreign company is entitled to get tax double taxation relief under section 91 of the Income Tax Act.

However, in case of dividend received by a company from another company by virtue of its shareholding in another company, the dividends received being inter-corporate dividends is allowable as deduction under section 80M to avoid double taxation.

2.15 Provisions for Set off and Carry Forward of Losses

Profit and losses are two sides of a coin. However, the Income tax law in India does offer taxpayers some assistances for set off of losses. The law comprises provisions for set-off and carry forward of losses which are discussed in detail in this section.

Set off of losses means adjusting the losses against the profit or income from another source/head of income of that assessment year. Losses that are not set off due to inadequate profit in the same assessment year can be carried forward to the following years for set off against eligible profit of those years subject to certain restrictions. A set-off could be an intra-head set-off or an inter-head set-off.

2.15.1 Inter Source Adjustment (Intra-head adjustment) [Sec. 70]

When there is loss in the net result of any source of income, such loss can be set-off against income from any other source under the same head.

For example: Loss from Business X can be set off against profit from Business Y, where Business X is one source and Business Y is another source and the common head of income is “Profits and gains of business or profession”

Exceptions to an Intra-head Set Off

- 1) Losses from a Speculative Business can only be set off against the profit of other speculative business.
However, non-speculative business losses can be set off against the income from speculative business.
- 2) Long-term capital loss can only be adjusted against long-term capital gains.
However, a short-term capital loss can be set off against both long-term capital gains and short-term capital gains.
- 3) No loss can be set off against the income from winning from lotteries, crossword puzzles, race, card game and any other game of any sort or from gambling or betting of any nature.
- 4) Loss from a business activity of owning and maintaining race-horses can be set off only against the profit from a business activity of owning and maintaining race-horses.
- 5) Losses from specified business under section 35AD can only be set off against income from specified business. But, losses from any other business or profession can be set off against the income from specified businesses.

2.15.2 Inter-Head Adjustment [Sec. 71]

If there is loss under one head of income even after inter-source adjustment then such loss can be set off or adjusted against income from another head of income.

Exception to the Inter Head Adjustment

- 1) When there is **loss under any head of income (except “Capital Gains”)** then such loss can be set off against income assessable for that assessment year under any other head of income including “Capital Gains”.
- 2) If there is a **loss under the head “Profit and gains of business or profession”**, then such loss cannot be adjusted against income under the head “Salaries”.
- 3) When the computed **net result under the head “Capital gains” is a loss**, then such a capital loss cannot be set off under any other head of income.
- 4) When there is **loss under the head “Income from house property”** then such loss can be set off against income from any other head up to Rs. 2 lakhs only.
- 5) If there is **loss from speculation business, activities of owning and maintaining race horses and specified business included in section 35AD**, then such losses cannot be set off against income under any other head.

2.15.3 Carry forward and set off of Losses from House Property [Sec. 71B]

- 1) When there is a loss under the head “Income from house property” in any assessment year, then such loss, at first, will be set off against income from any other head up to Rs. 2 Lakhs during the same year. The unabsorbed loss will be carried forward to the following assessment years for set off against income under the head “Income from house property”.
- 2) Such loss under this head can be carried forward up to the next 8 assessment years immediately succeeding the assessment year in which the loss was first calculated.
- 3) It can be carried forward even if the return of income for the loss year is belatedly filed.

2.15.4 Carry forward and set off of Business Losses other than speculation loss [Sec. 72]

- 1) When there is loss under the head “Profit and gains of business or profession” (except speculation loss) then such loss can be carried forward and can be set off against income under the same head only.
- 2) Such loss can be carried forward for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.
- 3) Loss cannot be carried forward if the return of loss under section 139(3) is not filed within the original due date.

2.15.5 Carry forward and set off of Speculation loss [Sec. 73]

- 1) Losses occurred in speculation business cannot be set off in the same year against any other non-speculation income and also cannot be carried forward and set off against other income in the subsequent years.
- 2) Loss from speculation can be carried forward for a maximum period of 4 years only from the end of the related assessment year in which the loss was first incurred.
- 3) Such loss cannot be carried forward if the return of loss under section 139(3) is not filed within the original due date.

2.15.6 Carry forward and set off of losses of Specified business [Sec. 73A]

- 1) Any loss computed from specified business mentioned under section 35AD can only be set off against profit and gains, if any, of the other specified business. The unabsorbed loss will be carried forward to be set off against the profit and gains of any specified business in the subsequent assessment years and so on.
- 2) Such loss can be carried forward for indefinite period of years to be set off against the income from specified business.

2.15.7 Losses under the head Capital Gains [Sec. 74]

- 1) Short-term capital losses which is carried forward can be set off against long-term capital gains as well as short-term capital gains.
- 2) If carried forward loss is long-term capital loss, then such loss can be adjusted only against long-term capital gains.
- 3) Net loss under the head Capital Gains cannot be adjusted against the income from any other head.
- 4) Any unabsorbed loss can be carried forward for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

2.15.8 Losses from activities of Owning and Maintaining Race-Horses [Sec. 74A (3)]

- 1) Losses from the activities of owing and maintaining race horses cannot be set off against the income from any other source other than income from activities of owing and maintaining race horses.
- 2) Such a loss can be carried forward for a maximum period of 4 assessment years for set off against the income from activities of owing and maintaining race horses in the following years.
- 3) Such losses cannot be carried forward if the return of loss under section 139(3) is not filed within the original due date.

2.15.9 Carry forward and set off of loss in case of change in the constitution of firm or succession- Section 78

- 1) Where there is a change in the constitution of a firm, so much of the loss attributable to the share of a retired/deceased partner remaining unabsorbed, shall not be allowed to be carried forward by the firm. However, the amount of unabsorbed depreciation can be carried forward.
- 2) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, such other person shall not be allowed to carry forward and set off against his income, any loss incurred by the predecessor.
- 3) However, in case of succession by inheritance, the legal heirs are allowed to carry forward and set off the business loss of the predecessor. Even when the legal heirs constitute themselves as a partnership firm, the firm so constituted shall be entitled to carry forward and set off the loss of the predecessor.

2.15.10 Carry forward and set off of loss in case of closely held companies **[Section 79]**

- 1) Where in any previous year, there has been a change in the shareholding of a company in which public are not substantially interested, unabsorbed loss of such company shall be allowed to be carried forward for set off against the income of the previous year only if the beneficial shareholders of at least 51% of the voting power on the last day of the previous year remained the same as on the last day of the previous year/previous years in which the loss was incurred.
- 2) This restriction does not apply in the case where change in voting power occurs upon the death of a shareholder or on account of transfer of shares by way of gift by a shareholder to his relative.
- 3) This restriction also does not apply in the case where the change in the shareholding takes place in an Indian company, being a subsidiary of a foreign company, as a result of amalgamation/demerger, subject to the condition that 51% shareholders of the amalgamating/demerged company continue to remain shareholders of the amalgamated/resulting company.

2.15.11 Carry forward and set off of accumulated business losses and unabsorbed depreciation of the amalgamating company in case of merger/amalgamation-Section 72A

The Income Tax Act, 1961 prescribes that unabsorbed depreciation of assets and accumulated business loss can be carried forward only by the same assessee under whose hands the loss incurred or depreciation remains unabsorbed except in case of succession of business by inheritance. However, under the provisions of Section 72A of the Act, in the case of amalgamation of a company, owning an industrial undertaking or a ship or a hotel with another company or the amalgamation of a banking company with a specified bank, the amalgamated company is entitled to carry forward the unabsorbed depreciation and brought forward loss of the amalgamating company provided certain conditions are fulfilled. Accordingly, the accumulated business loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss and depreciation of the amalgamated company for the previous year in which amalgamation took place.

As a result of this, the amalgamated company shall enjoy a fresh period of 8 years to carry forward unabsorbed business loss of the amalgamating company (disregarding the period of carry forward of loss already entertained by the amalgamating company) and shall be able to carry forward unabsorbed depreciation for further indefinite period by virtue of section 72A of the Income Tax Act. However, to avail this tax neutrality, the amalgamating companies as well as the amalgamated companies are required to satisfy the following conditions :

a) Conditions to be fulfilled by the amalgamating company

- The amalgamating company should have been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;
- The amalgamating company has held continuously as on the date of amalgamation at least three-fourths of the book value assets held by it, two years prior to the date of amalgamation.

b) Conditions to be fulfilled by the amalgamated company

- The amalgamated company holds continuously for a minimum period of five years from the date of amalgamation at least seventyfive per cent in the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;
- The amalgamated company continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;
- The amalgamated company fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.

2.15.11-1 Consequences for not satisfying the conditions after adjusting loss/ depreciation

In case the above specified conditions are not satisfied, then that part of brought forward loss and unabsorbed depreciation which has been set off by the amalgamated company shall be treated as the income the amalgamating company for the year in which the failure to comply with the conditions occur. The portion of brought forward loss and unabsorbed depreciation of the amalgamated company not yet set off shall stand lapsed.

2.15.12 Order of loss to be set off

As per provision to section 72(2), brought forward business loss is to be set off before setting off unabsorbed depreciation. The order of set off may be highlighted as below:

- i) Current year depreciation/capital expenditure on scientific research and current year expenditure on family planning, to the extent allowed;
- ii) Brought forward loss from business/profession;
- iii) Unabsorbed depreciation;
- iv) Unabsorbed capital expenditure on scientific research;
- v) Unabsorbed expenditure on family planning.

2.16 Examples of Business Income

1. The WDV of P & M on 1.04.2020 of Akhilesh Ltd engaged in manufacturing of Durga granules of Rs. 1000 lacks, company purchased additional P&M for Rs. 800 lacks on 18.04.2020 inclusive of a second-hand machine imported from China of Rs. 200 lacs, the production of new machine was taken w.e.f 01.12.2020. Discuss the tax consequences for the assessment year 2021-22.

Solution

As per section 32(1)(iia), an assessee engaged in the business of manufacture or production of any article of things engaged in the business of generation and distribution of power is entitled for an additional depreciation @20% of the actual cost of such P & M acquired and installed. Additional depreciation shall, however not be available in respect of those plant and machinery which is before its installation by the assessee were used within India by any other person

The depreciation allowable will be as under

Particulars	Period starts from
Depreciation on WDV of machinery as on 1.04.2020= Rs. 1000 lakhs @15%	150
Depreciation on P&M purchased on 18th April but actual production commenced w.e.f 1st December. Depreciation will be restricted to 50% of normal depreciation i.e 50% of (Rs. 800 lakhs *15%)	60
Additional depreciation @20% of the actual cost of new P & M. This depreciation is also to be restricted to 50% since production has commenced only on 01st December, 50% (20% of Rs. 600 Lakhs)	60
Total Depreciation	270

2. “SKY WALK Limited” to provide telecom services in Chennai obtained a license on 01.04.2018 for a period of 10 years ending on 31.03.2028 against a fee of Rs 27 lakhs to be paid in 3 installments of Rs 9 lakhs each by April 2018, April 2019, April 2020, respectively. The company has commenced business on 01.05.2019. Explain how the payment made for license fee shall be dealt with under the Income Tax Act, 1961 and the amount if any deductible for A.Y. 2021-22.

Solution

The payment made for acquiring the license to operate telecom services in Chennai shall be subject to deduction as per the scheme in section 35ABB. As per section 35ABB, any amount actually paid for obtaining license to operate telecommunication services shall be allowed deduction in equal installments during the number of years for which the license is in force.

If the payment is made before the commencement of business: - The deduction shall be allowed beginning with the year of commencement of business.

In any other case: -it will be allowed commencing for the year of payment. Deduction shall be allowed up to the year in which the license shall cease to be in force,

The amount of deduction available for A.Y. 2021-22 is worked out below

1	2	3	4=3/2
Previous year of payment	Unexpired period of License	Installment paid (Rs.)	Deduction in respect of each installment (Rs.)
2018-19	9 years	900000	100000
2019-20	9 years	900000	100000
2020-21	8 years	900000	112500
		2700000	312500

The deduction under section 35ABB for assessment year 2021-22 shall be Rs 312500

3. Explain in brief the treatment as to their taxability and/or allowability under the provision of Income Tax Act, 1961 for the assessment year 2021-22 in the following cases-
- i) Vijay receives a sum of Rs.50 lakhs from Abdul limited on 3rd January 2021 for agreeing not to carry on any business relating to computer software in India for the next three years.

- ii) P Ltd. paid dollars equivalent to Rs. 50 lakhs as sales commission for the year ended 31st March 2021. Without deducting tax at source to Mr. Peterson, a citizen of Canada and a non-resident who acted as agent for booking orders, from various customers who are outside India.

Solution

- i) As per section 28 any sum received under an agreement for not carrying out any activity in relation to any business (i.e., non-compete fees) is chargeable to Income Tax under the head PGBP, accordingly Rs. 50 lakhs received by Atul Limited from Kiran Limited is chargeable to Income Tax under the head PGBP.

The amount shall be allowable as deduction to Abdul Limited provided tax has been deducted at source u/s 194J on the payment so made to Vijay limited, if tax is not deducted at source, 30% of the expenditure will be disallowed u/s 40a(ia).

- ii) A foreign agent of an Indian exporter operates in his own country and no part of his income accrues and arises in India. His commission is usually remitted directly to him and is therefore not received by him or on his behalf in India.

The commission paid to the non-resident agent for services rendered outside India is thus not chargeable to tax in India, since commission is not subject to tax in India, disallowance u/s 40(a)(i) is not attracted even though tax has not been deducted at source. It shall be allowed as expenses.

4. The net result of a business carried on by a branch of foreign company in India for the year ended 31.03.2021 was a loss of Rs. 100 Lakhs after charge of head office expenses of Rs. 200 lakhs allocated to the branch. Explain with reason the income to be declared by the branch in its return for the assessment year 2021-22.

Solution

Section 44C allows head office expenses (i) an amount equal to 5% of the adjusted total income or (b) amount actually incurred as is attributable to the business of the Assessee in India, whichever is actually less, for the purpose of computing adjusted total income. The head office expenses of Rs. 200 Lakhs charged to the profit and loss account have to be added back.

The amount of income to be declared by the assessee for A.Y. 2021-22 will be as under-

Particulars	Rs. in Lakhs
Net loss for the year ended on 31.03.2021	(100)
Add: Amount of head office expenses to be considered separately as per section 44C	200
Adjusted total Income	100
Less: Head office expenses allowable u/s 44C is	5
i) Rs 5 lakhs being 5% of 100 lakhs	
ii) Rs 200 Lakhs	
Whichever is lower	
Income to be declared in return	95

5. The following are the particulars in respect of scheduled bank incorporated in India-

Particulars	Period starts from
Provision for bad & doubtful debts u/s 36(1) (viiia) up to assessment year 20-21	100
Gross total income of A.Y 21-22 (Before deduction u/s 36(1) (viiia))	800
Aggregate average advances made by rural branches of the bank	300
Bad debt written off (for the first) in the books of account (in respect of urban advances only) during the previous year 20-21	2100

Compute the deduction available u/s 36(1)(vii) for the assessment year 2021-22

Solution

Particulars		Rs. in Lakhs
Bad debts written off (for the first time) in the books of account		210
Less: Credit balance in the "Provision for Bad and Doubtful Debts" u/s 36(1)(viiia) as on 31st March 2021		
(i) Provision for Bad & Doubtful debts u/s 36(1) (viiia)	100	
(ii) Current year provision for the bad & doubtful debts u/s 36(1) (viiia)(8.5% of Rs 800 Lakhs+ 10% of 300 Lakhs	98	198
Deduction u/s 36(1)(vii) in respect of bad debts written off for assessment year 2021-22.		12

2.17 Summary

After studying this unit, we could understand the concept of Business and Profession; Business Incomes Taxable under the head of 'Profits and Gains of Business or Profession' (Section 28); Business Income which is not Chargeable under the head "Profits and Gains from Business or Profession"; Expenses Allowed as Deductions against Profits and Gains of Business or Profession [Section-30-37]; Computation of business income of corporate and partnership firms/LLPs; Inadmissible deductions under section 40; Expenses or Payments not deductible in certain circumstances under section 40A; Deemed Profits chargeable to tax as Business Income under Profits and Gains of Business or Profession [section 41]; Deductions from Gross Total Income from Business or Profession, Provisions of Minimum Alternate Tax; Dividend Distribution Tax and taxability of dividend income; Provisions for Set off and Carry Forward of Losses.

2.18 Questions

A. Multiple Choice Questions (MCQ)

1. As per section 30, which expenditure incurred for building shall not be allowed as deduction under business and profession?
 - a) Repairs of Building
 - b) Revenue Expenditure
 - c) Capital Expenditure**
 - d) None of these

2. Which is the charging section of income under the head profits and gains from business & profession?
 - a) Sec.27
 - b) Sec.28**
 - c) Sec.29
 - d) None of these

3. Circulars and Notifications are binding on the.....?
 - a) Income Tax Authorities**
 - b) Central Board of Direct Taxes (CBDT)
 - c) International Revenue Authorities
 - d) None of these

4. Income from illegal business is?
 - a) Exempted
 - b) Fully Taxable**
 - c) Partly Taxable
 - d) None of these

- 5) Business has been defined under section....

- a) 2 (14)
 - b) 2(13)**
 - c) 2(10)
 - d) None of these
6. While computing the business income, which of the following taxes are allowed as deduction?
- a) Sales tax**
 - b) Income Tax
 - c) Direct tax
 - d) All of the above
7. Business included which of the following as per section 2(13)
- a) Commerce
 - b) Manufacture
 - c) Trade
 - d) All of the above**
8. Dividend paid by an Indian company isin Income tax.
- a) Exempted
 - b) Taxable**
 - c) Partly Taxable
 - d) None of these
9. “Business” under Income-tax Act, does not include-
- a) Any trade
 - b) Commerce
 - c) Manufacture
 - d) Adventure or concern in the nature of leisure or sport**
10. In computing income under the head “Profits and Gains of Business or Profession”, income from which of the following business is taxable?

- a) Legal Business
- b) Illegal Business
- c) **Both (as) and (b)**
- d) None of the above

B. Short Answer Type Question

1. Give a few examples of income from business not taxable under the head “Profits or gains of business or profession.
2. Give a few examples of losses which are allowable in computing business income.
3. Discuss the conditions for deductibility of interest on borrowed capital.
4. What is Business?
5. Discuss the expenses which are expressly disallowed under section 40 and 40(a).

C. Broad Answer Type Question

1. Discuss the taxability of profits from illegal business.
2. What is the Income that are chargeable under the head of Profit & Gains of Business or profession?
3. What is the income mentioned under section 28 under Profit & gains of Business and profession?
4. What do you mean by intra head set off?
5. What is Deemed Profit?
6. What is Dividend Distribution Tax?
7. What is the rule of Set off and carry forward?
8. Briefly Define amortization of Telecom license fees (Sec 35ABB).
9. Define the deduction which is available in respect of expenditure on specified business.
10. What do you mean by written down value of a block of assets?
11. What is the deduction which are allowed under Profit and Gains of Business and Profession?
12. Give few examples of exceptions of an Intra-head Set Off.

13. What is Capital Loss?
14. What are the exceptions to Intra-head set off?
15. What is Intra head Set-off?
16. House property losses can forward for how many years?
17. Can House Property loss can be set off if return is filed after due date u/s 139 (1)?
18. Can Loss from Long term capital gain be set off from gain from short term capital gain?
19. Can loss from owing & maintaining of race horses be set of from Income from any other sources?

Answer Key (A)

- | | | | | |
|------|------|------|------|--------|
| 1(c) | 2(b) | 3(a) | 4(b) | 5(b) |
| 6(a) | 7(d) | 8(b) | 9(d) | 10(c). |

Unit - 3 □ Clubbing of Income (Sections 60 to 65)

Structure

3.0 Objectives

3.1 Introduction

3.2 Specified persons to Club Income

3.3 Various Provision Related to Clubbing of Income

3.4 Cross Transfer

3.5 Cases Where Clubbing of Income not Applicable

3.6 Examples of Clubbing Income

3.7 Summary

3.8 Questions

3.0 Objectives

After studying this unit, we will be able to understand the concepts of—

- Specified persons to club income;
- Various sections related to clubbing of income cross Transfer; and
- Some incomes that are not applicable for clubbing.

3.1 Introduction

In general an assessee is liable to tax in respect of his own income. However, in certain circumstances, the Income Tax Act provides for clubbing of income whereby income earned by some other person is assessed to tax in the hands of a specified person by virtue of section 60 to 64 of the Act. Thus, clubbing is called as a process which is called of **adding the income of other individual to one's own income**. Sections 60 to 64 of the Income-tax Act, 1961 is related to clubbing of income and 65 is recovery section. Usually, when a person earns an income then only, he is needed to pay tax, but there are certain instances where one has to pay tax without earning of an income. Such their persons may be of his wife, daughter-in-law, minor son or any other relatives. Here generally income is being transferred without transferring the ownership and in such a situation the transferor will be responsible to pay tax in respect of his income (if any) as

well as income of other person too. Sections 60 to 64 of the Act comprise numerous provisions involving to clubbing of income.

3.2 Specified persons to club income

Income earned by any particular person cannot be clubbed randomly with income earned by another person. There are certain norms by which income earned can be treated under Income Tax Act 1961. While calculating total income of an individual each assessee needs to follow certain norms and while clubbing of certain income, we need to follow certain rules. Section 64, speaks about certain rules where there are some specified incomes of specified persons which can be clubbed with the income of the assessee while calculating total income of an individual.

3.3 Various Provision of Clubbing of Income

Sections	Particulars
<p>Transfer of income without Transferring the Ownership of Asset u/s 60</p>	<p>Section 60 talks about transfer of income that takes place without transferring of ownership, here income is being transferred by the assesses without transferring the ownership of the asset, then section 60 will be applicable. Under Section 60 any income arises from such assets, it is taxable in the hands of transferor, and not transferee.</p> <p>Example-</p> <ol style="list-style-type: none"> 1. Mr. Subhadip owns 10, 000, 20% debentures at Sunshine India Ltd. of Rs. 100/- each (annual interest being Rs. 2, 00,000). On 25th December, 2020, he transfers interest income to Mr. Bikash, his friend, without transferring the ownership of these debentures. Discuss tax consequences for the Assessment year 2021-22. <p>Ans. The Taxable income in the hands of Mr. Subhadip is Rs. 2, 00, 000/- for the Assessment Year 2021-22. But in the hand of Mr. Bikash it is Nil as the income was transferred without transferring the ownership of the asset.</p>

Sections	Particulars
	<p>2. Mr. Roy had 1000, 10% Debentures @ Rs.100/- each in Sun Shine Ltd. Before going abroad for pursuing higher education Mr. Roy gave such Debentures to his friend Mr. Deep and advised to collect the interest. In April, 2020 the company gave Rs. 10,000/- as an interest to Mr. Deep. Subsequently, Deep spends such amount for his household expenses. In July, 2021 Mr. Roy came back from abroad and took back the Debentures. Discuss tax consequences of such income of Rs. 10, 000/- for the Assessment year 2021-22.</p> <p>Ans. The Taxable income in the hands of Mr. Roy is Rs. 10, 000/- for the Assessment year 2021-22. But in the hand of Mr. Deep it will not be taxable as the income was transferred without transferring the ownership of the asset.</p>
<p>Revocable Transfer of Assets u/s 61</p>	<p>Section 61 deals with the kind of a situation where assets are being transferred to the transferee on a condition that the asset may revocable at any latter date. Section 61 is applicable in this case. If any income arises from such assets, it is taxable in the hands of transferor u/s 61 and not in the hands of transferee.</p> <p>Example-</p> <p>3. Mr. Roy had a playground. He transferred the property to his friend Mr. Dey through power of attorney. During the previous year 2020-21 Mr. Dey earned Rs. 60, 000/- as rent from the property. Compute taxable income in the hand of Mr. Roy and Mr. Dey for the Assessment year 2021-22.</p> <p>Ans. Mr. Roy has not transferred the property to Mr. Dey permanently, only power of attorney is given, as the property may be taken back at the latter date, by Mr. Roy, thus this amounts to revocable transfer. The taxable income in the hands of Mr. Roy is Rs. 60, 000/- for the Assessment Year 2021-22. It will not be taxable in the hands and Mr. Dey as it was a arevocable transfer.</p>

Sections	Particulars
	<p>4. Richard had a playground. He transferred the property to his wife Mrs. Maria through power of attorney. During the previous year 2020-21 Mrs. Maria spends Rs. 40, 000/- towards the caretaker of the ground. She earned Rs. 1, 60, 000/- as rent from the property. Compute taxable income in the hand of Mr. Richard and Mrs. Maria for the Assessment year 2021-22.</p> <p>Ans. The taxable income in the hands of Mr. Richard is Rs. 1, 20, 000/- (1, 60, 000 - 40, 000) for the Assessment Year 2021-22. Mrs. Maria is not liable to tax as the asset assumes a right to re-acquire.</p>
<p>Remuneration to Spouse u/s 64(1)(ii)</p>	<p>Where the spouse of an individual receives any remuneration from a concern where the individual holds substantial interest and the spouse of the individual does not possess any technical or professional qualification to justify his/her remuneration, the remuneration so received by the spouse shall be clubbed under section 64(i)(ii) in the hands of the individual holding substantial right.</p> <p>Example-</p> <p>5. Mr. Roy holds 60% of shares of ABC India Ltd. His wife, Mrs. Papiya works as the personal assistant in the office of the company. Mrs. Papiya gets a salary of Rs. 4, 80, 000/- p.a. from the company. Discuss tax consequences of such income for the assessment year 2021-22. If Mrs. Papiya had a technical skill would your answer differ?</p> <p>Ans. The income of Mrs. Papiya (Rs. 4, 80, 000/-) will be added up with the income of Mr. Roy as he has substantial interest in the company u/s 64(1)(ii) for the assessment year 2021-22. Yes, If Mrs. Papiya possesses technical skill, then the income of Mrs. Papiya need not be added. Her income would be assessed separately in her own hand.</p>

Sections	Particulars
	<p>6. Mr. Dey holds 2/3rd of profits in a firm. He took his wife, Mrs. Dey as a manager in the firm. Mrs Dey did MBA in Finance from a renowned university. She gets a Salary of Rs. 16, 80, 000/- p.a. from the firm. Discuss tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The income of Mrs. Dey (Rs. 16, 80, 000/-) will not be clubbed with the income of Mr. Dey though he has the substantial interest in the firm, as Mrs. Dey has a professional skill for the job u/s 64(1)(ii). So, the income of Mrs. Dey will be assessed separately.</p>
<p>Income from Assets transferred to Spouse u/s 64(1)(iv)</p>	<p>If an individual transfers (directly or indirectly) any asset (other than house property) without adequate consideration to his spouse, income arising from such asset will be included in the total income of the transferor u/s 64(1)(iv).</p> <p>Example-</p> <p>7. Miss Munmun owns 10, 000, 20% debentures at Sunshine Ltd. of Rs. 100 each. On 25th December, 2020, she gifted these debentures to Mr. Das, her husband. During previous year Mr. Das earned by way of interest Rs. 2, 00, 000/- from such debenture. Discuss tax consequences for the Assessment year 2021-22.</p> <p>Ans. The debenture interest will be taxable in the hands of Miss Munmun for the assessment year 2021-22. The debenture interest of Rs. 2, 00, 000 will not be taxable in the hands of Mr. Das as debentures were gifted to him by his wife. Thus, clubbing provision u/s 64(i)(iv) will be applicable here.</p> <p>8. Mrs. Monalisa had a house property. During previous year she transferred the property without any consideration to her husband, Rental income earned by her husband during the previous year was</p>

Sections	Particulars
	<p>Rs. 60, 000/-. Discuss tax consequences for the Assessment year 2021-22.</p> <p>Ans. In this case Mrs. Monalisa will be the deemed owner of the property as such transfer is disregarded and will be considered for taxation u/s 22 and not in section 64(1)(iv) as such income is from the transfer of house property to spouse. The taxable income in the hands of Mrs. Monalisa is Rs. 42, 000/- (60, 000 - 30%) for the assessment year 2021-22.</p>
<p>Income from Assets transferred to Son's Wife u/s 64(1)(vi)</p>	<p>If an individual transfers (directly or indirectly) any asset after May 31, 1973 without adequate consideration to his son's wife, income arising from such asset will be included in the total income of the transferor.</p> <p>Example-</p> <p>9. Mr. Roy had 10, 000, 20% debentures at Sunshine India Ltd. of Rs. 100 each. During the previous year, Mr. Roy gave such debentures to his daughter-in-law, Mrs. Monalisa. During the previous year Mrs. Monalisa earned by way of interest Rs. 2, 00, 000/- from such debenture. Discuss tax consequences for the assessment year 2021-22.</p> <p>Ans. The income of Rs. 2, 00, 000/- will be clubbed with the income of Mr. Roy for the assessment year 2021-22. And in the hands of Mrs. Monalisa it will not be taxable as income from any asset transferred to son's wife is taxable in the hands of transferor u/s 64(1)(vi).</p> <p>10. Mrs. Dey had a fixed deposit (FD) of Rs.50,00,000/-. He transferred the FD to his son's wife Mrs. Lata. During the previous year 2020-21 Mrs. Lata earned Rs. 1, 40, 000/- as interest from the FD. Discuss tax consequences of such income in the hand of Mr. Dey and Mrs. Lata for the assessment year 2021-22.</p> <p>Ans. The income of Rs. 1, 40, 000/- from the asset transferred to son's wife will be clubbed with the</p>

Sections	Particulars
	<p>income of transferor for the assessment year 2021-22. Mrs. Lata shall not be taxable as income from any asset transferred to son's wife is taxable in the hands of transferor u/s 64(1)(vi).</p>
<p>Income from Assets transferred to a Person for the benefit of the Spouse of the transferor u/s 64(i)(vii)</p>	<p>If an individual transfers (directly or indirectly) any asset to a person or an association of persons without adequate consideration with a condition that the person or association in return will pay an amount to the spouse of the transferor, then such income will be included in the total income of the transferor u/s 64(i)(vii).</p> <p>Example-</p> <p>11. Mr. Das had a house property. He transferred it to a trust without any adequate consideration with a condition that an income of Rs. 4, 80, 000/- will be paid to the spouse of Mr. Das, Mrs. Monalisa. Discuss the tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The rent of Rs. 4, 80, 000/- received by Mrs. Monalisa from the trust, will be clubbed with the income of transferor, Mr. Das u/s 64(i)(vii).</p> <p>12. Mr. Dey had 1000 Equity Shares of Rs. 100/- each in Moon India Ltd. He transferred these to Mr. Das without any adequate consideration with a condition that an income of Rs. 60, 000/- will be paid to the spouse of Mr. Dey, Mrs. Muni. Discuss the tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The earning of Rs. 60, 000/- received by Mrs. Muni from Mr. Das, will be clubbed with the income of the transferor, Mr. Dey u/s 64(i)(vii).</p>

Sections	Particulars
<p>Income from Assets transferred to a person for the benefit of Son's Wife u/s 64(1)(viii)</p>	<p>Any income which has been earned by an individual by transferring (directly or indirectly) asset on or after 01.06.1973 to a person or an association of persons without adequate consideration with a condition that the person or association in return will pay an amount to the son's wife of the transferor. Such income will be clubbed or added up in the total income of the transferor u/s 64(i)(viii).</p> <p>Example-</p> <p>13. Mr. Roy had a Playground. He transferred it to a trust without any adequate consideration with a condition that an income of Rs. 8, 60, 000/- from it will be paid to the spouse of the son of Mr. Roy. Discuss tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The earning of Rs. 8, 60, 000/- received by the son's wife from the trust, will be clubbed with the income of transferor, Mr. Roy u/s 64(i)(viii).</p> <p>14. Mrs. Monalisa had a ground. She transferred the ground to the local market without any adequate consideration with a condition that an income of Rs. 4, 80, 000/- will be paid to the spouse of the son of Mrs. Monalisa. Discuss tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The earning of Rs. 4, 80, 000/- received by the spouse of the son of Mrs. Monalisa from the local market, will be clubbed with the income of transferor, Mrs. Monalisa u/s 64(i)(viii).</p>
<p>Income of a Minor Child u/s 64(1A)</p>	<p>Any income accruing or arising to a minor child will be clubbed u/s 64(1A) to the total income of the parent whose income is higher (excluding minor's income). But, in case where the marriage of his parents does not subsist, it will be clubbed with the income of that parent who maintains the minor child in the previous year. Section 64(1A) will not be applicable when. Minor earns through manual work; or application of his skill, talent or specified knowledge or experience.</p>

Sections	Particulars
	<p>Example-</p> <p>15. Miss Sarbajit, a minor child earns Rs. 60, 000/- from the FD made by his parents. Discuss tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The income of Sarabjit be clubbed to his parents' income whose total income is higher u/s 64(1A).</p> <p>16. Miss Sanchari, a minor child earns Rs. 10, 000/- from uploading her smiling and singing photos in the YouTube. Discuss tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The income of the minor girl will not be clubbed to her parents' income as such earnings are out of the application of her skill, talent or specified knowledge or experience in the particular field. So, in the hand of Sanchari, the minor girl, the income will be assessed to tax.</p> <p>N.B.- Child includes step child and/or adopted child also. u/s 2(15B).</p>
<p>Conversion of Self-acquired Property into Joint Family Property and Subsequent Partition u/s 64(2).</p>	<p>Income arising out of self-acquired property converted into joint family property without adequate consideration will be clubbed or added up with the total income of the transferor u/s 64(2). But, in case of such property being re-distributed among the members of the family, the proportionate income i.e., the share of spouse only will be added up or clubbed with the total income of the transferor member.</p> <p>Example-</p> <p>17. Dr. Roy, is a member of a HUF. During the previous year he converted his self-acquired property without adequate consideration, yielding an income of Rs. 4,60,000/- p.a. into joint family property. Discuss tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The earning of Rs. 4, 60, 000/- from the converted asset without adequate consideration will be clubbed</p>

Sections	Particulars
	<p>with the total income of Dr. Roy for the assessment year 2021-22 u/s 64(2).</p> <p>18. Mr. Roy had a self-acquired property. He transferred such property to the Hindu Undivided Family (HUF) business without adequate consideration. During the previous year such property was re-distributed among the members of the family. An income of Rs. 7,60,000/- was received by her spouse during the previous year. Discuss tax consequences of such income for the assessment year 2021-22.</p> <p>Ans. The earning of Rs. 7, 60, 000/- received by his spouse from the converted asset without adequate consideration will be clubbed with the total income of Mr. Roy for the assessment year 2021-22 u/s 64(2).</p>
Collection of Tax u/s 65	<p>The section deals with the collection of tax on such clubbed income. It empowers the assessing officer to serve a 'demand notice' to recover the applicable tax either from the person assessed or to whom the income actually belongs.</p> <p>Example-</p> <p>19. Mr. Das had 1000, 12% Debentures of Rs. 100/- each in ABC Ltd. He transferred such shares to his wife Mrs. Puspa. During the previous year she earned of Rs. 12,000/- from such debentures. Discuss tax consequences of Mr. Das for the assessment year 2020-21 and discuss recovery of the applicable tax.</p> <p>Ans. The earnings Rs. 12, 000/- from transferred assets to spouse will be added up with the income of transferor. However, the Assessing Officer (AO) may collect tax either from the Mrs. Puspa (the recipient of income) or from Mr. Das (the deemed owner of the asset).</p> <p>20. Mr. Roy is dealing with timber. He has a house property which was let out to a tenant with income of Rs. 6, 40,000/- per annum. He transfers the house property to his wife, Mrs. Roy as a gift. During the</p>

Sections	Particulars
	<p>year he had an income of Rs. 7, 60,000/- from the business. Compute income of Mr. Roy for the assessment year 2020-21 and discuss recovery of the applicable tax.</p> <p>Ans. The total income of Mr. Roy is Rs. 14, 00,000/- including the income from house property as transfer being disregarded. The concerned Assessing Officer (AO) has two options for recovery of such tax:</p> <p>(i) He may recover the entire amount of tax from Mr. Roy; or</p> <p>(ii) He may recover the amount of tax partly from Mr. Roy and partly from his wife.</p>

N.B.- (i) Clubbing of negative income will be calculated as usual. (ii) Income arising to the transferee from accretion or reinvestment of the income is not includible to the total income of the transferor.

3.4 Cross transfer

Cross transfer is a very typical situation. When two or more transfers are inter-connected and be the parts of same transaction, such transfers will be treated as cross transfer. In such case, both the transfers will be disregarded and will be taxed in the hands of respective transferors.

1. Mr. Roy made a gift of Rs. 60,000/- to Mrs. Lata, the wife of his brother Mr. Dhruva to purchase a house property and immediately Mr. Dhruva transferred certain number of shares of Rs. 60,000/- to Mr. Roy's daughter Miss Sanchari. During the year ending March 31, 2021 the chargeable income from house property was Rs. 40,000/- while the amount of dividend received on the shares was Rs. 30,000/-. State with reason how and in whose hands these two items of income will be taxed.

Ans. This is a case of cross transfer happened to by-pass the provisions of section 64(1). Therefore, income arising to Mrs. Dhruva (Rs.30, 000/-) will be taxed in the hands of Mr. Dhruva. And income arising to daughter of Mrs. Roy (Rs. 40, 000/-) will be taxable in the hands of Mr. Roy u/s 64(1A).

3.5 Cases Where Clubbing of Income not Applicable

- **Income transferred before marriage:** If any asset has been given to fiancée before marriage, then that asset would not be treated under clubbing provision. The important factor under law is that relation between husband and wife should exist between the two persons at the time of execution of the transactions and at the time of receipt of income.
- **Income derived from clubbed income:** Where any additional income arises to a transferee from accretion or reinvestment of transferred income. The clubbing provision shall not apply.
- **Saved money is not asset transferred:** If any money is being saved for the purpose of meeting regular or household expenditure i.e., the money which has been saved will not fall under the ambit of clubbing provisions.

3.6 Examples of Clubbing of Income

1) Mr. Dayal and Mrs. Dayal have the following income for the P.Y. 2020-21:

	Mr. Dayal Rs.	Mrs. Dayal Rs.
Income from Salary	3,25,000	1,30,000
Business income	1,86,000	—
Income from other sources	58,000	1,07,000
Total	5,69,000	2,37,000

Compute taxable income of Mr. Dayal and Mrs. Dayal for the A.Y. 2021-22 assuming that Mrs. Dayal gets remuneration from or concern where Mr. Dayal holds substantial interest.

Solution:**Calculation of taxable of Mr. and Mrs. Dayal for the A.Y. 2021-22:**

	Mr. Dayal	Mrs. Dayal
	Rs.	Rs.
Income from Salary	3,25,000	—
Income from Salary of Mrs. Dayal under section 64(i)(ii)	1,30,000	—
Income for business	1,86,000	—
Income from other sources	58,000	1,07,000
	<u>6,99,000</u>	<u>1,07,000</u>

Note : It is assumed that Mrs. Dayal has no technical / professional skill to justify her renunciation. However, if it is assumed that Mrs. Dayal has proliferation or technical skill to justify her renunciation from the concern where her husband Mr. Dayal has substantial interest, the clubbing provision under section 64(i)(ii) will not attract.

- 2) Mr. Suresh (age: 35 years, resident) gifts Rs.10,00,000/- to Mrs. Suresh (age: 31 years, resident), she deposits the same in a bank @ 10 per cent per annum. Ashis, minor child of Suresh and Mrs. Suresh, Sanjoy has a bank deposit of Rs.80,000/- (rate of interest 8 per cent) which was gifted to him by his grandfather. Other income of Suresh and Mrs. Suresh is as follows- Mr. Suresh: Rs.3,60,000/- [salary: Rs.2,60,000/-, bank interest: 1,00,000/-], Mrs. Suresh: Rs. 2,70,000/- (interest on company deposits). Out of interest income, Mrs. Suresh deposits Rs.1,000/- in public provident fund. Suresh's contribution to the recognized provident fund is Rs. 45,000/-.

Find out the net income of Mr. Suresh and Mrs. Suresh for the assessment year 2021-2022.

Solution:**Calculation for Net income of Mr. Suresh and Mrs. Suresh for the previous year 2020-2021 and assessment year 2021-2022.**

Particulars	Mr. Suresh Rs.	Mrs. Suresh Rs.	Mr. Sanjoy Rs.
- Salary	2, 60, 000	-	-
- Income from other sources:			
-Bank interest of Mrs. Suresh (10% of Rs. 10, 00, 000) u/s 64(i)(iv)	1, 00, 000	-	-
-Bank interest of Sanjoy [8% of Rs.80, 000 - Rs.1, 500] u/s 64(1A)	4, 900	-	-
-Bank interest of Mr. Suresh	1, 00, 000	-	-
-Interest of company deposit	-	2, 70, 000	
Gross Total Income	4, 64, 900	2, 70, 000	-
Less : Deduction under section 80C	45, 000	1, 000	-
Net Income	4, 19, 900	2, 69, 000	Nil

- 3) Mr. Akash gifted a let-out building which fetches rental income of Rs.10,500/- per month to his son's wife on 1.11.2020. The municipal tax on Rs.6,000/- on the property was paid on 10.1.2021. The total income from all other sources (computed) amounts to Rs.2,70,000/- except income from above said property. Calculate his total income chargeable to tax.

Solution:

	Rs.
Gross Annual Value Rs.10, 500 ×12 =	Rs. 1, 26, 000
Less Municipal Taxes Paid	Rs. 6, 000
Net Annual Value	<u>Rs. 1, 20, 000</u>
Less Standard deduction u/s 24 @ 30%	Rs. 36, 000
Income from House Property	<u>Rs. 84, 000</u>

Therefore, Total income of Mr. Akash = Rs.2,70, 000 + Rs.84, 000 = Rs.3, 54, 000/-

The Income from House Property will be clubbed in the hands of Mr. Akash u/s 64(1)(VIII).

- 4) Mr. Jodunath makes a gift of Rs.1, 30, 000/- to Mr. Roy which is invested by Mr. Roy in his business. The following are the data relating to the business of Mr. Roy for the year 2020-2021.

Total capital in the business as on April 1, 2020. Rs.7, 50, 000/-.

(Including Rs.1, 30, 000/- gifted by Mr. Roy)

Taxable profit for the year Rs.1, 50, 000/-

Calculate the amount of profit from the said business to be clubbed with the income of Mr. Jadunath.

Solution:

Amount of profit from business of Mr. Roy to be clubbed with the income of Mr. Jadunath

$$\begin{aligned}
 &= \text{Profit from business} \times \frac{\text{Amount of investment (out of gift) made by Mr. Roy on April 1, 2020}}{\text{Total investment on April 1, 2020}} \\
 &= \text{Rs. } 1, 50, 000 \times \frac{\text{Rs. } 1, 30, 000}{\text{Rs. } 7, 50, 000} \\
 &= \text{Rs. } 26, 000/-
 \end{aligned}$$

- 5) Mr. Z makes a gift of Rs. 4, 50, 000/- to Mrs. Z which is contributed by Mrs. Z in a firm as capital. Total capital contribution of Mrs. Z on April 1, 2020 is Rs. 9,00, 000/-. Particulars of income of Mrs. Z from the firm for the year 2020-2021 are as follows:

Share of profit from the firm Rs.1, 20, 000/-

Interest from the firm Rs.1, 00, 000/-

Salary from the firm Rs.72, 000/-

Calculate the income of Mrs. Z from the firm to be clubbed with the income of Mr. Z.

Solution:

Only proportionate interest receivable by Mrs. Z from the firm will be clubbed with the income of Mr. Z. No portion of the share of the profit and salary receivable from the firm by Mrs. Z will be clubbed with the income of the transferor. The amount to be clubbed with the revenue of Mr. Z in respect of income of Mrs. Z from the firm is computed as under-

$$\begin{aligned}
 &= \text{Interest from the firm} \times \frac{\text{Amount of investment of gift made by Mrs. Z on April 2020}}{\text{Total investment on April 1, 2020}} \\
 &= \text{Rs. } 1,00,000 \times \frac{\text{Rs. } 1,50,000}{\text{Rs. } 9,00,000} \\
 &= \text{Rs. } 50,000/-
 \end{aligned}$$

- 6) Ritesh is the minor child of Mr. and Mrs. Jogesh. Mr. Jogesh has business income of Rs. 2, 80, 000/- and Mrs. Jogesh has salary income of Rs. 2, 30, 000/-. Ritesh earns income of Rs. 64, 000/- from a dancing programme. Ritesh also earns interest of Rs.15, 000/- from a fixed deposit with a bank.

Compute total income of Mr. Jogesh, Mrs. Jogesh and Ritesh.

Solution:

Computation of Total Income of Mr. Jogesh, Mrs. Jogesh and Ritesh for the assessment year 2021-2022.

Particulars	Mr. Jogesh Rs.	Mrs. Jogesh Rs.	Ritesh Rs.
Business income	2, 80, 000	-	-
Income from salary	-	2, 30, 000	-
Income from dancing programme.	-	-	64, 000
Interest or bank deposit			
Subject to exemption under section 10(32) [Rs.15,000 - Rs.1,500]			
Gross Total Income	13, 500	-	-
	2, 93, 500	2, 30, 000	64, 000
Less: deduction under section VIA	Nil	Nil	Nil
Total Income	2, 93, 500	2, 30, 000	64, 000

Note:

- i) Income of Ritesh from dancing programme is not clubbed with the income of the parent as per the provision to section 64(1A).
- ii) Interest income of Ritesh is clubbed with the income of Mr. Jogesh after giving exemption under section 10(32), as total income (without considering the income of the minor) of Mr. Jogesh is higher than that of Mrs. Jogesh.
- 7) From the details given below, calculate the total income of Mr. D (aged 51 Years & resident in India) for the assessment year 2021-22.
- i) Income from business Rs. 1, 00, 000/-.
- ii) Income from minor son (singer by profession) Rs. 15,000/-.
- iii) Winning from lottery (gross) [ticket bought in the name of Mr. D's minor daughter] Rs. 8,500/-.
- iv) Mr. D's wife is a government servant and her income computed under the head salaries Rs. 70,000/-.
- v) Interest on Fixed deposit with SBI in the title of minor Daughter Rs. 22,500/-.

Solution:**Computation of total Income of Mr. B for the Assessment Year 2021-22.**

Particulars	Amount Rs.	Amount Rs.
Income from business		1, 00, 000
Winning from lottery bought in the name of minor daughter	8,500	
Interest on Fixed deposit with SBI in the title of minor Daughter	22,500	
	31, 000	
Less: - Exemption u/s 10(32)	1,500	
		29, 500
Total Income		1, 29, 500

4. Under which section revocable transfer of assets has been defined.....
 - a) Sec. 51
 - b) **Sec. 61**
 - c) Sec. 71
 - d) None of these
5. Some necessary clubbing provisions have been incorporated under which section for the purpose of curbing tax avoidance practice
6. Inclusion of others incomes in the income of the assessee is known as
7. Minor child has been defined under which section for clubbing of income
8. Exemption to parent for clubbing of minor's income comes u/s...
9. Amounting to Rs. is available exemption in respect to each minor child under clubbing and aggregation of income.
10. Clubbing provisions are applicable for-

B. Short Answer Type Questions

1. For application of clubbing of income also apply for clubbing of loss, discuss the rules regarding the statement.
2. Incomes of other person are included in the assessee's total income, mention the cases regarding this.

3. Regarding provisions of clubbing of income from the property converted into joint family property, what are the provisions?
4. State the significance of clubbing of income.
5. Discuss the provisions regarding the inclusion of the income of a minor child and the wife of the assessee in his total income.

C. Broad Answer Type Questions

1. Mention the various categories of incomes of other persons deemed to be the income of persons sought to be taxed under the provisions of the income-tax Act, 1961.
2. Discuss the provisions under section 64 (1) (viii).
3. Mr. Jignesh Kumar makes a gift of Rs.1, 50, 000/- to Mr. Roy which is invested by Mr. Roy in her business. The following are the data concerning to the business of Mr. Roy for the year 2020-21.

Total capital in the business as on April 1, 2020 Rs.7, 00, 000/-.

(Including Rs.1, 30, 000/- gifted by Mr. Roy)

Taxable profit for the year Rs.1, 50, 000/-.

Calculate the amount of profit from the said business to be clubbed with the income of Mr. Roy.

Ans. 32, 143/-

4. Mr. Y makes a gift of Rs. 5, 00, 000/- to Mrs. Y which is contributed by Mrs. Y in a firm as capital. Total capital contribution of Mrs. Y on April 1, 2020 is Rs. 10,00, 000/-. Particulars of income of Mrs. Y from the firm for the year 2020-2021 are as follows-

Share of profit from the firm Rs.1, 50, 000/-.

Interest from the firm Rs.1, 00, 000/-.

Salary from the firm Rs.72, 000/-.

Calculate the income of Mr. Y from the firm to be clubbed with the income of Mr. Y.

Ans. 50, 000/-

5. What is Clubbing of Income? Discuss the significances of Clubbing of Income.

Answer Key (A)

1(d)	2(c)	3(c)	4(b)	5(a)
6(c)	7(a)	8(b)	9(b)	10(b).

Unit : 4 □ Assessment Procedure

Structure

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4.0 Objectives

After studying this unit we will be able to understand—

- Voluntary Return [Sec. 139(1)];
- Return of Loss [Sec. 139(3)];
- Balated Return [Sec. 139(4)];
- Income Tax Return of Charitable and Religions Trust [Sec. 139(4a)];
- Income Tax Return of Political Party [Sec. 139(4b)];
- Revised Return [Sec. 139(5)];
- Defective Return [Sec. 139(9)];
- Due dates for filing of return;
- Income Tax Assessment;
- Penalties and Prosecution; and
- Advame Payment of Tax;

- Instalment and Due Dates for Advance Payment of Tax;
- Provisions regarding TDS;
- Refund of Tax;
- Interest;
- Appeals and Revisions;
- Settlement of Cases.

4.1 Introduction

The word assessment means to determine something. For income tax purposes, assessment means to find out the total income and also to find out the taxable payable thereon. Assessment also covers the process of finding out whether the tax paid by the assessee is correct or not. Thus, it is very much evident that the word assessment covers an important position in income tax, assessment means the process of collecting and also reviewing the information which has been filed by the assessee and also to examine whether the assessment is right or wrong. Thus, assessment refers to the calculation of income, sometimes for the purpose of resolving tax payable, by assessment income tax department also finds out the tax payable by the assessee. Assessment procedure involves four phases: the first phase involves the step where the assessee in his or her own capacity files the return of his total income, again return can also be filed by Tax Return Preparer on behalf of assessee. The second stage is concerned with computation of taxable income of the assessee. The third phase involves the matter of resolving the amount of tax payable by assessee on the basis of such calculation. The last phase is actually about the making of the assessment order and matter of issuing notice of demand specifying the amount, if any, payable by the assessee. The most important matter about assessment is that the process of assessment also involves reassessment and re-computation.

4.2 Income Tax Return

Income Tax Return (ITR) is a specific form which an assessee is supposed to submit to the Income Tax Department of India in respect of his income earned from various heads viz. income from salary, income from house property, income from business and profession, capital gains and income from other sources such as dividend, interest on deposits, royalty income, winning on lottery, cross-word puzzles, betting and card games etc. It contains detail information about the assessee's income and the taxes already paid him and yet to be paid for the relevant previous year. For this purpose, the Income Tax Department has

prescribed seven types of ITR forms - ITR-1, ITR-2, ITR-3, ITR-4, ITR-5, ITR-6, ITR-7 and the applicability of these forms will depend on the nature of income and the type of taxpayers.

4.2.1 Voluntary Return [Sec. 139(1)]

In income tax voluntary return refers to return being filed on a voluntary basis. There may be certain situations where income tax return has to be filed mandatorily, these situations include : (a) there are taxable income earned by the assessee; (b) where any TDS has been made from the income of the assessee; (c) where the assessee needs to claim a refund, in all these cases the return has to be filed on a mandatory basis. However, an assessee can file return as per his/her own will even if the filing of return is not mandatory and there is no binding or obligation on the assessee. Voluntary return with no taxable income can be filed by the assessee in certain cases where the assessee needs to submit return so that he can apply for bank loan or in certain cases to be eligible for carry forward and set off of losses.

Section 139(1) – Mandatory Voluntary Returns

Section 139 (1) deals with the situation when the return has to be submitted by the assessee on a mandatory basis. In the following situations, the filing of Income Tax Return is mandatory—

- Where a person other than a firm or company, has earned income which is above the basic exempted limit, then the person has to submit the return on a mandatory basis, within the due date specified under the Act.
- Any private, public, domestic or foreign company situated and/or doing business in India has to file return of income for every previous year on or before the due date in the prescribed form irrespective of the amount of income or loss.
- Every HUF (Hindu Undivided Family), AOP (Association of Persons) and BOI (Body of Individuals) – if the total income passes the prescribed exemption limit, are accountable to file the Income Tax Return in the prescribed form within the due date as mentioned under the Act.
- Any firm LLP (Limited Liability Partnership) is liable to file return voluntarily irrespective of the amount of income or loss.

4.2.2 Filing Return of Loss [Sec. 139(3)]

- Generally, where any loss is suffered by an assessee in the preceding financial year, then in that case filing of tax return is not obligatory on the part of the assessee

section 139(3) of the Income Tax Act provides that an assessee is required to file a loss return within the due date specified. Filing of loss return is very significant because an assessee cannot be allowed to carry forward and set off of losses in certain cases if the assessee does not file a return of loss u/s 139(3).

- Tax return for loss is required compulsory by the assessee in the following cases:
 - a) If the loss takes place under the head “Profits and Gains of Business and Profession” or under the head ‘Capital Gains’, loss return filing is obligatory if the assessee wants to carry forward this loss and offset with the upcoming income in future.
 - b) In case the loss arises from the activity of owning and maintaining race horses, filing of loss return is obligatory.

4.2.3 Late Filing of Income Tax Return or Belated Return [Sec. 139(4)]

The taxpayers have to file the tax return before the due date as defined under Section 139(1), or within the permissible time by a notice that is issued under the Section 142(1). If they fail to do so, they may still file the belated return for any previous year at any time until the end of one year from the end of the relevant year of assessment or before conclusion of the assessment, whichever happens earlier. However, the taxpayer might be charged with a penalty of Rs. 5,000/-, under Section 271F of IT Act 1961, in case the return is submitted after the relevant assessment year. Again, the taxpayer submitting belated return would be liable to pay simple interest @ 1% per month u/s 234A for every month or part thereof delay. Interest shall be charged from the due date to the date of filing return or where no return has been filed up to the date of completion of assessment u/s 144 and shall be calculated on the amount of tax payable on returned income as reduced by advance tax, tax deducted at source and payment of self-assessment tax.

4.2.4 Income Tax Return of Charitable and Religious Trusts [Sec. 139(4A)]

Filing Tax Return under Section 139(4A) is required by a person who takes an income derived from the property held under any trust or other legal compulsion, either exclusively for religious or charitable purposes or partly for such purposes only, or of income being voluntary contributions referred to in sub-section 2(24)(iia), shall, in case the total income (without giving effect to the provisions of sections 11 and 12) exceeds the maximum permissible amount which is not taxable under the Income Tax Act.

4.2.5 Political Party to furnish the Return on Income [Section 139(4B)]

Section 139(4B) provides that every political parties are to file Income Tax Return in case the total income surpasses the maximum permissible tax-exempt limit. The total income is calculated for this precise purpose and under this act excluding the effects of provisions

under Section 13A). The Chief Executive Officer or the Secretary of all political parties are obliged to furnish this return of income.

4.2.6 Revised Return [Sec. 139(5)]

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

4.2.7 Defective Returns [Sec. 139(9)]

Under section 139(9), where the Assessing Officer (AO) considers that the return submitted by an assessee is defective or imperfect, the AO may intimate the defects to the assessee with an opportunity to rectify the defects with 15 days from the date of giving such intimation. This time-limit of 15 days may be extended by the AO on an application made by the assessee. If the assessee fails to rectify the defects within the time-limit of 15 days or such further extended period, then the AO shall treat the return as invalid return and other provisions of the Act shall apply as if the assessee has failed to submit a return. However, if the assessee rectifies the defects after the expiry of 15 days time limit or further extended time but before assessment is made, the AO may condone the delay and treat the return a valid one.

The following documents are essential to avoid the return filed to be deemed as defective:

- A duly filled tax return in the prescribed form.
- Proof of all claims of paid taxes – like proof of tax assumption and collection that was done at source, payment of self-assessment tax and advance tax.
- A statement for the audit done under section 44AB, where prior to filing the return, the report is furnished.
- A statement displaying the calculation of taxes payable.
- If tax payer preserves books of account, then the mandatory copies are:
 - a) Profit and Loss A/C, Manufacturing A/C, Trading A/C, Balance Sheet, Income & Expense A/C.
 - b) Personal A/Cs of partners in case of partnership firms.
 - c) For AOP/BOI, personal accounts of the members.
 - d) For proprietors, the personal account.
- In case of Cost Audit, the related report.

- If the tax client's account is examined, then the copies of audited account, balance sheet and audited profit and loss account.
- If books of account of the tax payer are not preserved, then a declaration containing the gross receipts, turnover amount, expenses and net profit, bank balance, stocks, cash, debtors and creditors information and so on.

4.3 Return Forms

The forms are given below in the table-

New ITR Form	Subject
ITR-1 (i.e., SAHAJ)	For individuals having income from salary/one house property (not being brought forward loss from previous years/income from other sources (not being winning from lottery and income from race horses).
ITR-2	For individuals and HUF's not having business/professional income.
ITR-3	For persons/HUF's being partners in firms and not carrying out business or profession.
ITR-4	For individuals and HUF's having income from a proprietary business or profession.
ITR-4S (i.e., Sugam)	For individuals/HUF's deriving business income and such income is computed in accordance with special provisions referred to in sections 44AD and 44AE.
ITR-5	For firms, AOPs and BOIs or any other person (not being individual of HUF or company).
ITR-6	For companies other than companies claiming exemption under section 11.
ITR-7	For individuals as well as companies essential to furnish return under section 139(4A)/(4B)/(4C)/(4D)/(4E)/(4F).
ITR-V	Acknowledgement [Where the date of the return of income in forms ITR-1, ITR-2, ITR-3, ITR-4, ITR-5 and ITR-6].

The ITR Forms has been reviewed, the new ITR forms has been discussed below:

ITR 1:

ITR 1 may be filed in following situations-

- If Agricultural Income is less than Rupees Five Thousand.
- If the total income does not exceed Rs. 50, 00, 000/-.
- If not more than 1 Crore has been deposited in bank account in one particular year
- If not more than 1 Lakhs have been spent for electricity expenses
- If not more than 2 Lakhs have been spent for travelling abroad

ITR 2:

Individual and HUF can file ITR 2, those having the following criteria-

- Income is more than 50 Lakhs
- Agricultural Income is more than Rupees Five Thousand.
- If a person is an administrator of the company
- Persons who do not make money from business ventures.
- Income received through Salary, Pension, House property, lottery, horse race, capital gain
- Having foreign income or having foreign assets

ITR 3:

This is applicable for persons/HUF's being partners in firms and not carrying out business or profession with the following criteria-

- Individual and HUF can file the return
- Person having business and profession
- If the person is individual director of the company
- Income received as partner of a firm
- Investment in unlisted equity share
- Income from salary, pension, house property & other sources

ITR 4:

Individual, HUFs, Partnership Firms which are having income from business and profession can opt for ITR 4 form, those who have chosen for presumptive income scheme under section 44AD, 44ADA, 44 AE will choose ITR 4 form, If the turnover is exceeding Rupees 2 crore, then the assessee has to file ITR 3

ITR 5:

It can be filed by firm, Co-operative Society, Limited Liability partnership, Body of Individuals, Investment Fund, Estate of Insolvent, Local Authorities, Investment Fund and Business Trust

ITR 6:

The form can be filed electronically by companies other than companies defined under section 11 i.e those companies who are claiming exemption under income from a religious of charitable property.

ITR 7:

It can be filed by individuals holding a property of religious or charitable purposes. Political parties, medical institutions, News Agency, Educational Institutions, agencies involved in scientific research.

4.3.1 Due dates for filing return of income

Under the Act, the following are the specific due dates mentioned for filing return of income:

a) Where the assessee is required to furnish a report u/s 92E (for having international transactions)—	Within 30 th November of the relevant A.Y.
b) Where the assessee is a company (without having international transactions)—	Within 30 th September of the relevant A.Y.
c) Where the assessee is a non-corporate assessee and is required to have the accounts audited—	Within 30 th September of the relevant A.Y.
d) In any other cases	Within 31 st July of the relevant A.Y.

4.4 Kinds of Income Tax Assessment

The assessments may be as follows:

4.4.1 Self-Assessment [Sec 140A]

Every person, before submitting a return of income under section 139(1) or section 142(1) or section 148 or section 153A of the Income Tax Act is liable to make a self-assessment of his income to determine tax still payable after considering the tax already paid by way of advance tax, tax deduction at source etc. The assessee also has to pay interest up to the date of filing of the return along with self-assessment of tax. The return of income submitted by the assessee will be taken as the proof of payment of both tax and interest. Assessing officer, if he considers, may make an investigation for getting full information in respect of assessee's income. Where the amount paid by assessee falls short of the aggregate of tax and interest, the amount so paid shall first be adjusted towards interest payable and the balance, if any, shall be adjusted towards tax payable.

4.4.2 Summary Assessment [Section 143(1)]

On the basis of return filed by an assessee under section 139(1) or section 142(1), the Assessing Officer may complete the assessment as summary assessment without making any query from the assessee concerned. However, before making any such assessment, the Assessing Officer (A.O.) may make following adjustments in the returned income of the assessee:

- i) any arithmetical error in the return;
- ii) any incorrect claim, if such incorrect claim is apparent from any information in the return.

After completing the above adjustments as may be necessary, the A.O. shall send an intimation to the assessee within a period of one year from end of the financial year in which the return was submitted. The intimation shall specify the sum so payable by way of tax or any refund due, to the assessee.

Where there is neither any adjustment nor any tax due from or refund payable to the assessee, the acknowledgement of the return shall be deemed to be the intimation under section 143(1) for the completion of assessment.

4.4.3 Regular or Scrutiny Assessment [Section 143(3)]

On the basis of return of income submitted by the assessee under section 139(1) or in pursuance of a notice under section 142(1), if the A.O. is of the opinion that the assessee

has understated the income or has computed excessive loss or has short payment of tax in any manner, he may serve a notice under section 143(2) requiring him to attend his office or produce or caused to be produced any evidence which the A.O. may rely in support of the assessee's claim so as to give an opportunity of being heard to the assessee. Such a notice has to be served before the expiry of six months from the end of the financial year in which the return is furnished.

After hearing such evidence as the assessee may produce in response to the notice under section 143(2) or such other evidence as the A.O. may require on specified points and after taking into account all relevant information which the A.O. may have gathered, then the A.O. shall, by order in writing, make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee as further tax liability or the refund due to the assessee thereof.

4.4.4 Best Judgement Assessment[Section 144]

Under section 144, an Assessing Officer, after considering all relevant material which he has collected, shall make a best judgement assessment to determine the total income or loss of an assessee:

- a) if the assessee fails to submit return as required under section 139(1) or section 139(4) or section 139(5); or
- b) if the assessee fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with the direction given under section 142(2A) as to get his accounts audited; or
- c) if the assessee, after having submitted a return, fails to comply with all the terms of a notice issued under section 143(2) requiring his presence or production of evidence and documents; or
- d) if the Assessing Officer is not satisfied with the correctness or completeness of the accounts of the assessee or if no method of accounting has been regularly employed by the assessee.

Before making any such best judgment assessment, the assessee must be given an opportunity of being heard. Such opportunity shall be given by the A.O. by serving a notice calling upon the assessee to show cause on a date and time mentioned in the notice, as to why the assessment should not be completed to the best of his judgement. The best judgment assessment is also known as ex-parte assessment as it is done by the A.O. on his best of knowledge and judgment. Accordingly, the A.O. shall make an assessment of the total income or loss of the assessee to the best of his judgement and determine the sum

payable by the assessee on the basis of such assessment under section 144. However, it is to be noted that no refund shall be granted under section 144. In case of best judgment assessment, an assessee is entitled to file an appeal as his right under section 246 or to make an application for revision of order under section 264 to the Commissioner of Income Tax.

4.4.5 Income Escaping Assessment [Section 147]

Where the A.O. has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153 assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to the notice of the A.O. subsequently in the course of the proceedings under this section, or re-compute the loss or depreciation allowance or any other allowance, as the case may be, for the relevant previous year.

Where an assessment under section 143(3) or section 147 has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to furnish return under section 139(1) or section 142(1) or section 148 or to disclose fully and truly all material facts necessary for assessment purposes by the A.O.

The A.O. may assess or reassess an income which is chargeable to tax and the same has escaped assessment other than the income involving matters which are pending in an appeal, revision or reference etc.

The following are deemed to be the cases where income chargeable to tax has escaped assessment:

- i) where no return has been furnished by the assessee although his total income or the total income of any other person in respect of whom he is assessable under the Act during the previous year has exceeded the maximum amount not chargeable to tax;
- ii) where a return has been furnished by the assessee but no assessment has been made and it is noticed by the A.O. that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
- iii) where an assessment has been made but the income chargeable to tax has been under-assessed or such income has been assessed at too low a rate.

Before making any assessment, reassessment or re-computation under section 147, the A.O. shall serve on the assessee, a notice requiring him to furnish a return within such period as may be specified in the notice, a return of his income or the income of any other person in respect of whom he is assessable under the Act. The notice under section 148 must be issued as follows:

- a) where the income which has escaped assessment amounts to one lakh or more, the notice shall be issued within six years from the end of the relevant assessment year;
- b) in any other case, the notice shall be issued within four years from the end of the relevant assessment year.

4.5 Assessment or Reassessment Notice under section 148 of the Income Tax Act

As per Section 147 of the Income Tax Act, 1961, the Assessing Officer has the power to reassess a person's income based on tax returns which has been filed earlier. The Assessing Officer can do so by sending a notice under section 148 for income escaping assessment.

As per Union Budget 2021 outcome-

The time limit to re-open income tax assessment cases has been diminished to 3 years from 6 years. Also, in case of serious tax evasion the assessment can be re-opened for previous 10 years, in the case only when concealment of income is more than Rs. 50 lakhs.

4.5.1 Causes to receive a notice u/s 148

A person could receive a notice u/s 148 in circumstances where the assessing officer believes that such a person's income chargeable to tax might have escaped assessment.

Where the proof supporting his reasons to believe is available, the A.O. would record his reasons in writing and send the person notice u/s 148. The assessing officer in this case cannot change his mind and go for re-investigation without a valid reason.

In case the assessee has revealed all the documents and accurate information during the original assessment, the Assessing Officer cannot send a notice to the assessee for reassessing the same documents. Some of the evidences or new papers which show that the income has escaped assessment should come to the light.

In case the original evidence or documents come to light representing that the individual has concealed income, then the AO could take action against such assessee under section 147 and 148.

4.5.2 Who can issue a notice under section 148

The Income Tax Act, 1961, Sec.151(1) contains the provisions for issue of notice:

- After the end of four years from the end of relevant assessment year no notice would be issued by an Assessing Officer under section 148, unless Principal Chief Commissioner or Principal Commissioner or Chief Commissioner or Commissioner is pleased, on reasons recorded by the AO, that it's a perfect case for issuing such notice.
- Other than the above-mentioned cases in all other cases, no notice would be issued by an Assessing Officer under section 148, where AO is below the rank of a Joint Commissioner. Again, the notice wouldn't be issued unless Joint Commissioner is pleased, on explanations recorded by such AO, that it's a fit case for issuing such notice.
- For the purposes of above (1) and (2), Principal Chief Commissioner or the Principal Commissioner or the Chief Commissioner or the Joint Commissioner the Commissioner, liable on the case, being pleased on reasons recorded by AO about the fitness of the case for issuing notice under section 148 of the Income Tax Act, need not issue the notice by himself.

4.5.3 Time limit to issue a notice u/s 148

- Section 149 of the Income Tax Act, states that the notice under section 148 can be issued within a period of 4 years from the end of related AY (assessment year) in circumstance the income so evaded doesn't exceed INR 1 lac.
- In case the revenue is more than INR one lac the notice under the said section could be issued within a period of 6 years from the end of related A.Y. subject to provisions comprised in section 151.
- The notice under section 148 could be issued within a period of 16 years from the end of related A.Y. in situation the revenue that has run-away assessment narrates to assets located outside India.
- Further, if the assessment has been done under section 143(3) or 147 no further action could be taken under section 147 after finishing of 4 years from the end of related A.Y. unless income chargeable to tax has run-away assessment for such A.Y. due to letdown on assessee's part to file the return under section 139 or 142 or 148 or fully and truly revealing all the material facts essential for the assessment, for that AY.

4.6 Penalties and Prosecutions

Under the Income Tax Act, there are provisions for levying penalty as well as prosecution for default in complying with provisions of or with conditions prescribed under the Income-tax. The quantum of levying penalty depends on the nature and gravity of default.

Chapters XVII and XXI of Income-tax Act, 1961, contain various provisions empowering an Income Tax Authority to levy penalty in case of certain defaults under the Act in the following cases where the assessee:

- a) Is in default or is deemed to be in default in making payment of tax, including the tax deducted at source, advance tax and the self-assessment tax with penalty of such an amount as Assessing Officer may impose but not exceeding tax in arrears [Section 221 read with Sec.201(1)];
- b) Does not pay the advance tax in terms of section 208 of the Act with penalty as directed by the tax authority [Section 273(1)];
- c) Fails to comply with a notice issued under section 142(1) or 143(2) or fails to comply with the direction issued under section 142(2A) to get the accounts audited with penalty fixed at Rs. 10,000 for each failure [Section 271(1)(b)];
- d) Makes material concealment of particulars of income or furnishing of inaccurate particulars of income with penalty of 100 % to 300 % of the amount of tax sought to be evaded [Section 271(1)(c)];
- e) Does not maintain books of accounts and documents by persons carrying on profession or business as prescribed under section 44AA with penalty of Rs. 25,000. [Section 271A];
- f) Fails to get the accounts audited in prescribed circumstances or fails to obtain the prescribed audit report within prescribed time period of failure to furnish the audit report along with the return, as required under section 44AB with penalty of one-half per cent of total sales, turnover or gross receipts, etc., or Rs.1,50,000, which-ever is less. [Section 271B];
- g) Makes default to deduct tax at source with penalty of an amount equal to tax not deducted or paid. [Section 271C];
- h) Fails to file the return of income as required under Section 239 (1) with penalty of

Rs. 5,000 if return is furnished after due date specified under section 139(1). However, if the total income of the person does not exceed Rs. 5 lakhs then Rs. 1,000 shall be the late filing fees. [Section 271F];

- i) Fails to attend or give evidence or produce books of accounts and documents in compliance with the requirements of summons under section 131(1) with penalty of Rs. 10,000 for each failure/default. [Section 272A(1)(c)];
- j) Makes failure to comply with the provisions of section 139A dealing with the application for and allotment of Permanent Account Number with penalty of Rs.10,000 for each default. [Section 272A(1)(d)];
- k) Makes failure for which penalty leviable is Rs. 10,000 for each default:
 - i) to furnish in due time the return of income by charitable or religious institutions. [Section 272A(2)(e),
 - ii) to deliver in due time a copy of declaration of non-deduction of tax at source u/s.197A. [Section 272A(2)(f)],
 - iii) to furnish a certificate of tax deducted at source to the person on whose behalf tax has been deducted or collected as required by Section 203 or Section 206C. [Section 272A(2)(g), and
 - iv) to deduct and pay tax from salary payable to an employee as directed by the Assessing Officer or the Tax Recovery Officer as required by Section 226(2). [Section 272A(2)(h)]

4.6.1 Prosecutions

Under the Income Tax Act, 1961 an assessee shall be liable to be prosecuted in respect of the following offences committed by the assessee:

- a) For removal, parting with or otherwise dealing with books of accounts, documents, money, bullion, jewellery or other valuable article or things put under restraint during the search with imprisonment up to 2 years [Section 275A];
- b) For fraudulent removal, concealment, transfer or delivery of any property or any interest in the property with the intention to thwart recovery of tax with imprisonment up to 2 years [Section 276];
- c) For failure on the part of a liquidator or receiver of a company to give notice of his

appointment to the Assessing Officer or failure to set apart amount notified by the Assessing Officer, or parting away of company's properties in contravention of income-tax provision with imprisonment from 6 months to 2 years [Section 276A];

- d) For failure to enter into written agreement or failure to furnish the statement of immovable property intended to be transferred u/s.269UC, or failure to surrender or deliver the property u/s.269UE, purchased by the Appropriate Authority or doing or omitting to do anything u/s.269UL, which will have the effect of transfer of property without the permission of the Appropriate Authority (under the provisions of Chapter XX-C) with imprisonment from 6 months to 2 years [Section 276AB];
- e) For non-compliance of depositing tax deducted at source to the credit of the Central Government with imprisonment from 3 months to 7 years [Section 276B];
- f) For failure to pay or deposit the tax collected at source with imprisonment from 3 months to 7 years [Section 276BB];
- g) For undertaking wilful attempt to evade any tax, penalty or interest with imprisonment from 6 months to 7 years [Section 276C(1)];
- h) For undertaking wilful attempt to evade the payment of any tax, penalty or interest levied under Income Tax Act with imprisonment from 6 months to 7 years [Section 276C(2)];
- i) For wilful failure to furnish in due time return of income with imprisonment from 6 months to 7 years [Section 276CC];
- j) For non-compliance with the furnishing of return of income in Search Cases as required under section 158BC with imprisonment from 3 months to 3 years [Section 276CCC];
- k) For wilful failure to produce accounts and documents as directed by issue of notice under section 142(1) with imprisonment up to 1 year [Section 276D];
- l) For wilful failure to get the accounts audited as directed by the Assessing Officer under section 142(2A) with imprisonment up to 1 year [Section 276D];
- m) For making of a statement in verification or delivery of an account or statement which

is false and which the concerned person knows or believes to be false or does not believe to be true with imprisonment from 6 months to 7 years [Section 277];

- n) For abetting or inducing another person to make and deliver an account or statement or declaration relating to any taxable income which is false and which he either knows or believes to be false with imprisonment from 6 months to 7 years [Section 278].

4.7 Advance Tax Payment

Advance Tax is a type of tax which is paid by an assessee in advance within the relevant previous year. Advance tax is payable on the basis of estimated current income of the assessee by specified instalments during the relevant previous year. Advance Tax Payment by an assessee is in addition to any tax deducted at source from the income of the assessee. This type of tax can be paid through challans at bank branches which are sanctioned by the Income tax department.

Payment of advance Tax can be made online through the website of the Income Tax department or the National Securities Depository.

Who is liable to pay Advance Tax?

The eligibility criteria which one has to accomplish in order to pay advance tax are:

- a) Assessee's current tax liability exceeds Rs.10,000 during the relevant previous year;
- b) Every income earned by an assessee incl. capital gains, winning from lottery, crossword puzzles etc. is liable for payment of advance tax.

Senior citizens i.e., an assessee who is above the age of 60 years are exempted from paying advance tax. An assessee, who has opted for computing business income under section 44AD on presumptive basis, shall be exempted from payment of advance tax.

4.7.1 Advance Tax Payment Due Date (Installment)

Due date for payment of Advance Tax for all assesses including from F. Y. 2016–2017 corporate assessee.

Due Date of Payment	Amount to be paid as Advance Tax
On or before 15 June of the relevant P.Y.	Not less than 15% of the Advance Tax liability.
On or before 15 September of the relevant P.Y.	Not less than 45% of the Advance Tax liability.
On or before 15 December of the relevant P.Y.	Not less than 75% of the Advance Tax liability.
On or before 15 March of the relevant P.Y.	100% of the Advance Tax Liability.

However, the above mentioned schedule would not apply to those taxpayers who have opted for presumptive scheme of taxation under section 44 AD or 44ADA. Such tax payees would be liable to pay advance tax by 15th march@ 100%.

4.7.2 Computation of Advance Tax Liability

The amount of advance tax payable by an assessee in the financial year will be calculated as follows:

- 1) Estimating the present income of the financial year for which the advance tax is payable.
- 2) Computation tax as such on estimated income at the rate of tax applicable for the relevant financial year.
- 3) Adding surcharge, educational cess and secondary & higher education charge.
- 4) Allowing relief if any, u/s 89, 90, 90A and 91.
- 5) Deducting tax deducted at source and tax collected at source during the P.Y.
- 6) The balance will be the amount of advance tax to be paid.

4.7.3 Exemption in Advance Tax Payments

- Senior citizens aged 60 years and above are exempted from paying the advance tax.
- Salaried persons falling under TDS net are released from paying the advance tax. However, any incomes such as interest, capital gains rent and other non-salary income will also attract advance tax.

- If Tax Deducted at Source (TDS) deducted is more than the tax payable for the year, then one does not have to pay the advance tax.

4.7.4 Benefits of Paying Advance Tax

- Advance tax decreases the stress of taxpayers. As taxpayer is paying tax in advance, taxpayers do not have to concern about money shortage or tax payments at the last moment.
- It speeds up the tax collection procedure.
- It increases government funds as the government can earn an interest on the collected amount.
- It assists businesses in managing their funds well and delivers an idea of the income they have earned during the year.

4.7.5 Refund in Advance Tax Payment

At the end of the year, if the Income Tax department discovers that the assessee has paid more tax than they should have paid, then it will refund the excess amount. Taxpayers can claim refund by filling and submitting Form 30. Assessee has to make the claim within a period of one year from the last year of the assessment year.

4.7.6 Examples of Advance Tax Payment

- 1) Bijoy is a freelancer earning income from the profession of interior decoration. For the FY 2020-21, Bijoy estimates his annual gross receipts at Rs 20,00,000. Bijoy estimates his expenses at Rs. 12,00,000/-. Bijoy has deposited Rs. 40,000/- in PPF account. Bijoy has also paid Rs. 25,000/- towards LIC premium. Further, Bijoy has paid Rs 12,000 towards medical insurance premium. The professional receipts of Bijoy are subject to TDS. TDS of Rs. 30,000/- has been deducted on certain professional receipts Bijoy for the FY 2020-21. Besides professional receipts, Bijoy estimates an interest of Rs. 10,000/- on fixed deposits held by him.

Compute Bijoy's Advance Tax Liability

Solution.**Calculation for advance tax liability of Bijoy**

Income Estimation for Advance Tax	Amount Rs.	Amount Rs.
Income from Profession:		
Gross receipts	20,00,000	
Less: Expenses	12,00,000	
		8, 00, 000
Income from Other Sources:		
Interest from fixed deposit		10,000
		8, 10, 000
Gross Total Income		
Less: Deduction under section 80C/80D		
Contribution to PPF	40,000	
LIC premium	25,000	
	65, 000	
Deduction under 80D for payment of medical insurance premium	12,000	
Total Income		7, 33, 000
Tax on		
Total Income :		
up to Rs. 2,50,000	Nil	
up to Rs. 2,50,001- Rs. 5,00,000 @ 5%	12,500	
on Balance Rs. 2,33,000 @ 20%	46,600	
Add: Education cess @ 4%	<u>2,364</u>	
		59,100
		2,364
		61,464
Less: TDS		30,000
Tax Payable in Advance		31,464
		31,500
Rounded off		31,500

Advance Tax Payable		Amount Rs.
Due Date	Advance Tax payable	
On or Before 15th June, 2020	15% of Advance Tax	4,725
On or Before 15th September, 2020	30% of Advance Tax	9,450
On or Before 15th December, 2020	30% of Advance Tax	9,450
On or Before 15th March, 2021	25% of Advance Tax	7,825
Total of Advance Tax Payable	-	31,500

- 2) The estimated gross salary of Shri Jagdish Chowdhury (aged 38 years) for the previous year 2020-2021 is Rs.5, 70, 000/-. In addition, he has certain incomes assessable under the head “Income from other sources” amounting Rs.62, 000/-. Mr. Jagdish will be entitled to deduction under section 80C amounting Rs.40, 000/-. Tax deduction at source during the year is Rs. 15, 000/-. State whether Mr. Basu is required to pay advance tax or not.

Solution:

Computation of Total Income and Tax Payable by Shri Jagdish Chowdhury

Particulars	Amount Rs.	Amount Rs.
A. Income from Salary		
Gross Salary	5, 70, 000	
Less: Deduction u/s 16(i)	50,000	
B. Income from other sources		5, 20, 000
Gross total income		62, 000
Less: Deduction u/s 80C		5, 82, 000
Total Income		40, 000
Tax (including cess) on total income:		5, 42, 000
on first Rs. 25,000	Nil	
on next Rs. 2.5 lakh to 5 lakh @ 5%	12,500	
on balance Rs. 42,000 @ 20%	8,400	
	<u>20,900</u>	
Add: Edu. Cess @ 4%	836	
	<u>21, 736</u>	
Less: Tax deductible at source		15,000
Tax Payable		6, 736

Since tax payable by Mr. Jagdish for the previous year 2020-2021 after reducing the amount of tax deductible at source is not Rs.10, 000/- or more, he is not liable to pay advance tax as per section 208.

- 3) The estimated incomes of Mr. X a resident individual (aged 52 years), for the year 2020-2021 are as follows:

Particulars	Amount Rs.
Income from House Property	42, 5 00
Income from Business	5, 45, 000
Income from other Sources	25, 500

Mr. X is entitled to deduction under section 80C and 80G amounting Rs.51, 500/- and Rs.7, 500/- respectively. Tax deductible at source during the year is Rs.7, 330/-. Calculate the amount of advance tax payable by Mr. X.

Solution:

Calculation of advance tax payable by Mr. X

Particulars	Amount Rs.	Amount Rs.
A. Income from House Property		42, 5 00
B. Income from Business		5, 45, 000
C. Income from Other Sources		25, 500
Gross total Income		6, 13, 000
Less: Deduction under section 80C	51, 500	
Deduction under section 80G	7, 500	
		59, 000
Total Income		5, 54, 000
on first Rs. 25,000	Nil	
on next Rs. 2.5 lakh to 5 lakh @ 5%	12,500	
on balance Rs. 54,000 @ 20%	10,800	
	23,300	
Add: Education Cess @ 4%	932	
Tax (including cess) on total income	24,232	
Less: Tax deductible at source	7, 330	
Advance tax payable		16,902
Rounded off		16,900

Advance Tax Payable		Amount
Due Date	Advance Tax payable	Rs.
On or Before 15th June, 2020	15% of Advance Tax	2,535
On or Before 15th September, 2020	30% of Advance Tax	5,070
On or Before 15th December, 2020	30% of Advance Tax	5,070
On or Before 15th March, 2021	25% of Advance Tax	4,225
Total of Advance Tax Payable	-	16,900

- 4) Mr. Z has estimated the following income for the financial year 2020-21 a. Income from House property (Taxable) – Rs. 75,000/- b. Income from profession (Taxable) – Rs. 7,07,500/- c. Dividend from X Ltd – Rs. 10,000/-.
- Determine the instalments of Advance Tax payable during financial year 2020-21.

Solution:

Computation of Taxable income for the financial year 2020-21

Particulars	Amount Rs.	Amount Rs.
Income from HP (Taxable)		75,000
Income from profession (Taxable)		7,07,500
Income from other sources:		
Dividend from Indian company		10,000
Gross Total Income		7,92,500
Less: Deduction u/s 80		NIL
Total Income		7,92,500
Calculation of Tax Payable :		
Tax on 7,92,500		
Up to Rs. 2,50,000 - NIL		
Next Rs. 2,50,000 - 12,500		
Balance Rs. 2,92,500 - 58,500		71,000
Add: 4% cess		2,840
Tax Payable		73,840

Advance Tax Payable		Amount
Due Date	Advance Tax payable	Rs.
On or Before 15th June, 2020	15% of Advance Tax	10,176
On or Before 15th September, 2020	30% of Advance Tax	22,152
On or Before 15th December, 2020	30% of Advance Tax	22,152
On or Before 15th March, 2021	25% of Advance Tax	18,460
Total of Advance Tax Payable	-	73,840

- 5) Milk Co. Ltd., has an estimated taxable business income of Rs. 4,80,000/- and taxable STCG of Rs. 1,20,000/- on 03-06-2020. Calculate advance tax if the TDS is deducted at Rs. 11,000/- for the financial year 2020-21.

Solution:

Computation of Taxable income for the financial year 2020-21

Particulars	Amount Rs.
Business income taxable	4,80,000
STCG taxable	1,20,000
	6,00,000
GTI/NTI	
Tax on STCG 1,20,000 x 15%	18,000
Balance 4,80,000 x 30%	1,44,000
	1,62,000
Add: Surcharge	NIL
	1,62,000
Add: 4% cess	6,480
	1,68,480
Less: TDS	11,000
Advance tax payable	1,57,480

Advance Tax Payable		Amount
Due Date	Advance Tax payable	Rs.
On or Before 15th June, 2020	15% of Advance Tax	10,176
On or Before 15th September, 2020	30% of Advance Tax	22,152
On or Before 15th December, 2020	30% of Advance Tax	22,152
On or Before 15th March, 2021	25% of Advance Tax	18,460
Total of Advance Tax Payable	-	73,840

4.8 Provision regarding TDS and TCS [Section 190]

The concept of TDS was introduced with an aim to collect tax from the very source of income. Under the Income Tax Act, it has become customary to deduct tax at source from income as when income is paid or credited to the receiver of income. In today's scenario, the collection of tax through TDS and TCS by Government of India amounts to a big share in the revenue of Indian Economy.

The objective of charging tax deducted at source (TDS) and tax collection at source is to collect and recover tax from the source of income itself. Under the provisions of section 190, where a person making payment of specified income to any other person, shall deduct tax at source and deposit the same into the accounts of the Central Government within the specified time. The person from whose income TDS is made would be entitled to get credit of the amount so deducted on the basis of Form 26 AS or TDS certificate issued by the person making such deduction of tax at source along with mentioning the PAN of the deductee. Tax collection at source (TCS) is another mode of tax collection from the source of income by which a certain percent of specified transactions like sale of tobacco leaves, timber wood, minerals and mining materials, purchase of motor car of value exceeding Rs. 10 lakh etc. is deducted by the seller from the buyer of such products or things.

The following are the cases where tax is deducted at source under various provisions of the Act :

4.8.1 Deduction of tax at source from salary [Section 192]

Under Section 192, TDS is deducted at source at the time of actual payment of salary by the employer to his/her employees having income from salary more than the basic exemption limit under the Income Tax Act. This section is obligatory on every person responsible for paying any income chargeable to tax under the head 'Salaries' to deduct income-tax on the amount payable before transferring or crediting the amount of salary payable to the accounts of employees or before paying salary by way of any cheque or draft. Such income-tax has

to be calculated at the average rate of income-tax computed on the basis of the rates in force for the relevant financial year in which the payment is made, on the estimated total income of the assessee. Therefore, the liability to deduct tax at source in the case of salary arises only at the time of payment.

In respect of salary payments to employees of Government or to employees of companies, co-operative societies, local authorities, universities, institutions, associations or bodies, deduction of tax at source should be made after allowing relief under section 89(1), wherever eligible as per the income tax slab and the rates thereof applicable in the relevant financial year under the Finance Act.

4.8.2 TDS from Interest on securities [Section 193]

Section 193 provides that where a person making payment to a resident any amount by way of interest on securities, such person shall be liable to deduct tax at source at the rates in force from the amount of interest payable. The rate at which tax is deductible under section 193 is 10%, both in the case of domestic companies and resident non-corporate assesseees. Tax should be deducted at the time of credit of such income to the account of the payee at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

4.8.3 TDS from Dividend [Section 194]

Owing to total withdrawing the provision for exemption under section 10(34) of the Act in respect of dividend income, any dividend income received by shareholders is now taxable in the hands of the recipient shareholders. The companies declaring and paying dividend are no more liable to pay dividend distribution tax from the assessment year 2021-22. However, the companies paying dividend are under obliged to deduct tax at source, if such dividend exceeds Rs. 5,000 per annum. The rate of deduction of tax is 10 per cent in this case.

4.8.4 TDS from Interest other than interest on securities [Section 194A]

In terms of section 194A, the provision for TDS is applicable on interest other than 'interest on securities'. The provisions apply only to interest paid or credited to residents. In respect of payments to non-residents, the provisions are contained under section 195. The deduction of tax must be made at the time of crediting such interest to the payee or at the time of its payment in cash or by any other mode, whichever is earlier. The deduction of tax at source is to be made in all cases where the amount of income by way of interest, or as the case may be, the aggregate of the amount of interest credited or paid or likely to be credited or paid during the financial year to the account of or to the payee or any other person on his behalf is more than Rs. 5,000. The rate of tax deducted at source is 10 per cent in this case both for resident non-corporate assessee and domestic company.

4.8.5 TDS from Winnings from lotteries, puzzles and horse races [Section 194B and section 194BB]

Where a person making any payment of income to another person, resident or non-resident, in the nature of winnings from lotteries, cross-word puzzles, card game and other game of any sort is liable to deduct tax at source @ 30% if the income thereon exceeds Rs. 10,000 under section 194B.

Similar provision is applicable in respect of any income arising on races including horse races whereby the person making such payment shall be liable to deduct tax at source at the rate of 30 per cent if the amount of exceeds Rs. 10,000 under section 194BB.

4.8.6 TDS from Payments to contractors and sub-contractors [Section 194 C]

By virtue of section 194C, where a person making payment of any sum to any resident contractor and sub-contractor for carrying out any work or supplying labour in pursuance of a contract shall be liable to deduct tax at source at the prescribed rate when such payment credited or paid or is likely to be credited or paid exceeds Rs. 30,000 or when the aggregate of such payment in a financial year exceeds Rs. 1,00,000. This is applicable in respect of any contract between a contractor and the Central Government, State Government, local authority, statutory corporation, co-operative society etc., as the case may be.

Where any such payment is made by individuals, HUFs, AOPs, BOIs to a contractor, such individual shall be liable to deduct tax at source if the total sales or turnover exceeds Rs. 60 lakh or gross receipts exceed Rs. 15 lakh in the immediately preceding financial year. The prescribed rate for TDS is 1 per cent in case of adverting and 2 per cent in other cases.

4.8.7 TDS from Insurance commission [Section 194D]

Where any person makes a payment to a resident by way of remuneration or reward in the form of income which is insurance commission or other remuneration in consideration for soliciting or procuring insurance business (including the business relating to the continuance, renewal or revival of policies of insurance), such person by virtue of section 194D is liable to deduct tax at source at the rate of 10%, both in the case of resident non-corporate assessee and domestic companies. The deduction is to be made at the time of the credit of the income to the account of the payee or at the time of making the payment (by whatever mode) to the payee, whichever is earlier. If the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year to the account of the payee exceeds Rs. 15,000, only then the provision for TDS shall apply.

4.8.8 TDS from Payments to non-resident sportsmen or sports association [Section 194E]

The provision of section 194E shall be applicable in respect of any income payable to a

non-resident sportsman (including an athlete) who is not a citizen of India or a non-resident sports association or institution. The deduction of tax at source shall be at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. In this case, the deduction of tax at source shall be @ 20 per cent of the amount paid.

4.8.9 TDS from Payments in respect of deposits under National Savings Scheme etc. [Section 194EE]

Where a person making payment from the National Savings Scheme Account under section 80CCA shall be liable to deduct tax at source @ 20 per cent at the time of payment. However, tax shall not be deducted at source if the amount of payment or the aggregate amount of payment is less than Rs. 2,500 in a financial year. This provision shall not be applicable where the payment is made to the heirs of the depositor.

4.8.10 TDS for Repurchase of units by Mutual Fund or Unit Trust of India [Section 194F]

In terms of section 194F, a person making payment to another person on account of repurchase of units covered under section 80CCB(2) shall be liable to deduct tax at source at the rate of 20 per cent at the time of such payment.

4.8.11 TDS from Commission etc. on the sale of lottery tickets [Section 194G]

By virtue of section 194G, a person making payment by way of commission, remuneration or prize or by whatever name called on lottery tickets and the amount of such payment exceeds Rs. 15,000, the person making such payment shall be liable to deduct tax at source @ 10 per cent.

4.8.12 TDS from Commission or brokerage [Section 194H]

The provisions of section 194H states that where any person (other than an individual or Hindu undivided family) who is making payment by way of commission or brokerage (not being insurance commission) to a resident shall be liable to deduct tax at source at the rate of 10 per cent if such payment exceeds Rs. 15,000 in a financial year.

4.8.13 TDS from Rent [Section 194I]

In terms of section 194I, where a person (other than an individual or Hindu undivided family) who is making payment by way of rent to a resident shall be liable to deduct tax at source at the rate of 2 per cent where amount is paid in respect of rent for plant, machinery or equipment or at the rate of 10 per cent in case rent is paid for use of any land, building, factory building, land appurtenant to a building of furniture or fixtures if such payment credited or paid exceeds Rs. 1,80,000 in a financial year.

4.8.14 TDS from Fees for professional or technical services [Section 194J]

Section 194J of the Act provides that any person (other than an individual or Hindu undivided family) who is not subject to tax audit under section 44AB in the immediately preceding financial year and who is making payment to a resident any amount by way of fees for professional or technical services or royalty or non-compete fee referred to in section 28(va) shall be obliged to deduct tax at source at the rate of 10 per cent provided the amount of fees or the aggregate amount of fees credited or paid exceeds Rs. 30,000 in a financial year.

4.8.15 TDS from Interest payable to a non-resident or foreign company [Section 194LB]

Where any person make payment for interest income to a non-resident or a foreign company in respect of infrastructure debt fund referred under section 10(47), such person by virtue of section 194LB shall be liable to be deduct tax at source @ 5% at the time of credit of such income to the account of the payee or at the making such payment either in cash or cheque or draft or by any other mode.

4.9 Refund of Tax

Section 237 of the Income Tax Act, 1961 provides that any excess amount of tax paid by an assessee under the Act shall be refunded to the assessee. Where any person or assessee satisfies the assessing officer that the amount of the tax paid by him or paid by any person on his behalf during any previous assessment year exceeds the amount with which he is properly chargeable under the Act for that year, he is entitled to refund of excess amount of tax paid. It is right of every assessee to demand refund of excess tax paid by him. The tax authority after being satisfied with the facts and circumstances of the demand claimed by the assessee, shall issue order for the refund of excess tax paid by the assessee.

Where the taxpayer has to make a claim of income-tax refund, then the claim should be made in Form No. 30. However, w.e.f., 01-09-2019, the Finance (No. 2) Act, 2019, it has amended whereby the refund can be claimed only through filing of return of income within the time limit prescribed under Section 139.

However, as per section 240, in a case where the income-tax refund becomes due as a result of any order passed in an appeal or other proceeding under the Act, the Assessing Officer shall, except as otherwise provided in the Act, refund the amount to the taxpayer without making any claim in this behalf by the assessee.

4.9.1 Interest on Tax Refund

Where any refund of tax is payable to an assessee, the assessee is entitled to receive interest along with the refund of tax as per the following provisions :

- a) When refund is of any advance tax paid or tax deducted at source or tax collection at source, the interest is payable at the rate of one-half percent per month or part of month from 1st April of the relevant assessment year to the date of grant of refund if the return of income is furnished as specified under section 139(1) otherwise interest shall be allowed from the date of furnishing of return of income to the date on which the refund is granted.
- b) When refund is of tax other than advance tax paid or tax deducted at source or tax collection at source, the interest is payable at the rate of one-half percent per month or part of month of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted.
- c) However, no interest is payable if the excess payment is less than 10% of the tax determined on regular assessment or under section 143(1).

4.10 Interest Payable

Under the Income Tax Act, an assessee shall be liable to pay interest for failure to comply with the provisions of the Act in various cases like non-submission of return of income, failure to deduct or collect and pay tax etc. In such situations, the defaulting assessee shall be obliged to pay interest as per provisions of sections 234A, 234B, 234C, 234D, 201(1A), 220(2) etc.

4.10.1 Interest for default in furnishing return of income[Section 234A]

Where an assessee fails to submit his/her return of income or submits return after the due date as provided under section 139(1) of the Act, the assessee shall be liable to pay interest under section 234A as follows:

- a) Simple interest will be charged at 1 per cent per month or part of month for the period commencing on the date immediately following the due date of submission of return and ending on the date of :
 - i) furnishing the return (where return has been filed after due date by the assessee);
 - ii) completion of assessment under section 144 (where no return has been filed by the assessee).
- b) Interest will be calculated on the amount of tax on total income computed after deducting amount of advance tax paid, tax deducted or collected at source, tax relief, tax credit of MAT (but not self-assessment tax).
- c) However, no interest would be payable where self-assessment tax has been paid in full by the assessee prior to the date of filing of return of income even if the return has been submitted after the due date of filing of such return in terms of section 139(1).

Example:

Mr. Z submitted his return of income for the assessment year 2020-21 on October 18, 2020 declaring his income at Rs. 8,80,000. The Assessing Officer completed his assessment on November 12, 2020 with an assessed income of Rs. 7,56,000. Mr. Z paid advance tax of Rs. 36,000 during the previous year 2019-20 and he also paid the self-assessment tax in full for the said previous year before submitting his return on October 18, 2020. During the previous year 2019-20, tax deducted at source of Mr. Z was Rs. 15,000. Compute the amount of interest payable by Mr. Z under section 234A.

Solution:**Computation of interest payable by Mr. Z under section 234A for the Assessment Year 2020-21 (Previous Year 2019-20)**

Period of default for submission of return = Date on which return actually filed – Due date for filing of return = 3 months i.e., [October 18, 2020 – July 31, 2020]

Assessed income by AO	= Rs. 7,56,000
Tax liability on assessed income including education cess @ 4%	= Rs. 66,248
Shortfall in payment of tax = Rs. (66,248 – 36,000 – 15,000)	= Rs. 15,248.
Interest payable by Mr. Z under section 234A = Rs. 15,248 × 1% × 3	= Rs. 457

4.10.2 Interest for default in payment of advance tax [Section 234B]

If an assessee who is liable to pay advance tax, fails to pay such tax, he shall be obliged to pay interest at the rate of 1% (simple interest) for every month or part thereof from 1st April of the assessment year to the date of determination of income under section 143(1) and where a regular assessment has been made to the date of such assessment.

However, if the assessee has paid advance tax partly and has paid less than 90 % of the assessed tax, he shall be chargeable to pay interest at the rate of 1% (simple interest) for every month or part thereof from 1st April of the assessment year to the date of determination of income under section 143(1) and where a regular assessment has been made to the date of such assessment.

Example:

The final assessment of Mr. Sunil (aged 48 years) was passed by the A.O. for the A.Y. 2020-21 on November 22, 2020 at Rs. 9,25,000. Tax deducted at source of Mr. Sunil for the previous year 2019-20 was Rs. 31,000. Mr. Sunil also paid advance tax in the P.Y. 2019-20 as follows :

- | | | |
|----------------------|---|------------|
| a) On Sept. 15, 2019 | — | Rs. 15,300 |
| b) On Dec. 15, 2019 | — | Rs. 14,700 |
| c) On March 15, 2020 | — | Rs. 11,100 |
| d) On March 16, 2020 | — | Rs. 17,220 |

Compute the interest liability of Mr. Sunil under section 234B.

Solution:

Computation of interest payable by Mr. Sunil under section 234B

Particulars	Amount Rs.
Assessed Income	9, 25, 000
Tax on Rs. 9, 25, 000 incl. edu. cess @ 4%	1,01,400
Less: Tax deduction at source	<u>31,000</u>
Assessed Tax	<u>70,400</u>
90% of assessed tax i.e. Rs.70, 400 x 90%	63,360
Less: Advance tax paid i.e. Rs. (15, 300 + 14, 700 + 11, 100 + 17, 220)	<u>58,320</u>
Shortfall in advance payment tax	<u>5,040</u>
Since the advance tax paid during the P.Y. 2019-20 is less than 90% of the assessed tax, Mr. Sunil is liable to pay interest under section 234B on the shortfall of Rs. 5,000 (rounded off) for 8 months [1.4.2020 to 22.11.2020] @ 1% per month.	
Thus, interest obligation of Mr. Sunil under section 234B = Rs. 5,000 × 1% × 8]	<u>400</u>

4.10.3 Interest for deferment of advance tax [Section 234C]

Under section 234C of the Act, an assessee shall be liable to pay interest if he has not paid advance tax or has underestimated instalments of advance tax.

● **In the case of non-corporate assessees**

- a) If the amount of advance tax paid on or before 15th September is less than 30 % of the net tax payable, simple interest of 1% per month for three months on 30 % of net tax payable less amount of advance tax paid on or before 15th September of the relevant previous year shall be payable as interest;

- b) If the amount of advance tax paid on or before 15th December is less than 60 % of the net tax payable, simple interest of 1% per month for three months on 60 % of net tax payable less amount of advance tax paid on or before 15th December of the relevant previous year shall be payable as interest;
- c) If the amount of advance tax paid on or before 15th March is less than 100 % of the net tax payable, simple interest of 1% on 100 % of net tax payable less amount of advance tax paid on or before 15th March of the relevant previous year shall be payable as interest.

● **In the case of corporate assesseees**

- a) If advance tax paid on or before 15th June is less than 12 % of the net tax payable, simple interest of 1% per month for three months on 15 % of net tax payable less amount of advance tax paid on or before 15th June of the relevant previous year shall be payable;
- b) If advance tax paid on or before 15th September is less than 36 % of the net tax payable, simple interest of 1% per month for three months on 45 % of net tax payable less amount of advance tax paid on or before 15th September of the relevant previous year shall be payable;
- c) If advance tax paid on or before 15th December is less than 75 % of the net tax payable, simple interest of 1% per month for three months on 75 % of net tax payable less amount of advance tax paid on or before 15th December of the relevant previous year shall be payable;
- d) If advance tax paid on or before 15th March is less than 100 % of the net tax payable, simple interest of 1% on 100 % of net tax payable less amount of advance tax paid on or before 15th March of the relevant previous year shall be payable.

4.10.4 Interest on excess refund [Section 234D]

If an assessee is granted excess refund of tax under the Act, the assessee shall be liable to interest on excess refund under section 234D in the following circumstances :

- a) Where an assessee is granted a refund under section 143(1) but in fact he is not to get such refund under regular assessment;
- b) Where an assessee is granted a refund under section 143(1) and the refund so granted exceeds the amount refundable on regular assessment.

The assessee, in such cases, shall be liable to pay interest at the rate of one-half percent per month or part thereof from the date of grant of refund to the date of regular assessment on

the amount actually refunded in situation (a) above and on the excess of amount refunded over the amount refundable on regular assessment in situation (b).

4.10.5 Interest for failure to deduct or collect and pay tax at source [Section 201(1A)]

Where a person who is responsible for deducting or collecting tax at source does not deduct or collect tax at source, either wholly or partly, or even after collecting and deducting tax, fails to pay the same as required under the Act, the person shall be liable to pay interest mandatorily as follows:

- a) at the rate of 1 percent from the date on which tax was deductible to the date when tax was actually collected or deducted;
- b) at the rate of 1.5 percent from the date on which tax was collected or deducted to the date when it was actually paid;

Example:

ABC Ltd. paid Rs. 50,000 to Mr. Yadav on 1.9.2020 towards royalty without tax deducted at source. Subsequently, another payment of Rs. 40,000 on account of royalty income was made by ABC Ltd. to Mr. Yadav on 28.2.2021 and total TDS of Rs. 9,000 being 10 per cent of total royalty payment was made by ABC Ltd. However, ABC Ltd. deposited the TDS only on 18.5.2021. Compute the interest payable by ABC Ltd. under section 201(1A).

Solution:

Delay in deduction of tax at source	= 6 months (from 1.9.2020 to 28.2.21)
Delay in deposit of tax at source	= 3 months (from 28.2.2021 to 18.5.21)
Thus, interest chargeable under section 201(1A) is computed as follows:	
1 per cent on Rs. 5,000 for 6 months	= Rs. 300
1.5 per cent on Rs. 9,000 for 3 months	= Rs. 270
Total interest payable by ABC Ltd. under section 201(1A)	= <u><u>Rs. 570</u></u>

4.10.6 Interest for making late payment of income tax [Section 220(2)]

Where an assessee fails to pay any tax (other than advance tax) in response to a notice of demand within 30 days of the service of notice of demand, the assessee concerned shall be liable to pay interest at the rate of 1% for every month or part thereof from the expiry of 30 days of the service of notice of demand.

4.11 Appeals and Revision

As per provisions of the Income Tax Act, where an assessee becomes aggrieved by the order of the taxation authority, he has the right of appeal before the appropriate authority. There are four stages of appeal under the Income Tax Act as follows:

4.11.1 Appeal to the Commissioner (Appeals)

On being aggrieved, an assessee may appeal to the Commissioner (Appeals) for justice. Under section 248, where under an agreement or other arrangement, the tax deductible on any income, other than trust, in terms of section 195 is to be borne by the person by whom the income is payable, and such person having paid tax to the credit of the Central Government, claims that no tax is to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income. An appeal to the Commissioner (Appeals) against any order which is appealable is to be presented within 30 days from the date specified.

4.11.2 Procedure in Appeal [Section 250]

For the purposes of an appeal, the Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the assessee and the Assessing Officer against whose order the appeal is made. Both the assessee and the Assessing Officer have the right to be heard at the hearing of the appeal either in person or by an authorised representative.

The Commissioner (Appeals), before passing an order on an appeal, may make such further enquiries as he thinks fit or direct the Assessing Officer to make further enquiries and to send the same to him. He may also allow the appellant to go into any grounds of appeal not specified previously by the appellant if he is satisfied that the omission of that ground was wilful or unreasonable.

The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. On disposal of the appeal the Commissioner (Appeals) must communicate the order passed by him to the assessee as well as the Commissioner.

4.11.3 Appeal to the Appellate Tribunal

The Central Government shall constitute an Appellate Tribunal of judicial and accountant members to exercise the powers and discharge the conferred on the Tribunal by the Act. An assessee can appeal to the Appellate Tribunal so formed for this purpose. Every appeal to the Appellate Tribunal has to be made from the date on which the order sought to be appealed against is communicated to the assessee or the Commissioner, as the case may be.

4.11.4 Appeal to the High Court

Section 260A provides that a direct appeal may be made to the High Court against the orders of the Appellate Tribunal. The appeal shall be in the form of a memorandum of appeal, precisely stating in it the substantial question of law involved. The appeal to the High court shall be made within 120 days from the date on which the order appealed against is received by the assessee, or the Chief Commissioner or Commissioner.

4.11.5 Appeal to the Supreme Court

Under section 261, an appeal shall lie to the Supreme Court from any judgement of the High Court delivered before the establishment of the National Tax Tribunal (NTT), in a case where the High Court certifies to be a fit one for appeal to the Supreme Court. The provisions of the Code of Civil Procedure, 1908 in regard to appeal shall apply in the case of appeals to the Supreme Court in the same manner as in the case of appeals from decrees from a High Court.

4.11.6 Revision of Orders prejudicial to the revenue [Section 263]

The Commissioner may call for and examine the record of any proceeding under the Act. If he considers that any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as may be necessary, pass a suitable order. The Commissioner can enhance, modify or cancel an assessment and can also direct that a fresh assessment should be made.

Where any order referred to in section 263(1) passed by the Assessing Officer had been the subject-matter of any appeal, the powers of the Commissioner under section 263(1) shall extend and shall be deemed always to have extended to such matters as had not considered and decided in such appeal. No order shall be made after the expiry of 2 years from the end of the financial year in the order sought to be revised was passed.

4.11.7 Revision of other orders [Section 264]

In the case of any other order (not being an order prejudicial to the Revenue) passed by any subordinate authority including the Deputy Commissioner (Appeals), the Commissioner may either on his own motion or on receipt of an application from the assessee, call for the record of any proceedings under the Act in the course of which the order was passed. After making such enquiries as may be necessary the Commissioner may such order as he thinks fit. The Commissioner is not empowered to revise any order on his own motion if a period of more than one year has expired from the date of the order sought to revised.

Under section 264, the Commissioner of Income tax is empowered to revise an order passed by the subordinate authority where no appeal has been filed. For filing an application,

the time limit is one year. It is obligatory on the part of the Commissioner to pass an order within a period of one year from the end of the financial year in which such application is made by the assessee for revision.

4.12 Settlement of Cases

For the purposes of settlement of income-tax cases waiting for justice, the Settlement Commission was constituted in 1976 under section 245 B of Income-tax Act, 1961 (Chapter XIX-A) to expedite the process of mitigating tax disputes and litigations and to settle up the pending cases. The Commission has its Principal Bench at New Delhi and three Additional Benches at Chennai, Kolkata and Mumbai.

The Settlement Commission consists of one Chairman and two Members in the Principal Bench in New Delhi and one Vice Chairman and two Members in each of the three Additional Benches.

An assessee may make an application to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed, on containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer and the manner in which such income has been derived.

The additional tax and interest thereon under section 234B and 234C have to be paid on or before the date of making the application and the proof of such payment is to be attached with the application.

In terms of section 245C, an assessee may, at any stage of a case relating to him, make an application in the prescribed form and manner, containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer. The form in which such application is to be prescribed in 34-B which is notified under the Income-Tax Rules, 1962.

The assessee should also disclose the following to the Settlement Commission for favouring the settlement of his case :

- a) The manner in which such income has been actually derived by the assessee;
- b) The additional amount of income-tax payable on such income;
- c) Such other relevant particulars as may be prescribed to assist the Commission to make settlement of the case.

After receiving the application from the assessee for settlement purposes, the Commission shall call for report of the Commissioner of Income Tax under section 245D (2B). Where the report of the Commissioner of Income Tax is not received within the period of 30 days

from the date of receipt of letter from the Commission, the Settlement Commission shall pass an order on the basis of its satisfaction on the litigation within 15 days of the expiry of the period of 30 days given to the Commissioner of Income Tax for submitting the report. The order passed by the Settlement Commission is conclusive as to the matters stated therein and no appeal lies to any authority against the order passed by the Settlement Commission.

4.12.1 Objectives of the Income Tax Settlement Commission

The following are the objectives of Tax Settlement Commission:

- a) To set up a quasi-judiciary machinery for giving opportunity to the defaulting taxpayers to achieve a clean status through compromise and settlement;
- b) To provide speedy settlement of pending disputes;
- c) To mitigate litigation by way of providing conclusiveness of proceedings;
- d) To resolve controversies in complicated cases;
- e) To ensure prompt collection of tax revenues at low cost of collection.

4.12.2 Powers of Settlement Commission

The following are the powers of Settlement Commission:

- The Settlement Commission has all the powers of Income Tax authorities in respect of proceedings pending before it.
- It has the authority to reopen completed proceedings under section 245E of the Income Tax Act, 1961.
- It has unique jurisdiction to rectify any error committed by it when such error is prejudicial to a party for which that party is not responsible. However, it does not have the power to review its own order if the matter raised by the applicant has been properly considered and a decision has been taken thereon.
- It has the power to grant immunity from prosecution and penalty under the Income Tax Act, under the Indian Penal Code or any other Central Act.
- The Settlement Commission has the power to order provisional attachment to protect the interest of revenue.
- It may refer back a case to the concerned Assessing Officer where the assessee does not cooperate with the Commission.
- The Commission may waive interest permitted under the provisions of the Income Tax Act and Rules and the circulars issued thereunder.
- The Settlement Commission may also prohibit subsequent applications for settlement in certain cases, if so required.

4.13 Summary

After studying this unit we would understand the concepts of voluntary. Return [Sec. 139(1)], Return of loss [Sec. 139(3)], Belated Return [Sec. 139(4)]. Revised Return [Sec. 139(5)], Defective Return [Sec. 139(4)], Tax Return of Charitable Trust and Political Party, Assessment Procedure Reassessment, Issue of Notice u/s 148, Time limit to issue Notice u/s 148, Penalties and Prosecution, Advance Payment of Tax, Instalment and due dates for payment of advance tax, provisions regarding Tax Deducted of Source, Refund of Tax, Interest, Appeals and Revisions under the I.T.Act, Settlement of Cases.

4.14 Questions

A. Multiple Choice Questions (MCQ)

1. Advance Tax is being paid by a person other than senior citizen whose estimated total payable tax (liability) is Rs 10000 or more for the coming year. Among the following sections which is applicable, for those persons who are going to pay the tax in form of “advance tax”
 - a) 205
 - b) 208**
 - c) 215
 - d) None of these
2. Advance Tax has been paid in 4 installments, identify and mention which out of the four dates mentioned below in which all taxpayers (other than those eligible assesseees, who are being referred in section 44AD or section 44ADA) are required to pay up to 45% of advance tax by the date of
 - a) 15th June
 - b) 30th June
 - c) 15th September**
 - d) None of these
3. The order of the Assessing Officer under section 210(3) requiring the taxpayer to pay advance tax on his current year’s income may be passed during the financial year, but not later than-
 - a) 15th March
 - b) Last day of January
 - c) Last day of February**
 - d) None of these
4. Any person who is actually not having any income from business or profession is actually not liable to pay advance tax is being described in section 207 of Income Tax Act 1961

- a) An individual resident having the age of below 60 years
 - b) A resident HUF
 - c) A non-resident individual
 - d) **A resident senior citizen (i.e., an individual of the age of 60 years or above)**
5. As per section 208, every assessee has to pay advance tax whose estimated tax liability for the year exceeds ... and this tax has to be paid as per section 208.
- a) Rs. 5, 000/- b) **Rs. 10, 000/-**
 - c) Rs. 15, 000/- d) None of these
6. An assessee who is not having any income under the head of Profit and Gains of Business and Profession and a person who is a resident individual and who is at the age of 60 years and above ... can claim exemption under section 207.
- a) On the first day of the financial year
 - b) On the last day of financial year
 - c) **At any time during the year**
 - d) None of these
7. On receipt of the notice from the Assessing Officer to pay advance tax, if the taxpayer's estimate is lower than the estimate of the Assessing Officer, then he has to send intimation in Form No. to the Assessing Officer.
- a) **28A** b) 34C
 - c) 34D d) None of these
8. Which of the followings is/are not included in the taxable income?
- a) Income from smuggling activity
 - b) Casual income
 - c) **Gifts of personal nature subject to a maximum of Rs. 50,000/- received in cash**
 - d) None of these
9. Akash Sharma received rent by sub-letting a building, who is engaged in the trading of fertilizer This will be taxable under the head-
- a) Income from house property
 - b) Income from capital gains

- c) Income from profits and gains of business and profession
 d) **Income from other sources**
10. What is the maximum amount of deduction for family pension?
 a) Rs. 20, 000/- b) **Rs. 15, 000/-**
 c) Rs. 25, 000/- d) None of these

B. Short Answer Type Questions

1. What is Summary Assessment?
2. Describe the term “Best Judgement Assessment”.
3. Discuss the provisions of section 210 for payment of advance tax under different situations.
4. Describe the different types of assessment which has been allowed under the Income-tax Act.
5. There are different types of return submitted by different types of assesses, define the different due dates for filing of return of income for various kinds of assesses

C. Broad Answer Type Questions

1. There are different aspects of advance payment of tax, briefly discuss the provisions in details.
2. What do you mean by the section 139(4)?
3. What do you mean by the term “Belated Return”?
4. Mr. Akash has a taxable total income estimated to be Rs.5,50,000/-. Compute the advance tax instalments if his TDS is Rs.5,000/-.

Ans. Rs.18, 175/-.

5. The estimated taxable business income of Z Ltd for the financial year 2020-21 is Rs.6,00,000/- and taxable LTCG on 03-06-2020 is Rs.3,00,000/-. Compute the advance tax instalment assuming assessed TDS to be Rs.15,000/-.

Ans. Rs.2, 32, 200/-.

Answer Key (A)

- | | | | | |
|------|------|------|------|--------|
| 1(b) | 2(c) | 3(c) | 4(d) | 5(b) |
| 6(c) | 7(a) | 8(c) | 9(d) | 10(b). |

Module - II
Indirect Taxation

Unit - 5 □ GST in India : Levy and Collection

Structure

- 5.0 Objectives**
- 5.1 Introduction**
- 5.2 Genesis of GST in India**
- 5.3 Constitutional Amendment for GST**
- 5.4 Legislative Framework**
- 5.5 Structure of GST**
- 5.6 Benefits of GST**
- 5.7 Extent of CGST Act/ SGST Act/ UTGST Act/ IGST Act**
- 5.8 Applicability of GST in India**
- 5.9 Levy and collection**
 - 5.9.1 Levy and collection as per CGST Act, 2017**
 - 5.9.2 Levy and collection as per IGST Act, 2017**
- 5.10 GST on Alcohol for human consumption**
- 5.11 GST on Petroleum**
- 5.12 Liability to pay CGST**
- 5.13 Summary**
- 5.14 Questions**

5.0 Objectives

The study of this unit, will help us to understand—

- Concept of GST and its genesis
- Constitutional amendment and legislative framework of GST
- Structure and benefits of GST
- Applicability of GST in India
- Levy and Collection of GST
- Liability to pay CGST

5.1 Introduction

Goods and Services Tax (GST) has been identified as one of the most important tax reforms in post independence. GST is a path breaking indirect tax reform which will create a common

national market by removing inter-state trade barriers. GST has subsumed (absorbed or include) multiple indirect taxes imposed by central and state governments.

Power to levy any tax is derived from the Constitution of India. As per article 265 of The Constitution of India no tax shall be imposed or collected except by the authority of any Law. The charging section is the must in any Taxing Law for levy (impose) and collection (payment) of taxes. The very basic for the charge of tax in any taxing statute is taxable event, i.e. the point of time when tax will be imposed. Under pre GST regime, each indirect taxes has separate taxable event (such as manufacture in case of Excise Duty, provision of services in case of Service Tax, sale of goods in case of VAT/ CST, etc.) Under the GST regime, the taxable event is supply of goods or services or both. The scope of supply has been discussed in detail in unit-6.

GST subsumed the following :

Central taxes	State taxes
Central excise duty	Sate VAT
Additional excise duty	Entertainment tax
Service tax	Entry tax
Surcharge and cess	Luxury tax
Central sales tax	Purchase tax

GST was first introduced in France in the year 1954. Within 62 years of its introduction about 160 countries across the world have adopted GST. Generally GST is popular for single model but Canada and Brazil also have dual model of GST. India has adopted a dual GST which will be imposed concurrently by centre and states.

5.2 Genesis of GST in India

- | | |
|--------------|--|
| 2004 | The idea of GST was emerged in India from the recommendation of Kelkar Task Force. |
| 2007 | Union Finance Minister, Shri P. Chidambaram, while presenting the central budget (2007-08) announced the GST for introduction in India. |
| 2014 | NDA government tabled the Constitution (122 nd Amendment) Bill |
| 2016 | It got assent of the president on 8th September, 2016 and became Constitution (101 st amendment) Act, 2016, which paved the way for the introduction of GST in India. |
| 2017 (March) | Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were |

introduced and passed in Lok Sabha and on receipt of President assent on 12th April, 2017 became enacted. Subsequently State GST laws had been enacted by respective State Government.

2017 (July) w.e.f 1st July 2017, GST was implemented across India.

5.3 Constitutional Amendment for GST

Constitution (101st amendment) Act, 2016 was enacted on 8.09.2016 for the following significant amendments.

- (a) Concurrent (simultaneously) power on Parliament and State legislatures to make laws for imposing taxes on goods and services.
- (b) GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- (c) Parliament has exclusive power to make laws with respect to goods and services tax of inter-state (from one state to another state) supply.
- (d) Parliament shall decide principles for determining the place of supply and when supply takes place in course of inter-State trade and commerce.
- (e) The explanation to Article 269A of Constitution of India provides that the import of goods and services will be deemed as a supply takes place in course of inter-State trade and commerce.
- (f) For the following items Central Excise duty will be imposed on their production and respective States will impose Sales tax the on their sales.
 - i) Petroleum crude
 - ii) High speed diesel
 - iii) Motor spirit (commonly known as petrol)
 - iv) Natural gas
 - v) Aviation turbine fuel
 - vi) Tobacco and tobacco products
- (g) Article 279A of the Constitution of India empowers the president of India to Constitute Goods and Service tax Council (GST Council) under the chairmanship of the Union Finance Minister to recommend about (Article 279A):
 - i) the GST rate
 - ii) Valuation and other fundamental rules
 - iii) Exemption
 - iv) Future changes
 - v) Return
 - vi) Registration

5.4 Legislative Framework

There are total 35 GST Acts in India:

- 1- The Central Goods and Service Tax Act, 2017 for imposing CGST on intra-State supply of goods and services.
- 31- State Goods and Service Tax Act, 2017 for imposing SGST by respective state on intra-State supply of goods and services.
- 1 – The Union Territory Goods and Services Tax Act, 2017 for levying UTGST in 5 union Territories without State Legislatures on intra-Territory supply of goods and services. (Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh)
- 1 – The Integrated Goods and Service Tax Act, 2017 for levying IGST and
- 1 – The Goods and services Tax (Compensation to states) Act, 2017 for levying GST Compensation Cess.

5.5 Structure of GST

1. GST is levied on supply of goods and services across India (including Jammu and Kashmir). It is a single tax on the supply of goods and services, right from the manufacturer to the consumer. Under GST credit of taxes paid at previous stages is available as set-off from the output tax.
2. GST is destination based consumption tax. Benefit of tax (STCG/ UTGST) will accrue to the consuming state.
3. Centre and states will impose tax on goods and services simultaneously. Centre now can impose tax on sale of goods within State and States can impose tax on services.
 - (a) **Intra-State supply of goods and services**
 - CGST-Payable to Central Government
 - SGST/ UTGST-Payable to State Government/ Union Territory (as applicable) where they are consumed
 - (b) **Inter-States Supply of goods and services**
 - IGST - Payable to Central Government
4. Centre will levy and administer CGST and IGST while respective States/ UTs will levy and administer SGST/UTGST.
5. Import will be treated as inter-States supply and IGST will be chargeable along with basic Customs duty.
6. However, in GST Export will be treated as Zero rated supplies and no IGST is payable.

7. The rates of GST are 0.5%, 3%, 5%, 12%, 18% and 28%. In addition, compensation cess will be payable on pan masala, coal, aerated water and motor cars (Sin cess). There is no education cess or Swach Bharat cess or Krishi Kalyan cess on GST.
8. GST will be calculated on value of supply of goods and services, which is transaction value. (subject to some exceptions)
9. Under GST, every suppliers who have made taxable supply shall required to get himself registered under GST Law.
10. A registered person is entitled to take credit (deduction) of input tax paid from the output tax (if any) subject to following restriction:
 - (a) **Utilisation of IGST** : first utilized for the payment of IGST then the balance may be utilized towards payment of CGST and SGST/UTGST
 - (b) **Utilisation of CGST**: first utilized for the payment of CGST then the balance may be utilized towards payment of IGST.
 - (c) **Utilisation of SGST/UTGST**: first utilized for the payment of SGST/UTGST then the balance may be utilized towards payment of IGST.
11. Under GST regime there is a seamless (without any obstruction) credit flow in case of inter-state supplies, which was not possible in pre GST period. No credit was available for CST paid by the buyer. Under GST regime the seamless credit will flow as follows:
 - (a) The inter-state supplier in exporting state is allowed to set off the available credit in IGST, CGST and SGST/UTGST against the IGST payable on inter-state supply made by him.
 - (b) The buyer of importing state in inter-state supply can avail the credit of IGST paid on purchase from the output tax payable.
 - (c) The exporting state transfers to the centre the credit of SGST/ UTGST utilised for the payment of IGST.
 - (d) The Centre transfers to the importing state the credit of IGST used in payment of SGST/UTGST.
12. A common portal or platform is needed which could act as a clearing house and verify the claims and inform the respective government to transfer the funds. This is possible with the help of a strong IT infrastructure. Accordingly Government has established common GST Electronic Portal (www.gst.gov.in), a website managed by Goods and Services Network (GSTN) for the tax payer and common IT infrastructure for Central and States. Primarily, GSTN provides three services to taxpayers.
 - (a) Facilitating Registration.

- (b) Forwarding the returns to Central and States authorities.
- (c) Computation and settlement of IGST.
- (d) Matching of tax payment details with banking network.
- (e) Providing analysis of taxpayers' profile.

5.6 Benefits of GST

GST is a win-win situation for the entire country. It provides benefits to all the stakeholders of industry, Government and customers. It is expected that it will reduce cost of goods and services and make them globally competitive. The significant benefits of GST are discussed hereunder:

- (a) **Creation of unified national market:** GST aims to make India a common market with common tax rates and compliances (procedures) and remove the economic barriers to form an integrated economy in the national level.
- (b) **Mitigation of ill effects of cascading:** GST subsume most of the Central and States indirect taxes into a single tax and allow the credit of tax paid from the output tax for the transaction across the entire value chain process. Eradication of “tax on tax” gives the benefit to the industry.
- (c) **Boost to ‘Make in India’ initiative:** GST will give major boost to the ‘Make in India’ initiative of government of India by making goods and services produced in India competitive in the national as well as international market.
- (d) **Increase in government revenue:** GST is expected to increase the Government revenue by widening the tax base and improving the taxpayer compliances.

5.7 Extent of CGST Act/ SGST Act/ UTGST Act/ IGST Act

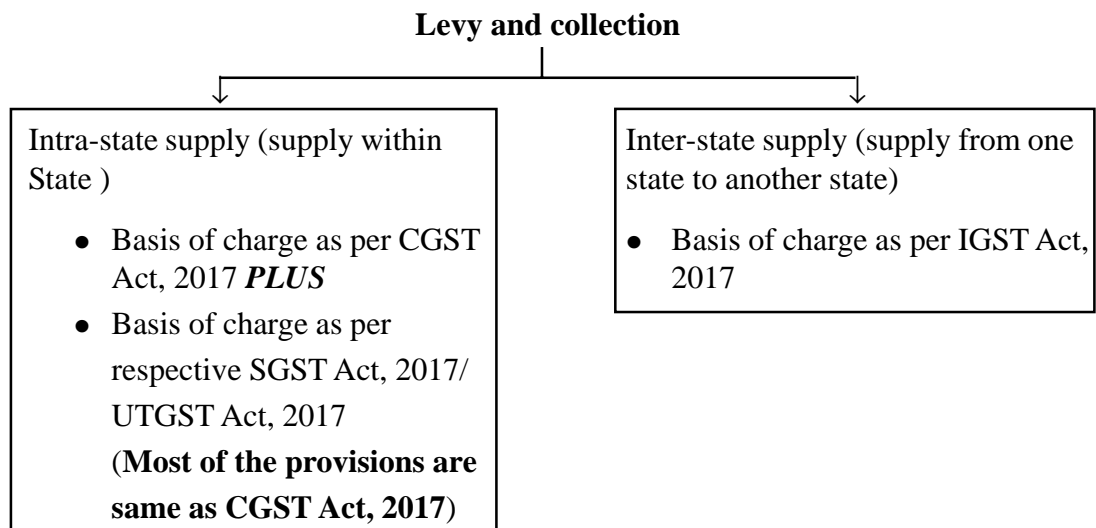
- The Central Goods and Service Tax Act, 2017 for imposing CGST on intra-state supply of goods and services, extends whole of India including Jammu and Kashmir.
- Respective State Goods and Service Tax Act, 2017 for imposing SGST by respective state on intra-state supply of goods and services, extends whole of that state/ Union territory having state legislature (Delhi and Puducherry).
- The Union Territory Goods and Services Tax Act, 2017 for levying UTGST in 5 Union Territories without State Legislatures on intra-Territory supply of goods and services. (Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh)
- The Integrated Goods and Service Tax Act, 2017 for levying IGST and whole of India including Jammu and Kashmir.

5.8 Applicability of GST in India

India means

- Territory of India (i.e. entire landmass of India including states and union territory)
- Indian territorial waters, seabed and sub-soil underlying such waters, continental shelf, excluding Special Economic Zone (SEZ) and any other notified maritime zone.
- The air space above its territory and territorial waters.

5.9 Levy and collection



5.9.1. Levy and collection as per CGST Act, 2017

- (a) U/s 9(1) of CGST Act, 2017 there shall be levied a tax –
- Called the Central Goods and Services Tax(CGST);
 - On all the intra-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption;
 - On the value determined u/s 15; and
 - At such a rate (maximum 20%,) as notified by the Central Government on recommendation of GST Council; and
 - Collected in such a manner as may be prescribed; and
 - Shall be paid by the taxable person.

- (b) U/s 9(2) of CGST Act 2017, the CGST of following supply shall be levied with the effect from such date as notified by the Central Government on recommendation of GST Council-
- Petroleum crude
 - High speed diesel
 - Motor spirit (commonly known as petrol)
 - Natural gas
 - Aviation turbine fuel
- (c) U/s 9(3), CGST is to be paid on reverse charge basis by the recipient on notified goods/ services or both (liability to pay tax by the recipient of supply of goods / services rather than supplier of goods/ services under forward charge)
- (d) U/s 9(4), CGST on taxable supply of goods/ services to registered supplier from unregistered supplier is to be paid on reverse charge basis by the recipient.
- (e) U/s 9(5), E-Commerce operator is liable to pay CGST on notified intra-state supplies.

5.9.2. Levy and collection as per IGST Act, 2017

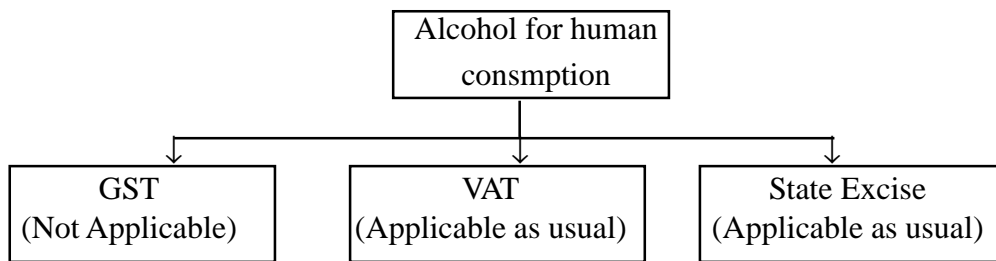
- (a) U/s 5(1) of IGST Act, 2017 there shall be levied a tax –
- Called the Integrated Goods and Services Tax (IGST);
 - On all the inter-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption;
 - On the value determined u/s 15 of CGST Act, 2017; and
 - At such a rate (maximum 40%,) as notified by the Central Government on recommendation of GST Council; and
 - Collected in such a manner as may be prescribed; and
 - Shall be paid by the taxable person.

Provided further that IGST will be imposed on goods/ services imported into India.

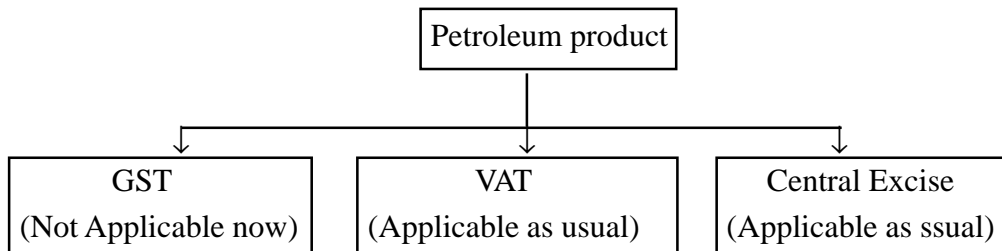
- (b) U/s 5(2) of IGST Act, 2017, the CGST of following supply shall be levied with the effect from such date as notified by the Central Government on recommendation of GST Council-
- Petroleum crude
 - High speed diesel
 - Motor spirit (commonly known as petrol)
 - Natural gas
 - Aviation turbine fuel

- (c) U/s 5(3), IGST is to be paid on reverse charge basis by the recipient on notified goods/ services or both (liability to pay tax by the recipient of supply of goods / services rather than supplier of goods/ services under forward charge).
- (d) U/s 5(4), IGST on taxable inter-state supply of goods/ services to registered supplier from unregistered supplier (agriculturist) is to be paid on reverse charge basis by the recipient.
- (e) U/s 5(5), E-Commerce operator is liable to pay CGST on notified inter-state supplies.

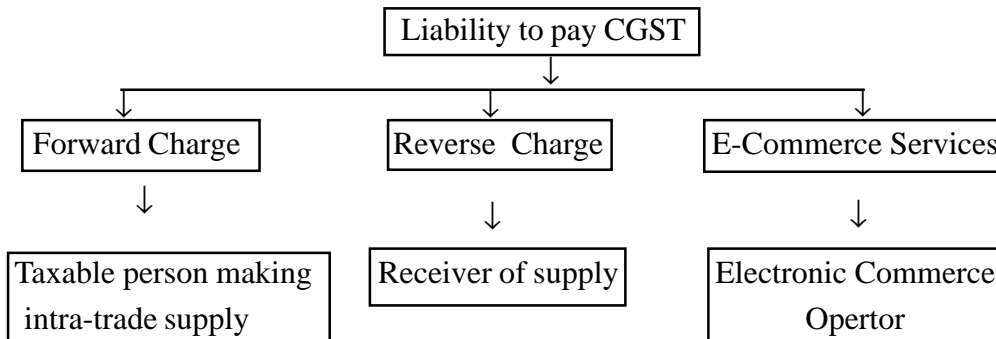
5.10 GST on Alcohol for human consumption



5.11 GST on Petroleum



5.12 Liability to pay CGST



5.13 Summary

From the above discussion we could understand the concept of GST and its genesis; Constitutional amendment and Legislative framework of GST; Structure and benefits of GST; Applicability of GST in India; Levy and Correction of GST; and Liability to pay CGST.

5.14 Questions

1. Briefly describe the structure of GST in India.
2. How does the seamless Credit flow under GST?
3. How the GST is levied and collected?
4. Briefly describe the provisions of levy and collection of taxes under CGST Act 2017.
5. Briefly describe the provisions of levy and collection of taxes under IGST Act. 2017.

Multiple Choice Questions (MCQ)

1. Authority to levy and collect taxes in India is given to the Central and State Government by
 - (a) Article 246 of Constitution of India
 - (b) Article 265 of Constitution of India
 - (c) Article 269 of Constitution of India
 - (d) Article 279A of Constitution of India
2. The exclusive right to make laws for matters containing in List-I of Schedule VII of the Constitution of India has been given to
 - (a) State Governments
 - (b) Central Government
 - (c) Both Centre and State Governments
 - (d) None of the above
3. The exclusive right to make laws for matters containing in List-II of Schedule VII of the Constitution of India has been given to
 - (a) State Governments
 - (b) Central Government

- (c) Both Centre and State Governments
 - (d) None of the above
4. The exclusive right to make laws for matters containing in List-III of Schedule VII of the Constitution of India has been given to
- (a) State Governments
 - (b) Central Government
 - (c) Both Centre and State Governments
 - (d) None of the above
5. Power to make laws with respect to goods and service tax has been given by the Constitution vide,
- (a) Article 279A
 - (b) Article 246A
 - (c) Article 246
 - (d) Article 366
6. Which of the following taxes have been subsumed in GST?
- (a) Central Sales Tax
 - (b) Central Excise Duty and service tax
 - (c) VAT
 - (d) All of the above
7. GST is levied on supply of all goods and services except:
- (a) Alcoholic liquor for human consumption
 - (b) Tobacco
 - (c) Legal services
 - (d) All of the above
8. GST on Petroleum Crude, High Speed Diesel, Motor Spirit (commonly known as Petrol), Natural Gas and Aviation Turbine Fuel:
- (a) Is not levied at all
 - (b) Is levied, but exempt
 - (c) Will be levied from a date to be notified on the recommendations of the GST Council

- (d) Will be levied from 1.4.2018
9. The GST Council shall, besides other recommendations, make recommendations to the Union and the States on—
- (a) The goods and services that may be subjected to, or exempted from the goods and services tax
 - (b) The threshold limit of turnover below which goods and services may be exempted from goods and services tax
 - (c) The rates including floor rates with bands of goods and services tax
 - (d) All the above
10. Which article of the Constitution empowered the President to Constitute Goods and Service Tax Council?
- (a) 270
 - (b) 246A
 - (c) 279A
 - (d) 269A
11. Who shall be empowered to levy and collect GST on supplies in the course of Inter-State trade or commerce?
- (a) Government of India
 - (b) State Governments
 - (c) Union Territories
 - (d) All the above

Answer Key :

- | | | | | |
|---------|-------|-------|-------|--------|
| 1 (b) | 2 (b) | 3 (b) | 4 (c) | 5 (b) |
| 6 (d) | 7 (a) | 8 (c) | 9 (d) | 10 (c) |
| 11 (a). | | | | |

Unit - 6 □ Concept of Supply under GST

Structure

- 6.0 Objectives**
- 6.1 Introduction**
- 6.2 Definition of important terms**
- 6.3 Scope of Supply**
 - 6.3.1 Supply for Consideration in course of furtherance of business**
 - 6.3.2 Supply without consideration**
 - 6.3.3 Activities treated as Supply of goods/services**
 - 6.3.4 Activities treated neither as Supply of goods nor as Supply of services**
 - 6.3.5 Activities notified by Government**
 - 6.3.6 Illustration**
- 6.4 Composite Supply and Mixed Supply**
 - 6.4.1 Composite Supply**
 - 6.4.2 Mixed Supply**
 - 6.4.3 Guiding principles for determining a Supply as Composite Supply or mixed Supply**
 - 6.4.4 Illustration**
- 6.5 Place of Supply**
 - 6.5.1 Scope of the provisions**
 - 6.5.2 Place of Supply of goods other than export and import**
 - 6.5.3 Place of Supply of services other than export and import**
 - 6.5.4 Illustration**
- 6.6 Time of Supply (Point of Taxation)**
 - 6.6.1 Time of Supply of goods**
 - 6.6.2 Time of Supply of services**
 - 6.6.3 Time of Supply of vouchers**
 - 6.6.4 Time of Supply of goods under RCM**
 - 6.6.5 Time of supply of services under RCM**
 - 6.6.6 Time of Supply in case of change in rate of Tax**
 - 6.6.7 Date of Tax**
 - 6.6.8 Illustration**

6.7 Value of Supply

6.7.1 Determination of Supply

6.7.2. Illustration

6.8 Summary

6.9 Questions

6.0 Objectives

After studying this unit, we will be able to understand and realise—

- Scope of Supply, Composite supply and Mixed Supply
- Place and Time of Supply
- Date of Payment of GST
- Value of Supply

6.1 Introduction

The incidence of tax is the foundation stone of any taxation system. It determines the point at which tax would be levied (i.e. the taxable event). The earlier framework of taxable event across various areas of indirect taxes was subject to varying interpretations resulting in endless litigation since decades. Broadly, the controversies related to issues like whether a particular process amounted to manufacture or not, whether a particular transaction was sale of goods or rendering of services, etc. The GST laws resolve these issues by laying down one comprehensive taxable event, i.e. ‘supply of goods or services or both’. GST law, by levying tax on the ‘supply of goods and/or services’, departs from the historically understood concepts of ‘taxable event’ under the erstwhile indirect tax laws (i.e. sale under state VAT laws, manufacture under excise laws and provisioning of service under service tax laws). For a better understanding of this topic, it is imperative to understand the meaning of a few important terms which have been explained in this unit.

6.2 Definition of important terms

Meaning of ‘Goods’ {Section 2 (52) of CGST Act}

‘Goods’ means every kind of movable property other than money and securities but includes:

- actionable claim;
- growing crops, grass and things attached to/forming part of the land which are agreed to be severed before supply or under a contract of supply.

Meaning of ‘Services’ {Section 2(102) of CGST Act}:

Services means anything other than goods, money and securities.

Services include activities relating to the use of money or its conversion of money by cash or by any other mode, from one form of currency or denomination to another form, currency or denomination for which a separate consideration is charged.

Meaning of ‘Consideration’ {Section 2(31) of CGST Act}:

The scope of the word ‘consideration’ in relation to the supply of goods or services or both would include:

- any payment made or to be made, whether in money or otherwise, by the recipient or by any other person; and
- the monetary value of any act or forbearance by the recipient or by any other person.

However, any subsidy given by Central Government or State Government shall not be treated as a part of consideration; and a deposit given in respect of supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies the deposit as consideration for the said supply.

Meaning of ‘Money’ {Section 2(75) of CGST Act}:

Money means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination.

However, money shall not include any currency that is held for its numismatic value.

Meaning of ‘Business’ (Section 2(17) of CGST Act):

Business includes:

- a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- b) any activity or transaction in connection with or incidental or ancillary to (a) above;
- c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
- e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;

- f) admission, for a consideration, of persons to any premises;
- g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Meaning of 'Person' {Section 2(84) of CGST Act):

Person includes:

- an individual (i.e. a natural human being);
- a Hindu Undivided Family ('HUF') (The meaning of HUF has not been given under the tax laws. As per the Hindu law, it means a family which consists of all persons lineally descended from a common ancestor including their wives and daughters. Married daughters are no longer treated as a member of HUF after they get married in other families);
- a firm;
- a limited liability partnership firm;
- a company;
- a trust;
- a body -corporate incorporated by or under the laws of a country outside India;
- an association of persons (AOP), whether incorporated or not (an AOP refers to a situation where two or more persons join hands to carry on any business);
- a body of individuals (BOI), whether incorporated or not (a BOI is similar to AOP; however, all the participants of BOI are only individuals whereas in case of AOP, one or more participant is a non-individual);
- government (Central Government as well as State Government);
- a local authority (ie, panchayat, municipality, cantonment board, etc); and
- a co-operative society registered under any law relating to cooperative societies;
- a society as defined under the Societies Registration Act, 1860;
- a corporation established by/under any Central, State or Provincial Act or Government company as defined u/s 2(45) of Companies Act, 2013;
- every artificial juridical person not covered above (artificial juridical persons are entities which are not natural persons but are separate entities in the eyes of law. Though they may not be sued directly in a court of law, but they can be sued through persons managing them. Examples are universities, ICAI, ICSI, etc);

Meaning of ‘Related Persons’ {Explanation to Section 15 of CGST Act}

Persons shall be deemed to be ‘related persons’ if:

- such persons are officers or directors of one another’s businesses;
- such persons are legally recognised partners in business;
- such persons are employer & employee;
- a third person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person;
- they are members of the same person; or
- one of them is the sole agent, sole distributor or sole concessionaire of the other.

6.3 Scope of Supply {Section 7 of CGST Act}

- **Section 7(1):** For the purposes of this Act, the expression “supply” includes:
 - a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - b) import of services for a consideration whether or not in the course or furtherance of business;
 - c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
 - d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
- **Section 7(2):** Notwithstanding anything contained in sub-section (1),
 - a) activities or transactions specified in Schedule III; or
 - b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
- **Section 7(3):** Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as:

- a) a supply of goods and not as a supply of services; or
- b) a supply of services and not as a supply of goods.

Overview of Supply :

Inclusions	Exclusions
<ul style="list-style-type: none"> ✓ Supply for consideration in course or furtherance of business {Section 7(1)(a)} ✓ Importation of services for consideration whether or not in course or furtherance of business {Section 7(1)(b)} ✓ Supply without consideration {Section 7(1)(c)+ Schedule I} ✓ Activities to be treated as Supply of goods or Supply of services {Section 7(1)(d) + Schedule II} 	<p>Activities to be treated neither as Supply of goods nor Supply of services {Section 7(2) + Schedule III}</p>

6.3.1 Supply for consideration in course or furtherance of business {Section 7(1) of CGST Act}

Section 7(1)(a) of CGST Act provides that a supply of goods/services should be carried out for consideration in the course or furtherance of business.

Modes of Supply:

- Section 7(1)(a) of CGST Act includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for consideration in the course or furtherance of business.
- **Sale and Transfer:**
Earlier, VAT was levied by State Governments on sale of goods within their respective states wherein 'sale was defined to mean transfer of property in goods for consideration. Under CGST Act, sale has been treated as a form of supply leviable to GST.
- **Barter and Exchange:**
 - Barter transactions involve only exchange of goods/services whereas exchange

may cover a situation where the goods are partly paid for in goods and partly in money.

- When there is a barter of goods or services, same activity constitutes supply as well as consideration. By making a specific inclusion in the definition of supply, all barter and exchanges have been made liable to GST.
- **Licence, Lease, Rental etc:**
 - Licences, leases and rentals of goods were earlier treated as services where the goods were transferred without transfer of right to use (effective possession and control over the goods) and were treated as sales where the goods were transferred with transfer of right to use.
 - Under the GST regime, such licences, leases and rentals of goods with or without transfer of right to use are covered under the scope of 'supply of services' because 'there is no transfer of title in such supplies. Such transactions are specifically treated as 'supply of services' under Schedule II of CGST Act.

CONSIDERATION:

- One of the essential conditions for the supply of goods and/or services to fall within the ambit of GST is that the supply should have been made for a consideration.
- However, consideration does not always mean money. It covers anything which might be possibly done, given or made in exchange for something else.
- Further, consideration need not always flow from the recipient of the supply. It can also be made by a third person.

In Course or Furtherance of Business:

- GST is essentially a tax on only commercial transactions. Hence, only those supplies which are made in the course or furtherance of business qualify as 'supply' under GST.

Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business.

Example: Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because supply is not made by Rishabh in the course or furtherance of business.

- In order to understand the term 'in the course or furtherance of business', we need to understand the term 'business'. Business has been defined u/s 2(17) of CGST Act to include, inter-alia, any trade, commerce, manufacture, profession, vocation etc whether or not undertaken for a monetary benefit. Business also includes any

activity or transaction which is incidental or ancillary to the afore mentioned listed activities.

Example: Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust - 'Kind Human'. The sale of paintings by the actor qualifies as supply even though it is a one-time occurrence.

Import of Services for Consideration {Section 7(1)(b) of CGST Act}

- Section 7(1)(b) of CGST Act expands the scope of the term 'supply' by including importation of services for a consideration within its ambit irrespective of the fact whether such importation is in the course or furtherance of business or not.
- Section 7(i)(b) of CGST Act (ie importation of services for consideration) is the only exception to the condition of supply being in course or furtherance of business.

Example: Mr. M, a proprietor, has received designing services for his house from an architect located in New York at an agreed consideration of US \$5,000. The import of services by Mr. M shall be treated as a supply u/s 7(1)(b) of CGST Act even though it is not in the course of or furtherance of business.

6.3.2 Supply without Consideration

As a general rule, for an activity to qualify as supply, the same should have been provided for consideration. However, Section 7(1)(c) of CGST Act read along with Schedule I of CGST Act lists down the following four cases where existence of consideration is not a pre-requisite for an activity to qualify as supply:

1. Permanent Transfer/ Disposal of Business Assets:

- Transfer/disposal of business assets by an entity on permanent basis without consideration shall be regarded as supply if input tax credit has been availed on procurement of such assets.
- This clause is wide enough to cover transfer of business assets from holding to subsidiary company or vice versa without consideration.

Example: Donation of old laptops to charitable schools by XYZ & Co. At the time of purchase of new laptops will qualify as supply provided input tax credit has been availed by XYZ & Co. on such laptops.

Example: A cloth retailer gives clothes from his business stock to his friend free of cost. In this case, transfer of business stock would amount to supply if he had claimed input tax credit on his procurement of such business stock.

2. Supply to Related Persons/Distinct Persons:

Transactions involving supply of goods/services/both without consideration

between related persons or distinct persons as specified u/s 25 of CGST Act will qualify as supply provided such supply has been made in the course or furtherance of business.

➤ **Taxability of Stock Transfers//Branch Transfers:**

Under the earlier law, no tax was applicable on stock transfers/branch transfers since such transactions do not involve transfer of property in goods. However, under the GST regime, stock transfers/branch transfers between different locations (with separate GST registrations) of same legal entity will qualify as 'supply'.

Example: Raghurib Fabrics transfers 1,000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghurib Fabrics are registered in the states where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.

➤ **Employer-Employee Transactions:**

- The definition of 'related persons' covers employer-employee relationship within its scope. Accordingly, all employer-employee transactions should be regarded as supply irrespective of the fact whether consideration is involved or not.
- However, Schedule I of CGST Act provides that gifts given by an employer to an employee shall not be treated as supply if the amounts of gifts given during a financial year does not exceed Rs 50,000. However, gifts exceeding Rs 50,000 shall be subject to GST.
- Moreover, Schedule III of CGST Act clearly states that services provided by an employee to the employer in the course of or in relation to his employment shall not be treated as supply of services. Therefore, any kinds of benefits given by an employer to his employee in terms of contractual agreement entered into between the employer and the employee will not be subject to GST.
- **Example:** Where an employer provides free housing to his employee, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the employee's remuneration package, no GST implications should arise on such free housing.

3. Supply of Goods Between Principal & Agent:

Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply. Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is also considered as supply.

Example: ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. For this purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons. Supply of goods by ABC Manufacturers Ltd. to Raghav & Sons will qualify as supply even though no consideration has been recovered from Raghav & Sons.

4. Import of Services from Related Persons Located Outside India:

Import of services by a taxable person from a related person or from any of his establishments located outside India in the course or furtherance of business shall be treated as supply irrespective of the presence of consideration.

Example: ABC Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Since ABC Associates and the branch office are related persons, services received by ABC Associates will qualify as supply even though the head office has not charged anything from it.

Example: Sumit, a proprietor registered in Delhi, has sought architect services from his brother located in US with respect to his newly constructed house in Delhi. Although services have been received by Sumit without consideration from a related person, the transaction will not qualify as supply since the same has not been received in course or furtherance of business.

6.3.3 Activities to be treated as Supply of goods/services

Section 7(l)(d) of CGST Act read along with Schedule II of CGST Act enlists various matters/transactions which are to be treated as supply of either goods or services. The matters listed under Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.

SL.No.	Nature of Transaction	Nature of Supply
1.	a) Transfer of title in goods b) Transfer of right in goods/undivided share in goods without transfer of title in goods. c) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.	Supply of Goods Supply of Goods Supply of Goods
2.	a) Lease, tenancy, easement, license to occupy land b) Lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly.	Supply of Goods

SL.No.	Nature of Transaction	Nature of Supply
3.	<p>Any treatment or process which is applied to another person's goods.</p> <p>Example: Job work performed by a job worker like dyeing of fabric in various colours.</p>	Supply of Goods
4.	<p>a) Goods forming part of business assets are transferred or disposed-off by/under directions of person carrying on the business so as no longer to form part of those assets, whether or not for consideration.</p> <p>b) Goods held/used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, by or under the direction of a person carrying on a business, whether or not for consideration.</p> <p>Example: A director using company's car for personal travels</p> <p>c) Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> ➤ Business is transferred as a going concern to another person; or ➤ Business is carried on by a personal representative who is deemed to be a taxable person 	<p>Supply of Goods</p> <p>Supply of Goods</p> <p>Supply of Goods</p>
5.	<p>a) Renting of immovable property</p> <p>b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer before its completion provided some part of the consideration is received before the issuance of completion certificate</p> <p>c) Temporary transfer or permitting the use or enjoyment of any intellectual property right</p>	Supply of Goods

- Services provided by an employee to his employer during the course of employment are not taxable under GST law.
- Services provided outside the course of employment for a consideration would qualify as a supply and thus liable to GST.
Example: If an employee provides private coaching to his employer’s children, such services would not get covered under the above exclusion and would be liable to GST.
- Amounts paid by the employer to the employee for premature termination of a contract of employment are treated as amounts paid in relation to services provided by the employee to the employer in the course of employment. Thus, such amount would not be liable to GST.

Nature of Transaction	Whether regarded as ‘services carried out during the course of employment’?
Services provided by a casual worker to employer who gives wages on daily basis to the worker	Yes. These are services provided by the worker in the course of employment.
In case the casual workers are employed by a contractor, like a building contractor or security agency services, who deploys them for execution of a contract or for provision of security services	<ul style="list-style-type: none"> ■ Yes. Services provided by the casual workers to the contractors are in the course of employment. ■ However, services provided by the contractor to his client by deploying such workers would not be a service provided by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.
Services provided on contract basis by a person to another	No. Services provided on contract basis (ie principal-to-principal basis) are not services provided in the course of employment.

2. Services by any Court or Tribunal established under any Law for the time being in force

3. Functions/Duties Performed By Following Persons:

- the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

- the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of Funeral, Burial, Crematorium or Mortuary including transportation of the Deceased

5. Sale of Land and Sale of Building Subject to Paragraph 5(b) of Schedule II

6. Actionable Claims, other than Lottery, Betting and Gambling

6.3.5 Activities notified by Government

Section 7(2)(b) of CGST Act provides that activities undertaken by Central Government/State Government/Local Authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the GST Council, shall be treated neither as supply of goods nor as supply of services. In terms of the above provision, services by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution has been notified.

6.3.6 Illustration

Problem 1:

R is a supplier of goods located in Mumbai. In October, 2017 he has imported Consultancy Services for Development of IT Software from U.S.A. for a stipulated consideration of \$ 80,000. Will the import of consultancy services be treated as supply?

Solution : The importation of service in the above case shall fall within the ambit of term “supply” as it is for a **consideration** and in the course or furtherance of business and shall be liable to IGST.

Problem 2 :

R is a supplier of goods located in Chandigarh. In November, 2017, he has imported ‘Architecture Services’ from a relative consultant located in Germany, without any consideration (**monetary or non-monetary**) for construction of his personal house.

- (a) Will the import of architecture services for personal use be treated as supply and liable to IGST?
- (b) What will be your answer if the above services have been imported by R in the course or furtherance of business?

Solution : (a) Since, there is no consideration and it is for personal use, importation

Problem 5 :

R is engaged in supply of certain goods in Delhi and Haryana. He wishes to transfer goods worth Rs. 1,40,000 from Delhi to its branch in Haryana. Will such transfer be treated as supply and liable for GST?

Solution : R shall be treated as distinct persons. Thus any supply of goods or services or both between Delhi to branch at Haryana shall be subject to integrated tax in terms of IGST Act, even though such transaction may not involve any payment of consideration.

Problem 6 : Employees of a R Ltd., which is a subsidiary of G Limited, have been sent on deputation basis to its Holding Company namely G Limited.

Will such transfer on deputation be treated as supply and liable to GST?

Solution : Such transfer of employee shall fall within the ambit of the term 'supply' even in the absence of any consideration. As both the companies fall under the definition of related person.

Problem 7:

R, the Principal located in Nagpur (Maharashtra) supplies certain goods to his agent G, located in Delhi. G undertakes to supply the said goods in Delhi on behalf of R. Will the above activity be treated as supply and liable for GST?

Solution : As per Schedule I of CGST Act, supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal is treated as supply even if such supply is without any consideration. Thus, such supply of goods by R to G shall fall within the ambit of the term 'supply' even if made without consideration and shall be liable for integrated tax under IGST Act.

Problem 8:

R works as an agent and is located in Mumbai. G is a manufacturer located in Delhi. R agrees to purchase certain goods from Mumbai on behalf of G every month and supply the same to G. Will the above activity be treated as supply and liable for GST?

Solution : As per Schedule I of CGST Act, supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal shall be treated as supply even if it is without consideration. Thus such supply of goods by R to G shall fall within the term of supply, even if made without consideration. This supply of goods from R to G shall be subject to integrated tax under IGST Act.

Problem 9:

R lives in Germany. His brother G is carrying on business in India. G imports technical services from R without any consideration in November, 2017 in the course or furtherance of business. Will this be treated as supply or services although G did not pay any consideration to R?

Solution : As per Schedule I of the CGST Act, import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business shall be treated as supply even if it is without any consideration. The said importation of service shall fall within the ambit of term “supply” and G shall be liable to pay integrated tax under IGST Act, 2017 even if R has provided consultancy services without any consideration. However, if such services are for personal use then it will not be treated as supply unless there is a consideration.

Problem 10:

Under a scheme of finance, Maruti Ltd. gives the possession of car to the buyer in November, 2017. It agrees to transfer the ownership of the car to the buyer in January, 2019 upon payment of full consideration of Rs. 9,60,000, in installments as agreed.

What will be the nature of this transaction?

Solution : As per Schedule II of the CGST Act, transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed shall be treated as supply of goods.

Thus, the aforesaid transaction shall be treated as supply of goods on hire purchase and liable to GST.

Problem 11:

R, the owner of a specific piece of land in Delhi, leases the same to G for one year for an agreed, Consideration in November, 2017.

What will be the nature of this transaction?

Solution :

As per Schedule II of the CGST Act, any lease, tenancy, easement, license to occupy land shall be treated as supply of services.

Thus, the aforesaid lease of land shall be treated as a supply of services and liable to GST.

Problem 12:

R is a manufacturer of goods. He sends his goods for the purpose of special packaging to G on job work. The packaging material has also been provided by R.

What is the nature of this activity?

Solution : As per Schedule II of the CGST Act, treatment or process applied to another person’s goods (job work) shall be treated as supply of services. Further, it shall be immaterial, whether the job-work is to be carried out by a job-worker with or without any material.

In the given case, the activity of special packing by G shall be treated as supply of services. Further, it shall be immaterial whether G uses his own packing material or the same is provided by R.

Problem 13 :

R is carrying on the business of consumer durable products. He disposed of a defective TV for Rs. 20,000 to G whereas its normal price is Rs.2,00,000.

- (a) Will the aforesaid disposal be treated supply of goods or services.
- (b) Assume in the above example, R donated the above-refrigerator to an NGO and he has claimed the input tax credit on such refrigerator at the time of purchase.

Solution : (a) As per Schedule II of the CGST Act, where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

Thus, the aforesaid disposal shall be considered as supply of goods by R and liable to GST.

- (b) The aforesaid donation shall be considered as supply of goods by R. Valuation of the defective refrigerator for payment of GST shall be done on fair market value basis in accordance with CGST Rules, 2017 concerned with determination of value.

Problem 14 :

R deals in home appliances like washing machines, refrigerator, etc. He uses computers in his shops for keeping track of inventory and for other business purposes. Out of 2 computers, R takes home one computer to be used by his son for his studies during the month of October, 2017 and thereafter computer is brought back to the show room of R.

What will be the nature of this transaction?

Solution :

As per Schedule II of the CGST Act, where goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is supply of services.

The aforesaid private use of a computer by R/his son shall be treated as a ‘**supply of services**’, although it is without consideration and thus liable to GST.

Problem 15 :

R gives generator-sets on rental basis to various customers. He gives a generator-set to his brother-in-law for a period of one month in September, 2017 on the occasion of some function in the home of his brother-in-law and thereafter generator is brought back to the show room of R. What will be the nature of this transaction?

Solution : As per Schedule II of the CGST Act, where goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for

use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is supply of services.

The activity of making available the said generator for the private use of brother-in-law of R shall be treated as a 'supply of services' although it is without consideration and thus liable to GST.

Problem 16 :

R has closed down his business but was left with certain capital goods and inputs forming part of the assets of the business carried on by him. The closure of the business is due to his ill health.

What will be the nature of this transaction?

Solution : As per Schedule II of the CGST Act, where goods forming part of the assets of any business carried on by a person shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

- (i) the business is transferred as a going concern to another person; or
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

In this case, such goods shall deemed to be supplied by him in the course of furtherance of his business immediately before he ceases to be a taxable person. Thus, the capital goods which have some useful life and such inputs lying with him on which credit has been availed should be treated as deemed supply and shall be subject to GST.

6.4 Composite Supply and Mixed Supply

GST is payable on supply of goods/ services at a rate notified by the government. In case of supply of single goods/ services poses no problem for determination of applicable GST rate, if they are clearly identifiable. However, some of the supplies are a combination of goods/combination of services/ combination of services and goods wherein each individual component of such supply attracts a different rate of tax. In such cases, determination of applicable rate of tax to be levied on such supplies may be a challenge. To address this issue, the GST law categorises such supplies into composite supplies and mixed supplies.

6.4.1 Composite Supply

U/s 2(30) of CGST Act, 2017 Composite supply means a supply –

- Made by a taxable person
- to a recipient

- consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
- which are naturally bundled, and
- supplied in conjunction with each other in ordinary course of business,
- and out of all supplies, one of which is principal supply. (Principal supply means predominant element of composite supply for which other supplies forming part of composite supply play an ancillary role)

Condition for Composite Supply

Any supply of goods or services will be treated as composite supply if it satisfies the following conditions simultaneously:

- i) supply of two or more taxable supply
- ii) it is naturally bundled i.e., goods or services are usually provided together in normal course of business. They cannot be separated.
- iii) One of the supplies must be principal supply.

Tax liability for Composite Supply

As per Sec. 8 of CGST Act, 2017 a Composite Supply, comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. Accordingly the tax rate applicable for the goods or services which is treated as principal supply is the rate of tax for Composite Supply.

6.4.2 Mixed Supply

As per Sec. 2(74) mixed supply means –

- Two or more individual supplies of goods or services or any combination thereof,
- Made in conjunction with each other
- By a taxable person
- For a single price
- Where such supply does not constitute a composite supply.

Condition for Mixed Supply

Any supply of goods or services will be treated as mixed supply if it satisfies the following conditions simultaneously:

1. Supply of two or more individual supply
2. It is not naturally bundled i.e., goods or services are usually not provided together in normal course of business. They can be separated.
3. None of the supplies is principal supply.

Tax liability for Composite Supply

As per Sec. 8 of CGST Act, 2017 a Mixed Supply comprising two or more shall be treated as a supply of that particular supply which attracts the highest rate of tax.

6.4.3 Guiding principles for determining a supply as Composite Supply or Mixed Supply

Following guiding principles could be adopted to determine whether it would be a Composite Supply or Mixed Supply.

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Each supply priced separately	No	No

Criteria for determining natural bundle

- Perception of customer about the supply.
- Market trend i.e. how other supplier supplies.
- Nature of ingredient of supply.

6.4.4 Illustration

Problem 1 :

R is selling hampers consisting of canned foods, sweets, chocolates, cakes and dry fruits on diwali and other festivals. What is the kind of supply and at which rate will GST be payable by R?

Solution : The supply of hamper consisting of canned foods, sweets, chocolates, cakes and dry fruits if sold for a single price shall be a mixed supply and the GST rate shall be rate of any of these items which attracts the highest rate of tax. However, if each of the items is supplied separately and is not dependant on any other item, it shall not be mixed supply and GST rate applicable shall be the rate applicable for each supply.

Problem 2:

R dispatched chocolates to G from Delhi to Punjab after getting it packed and paying insurance charges of such goods. What is the kind of such supply of chocolates and what rate will GST be applicable?

Solution : Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply. GST rate applicable in this case shall be the GST rate of chocolates.

Problem 3 :

R purchases air travel ticket of Air India from Delhi to Bangalore for Rs. 9,000 which includes free food on board and free insurance. What is the kind of such supply and what rate will GST be applicable?

Solution: Air travel ticket from Delhi to Bangalore costing Rs. 9,000 includes free food on board and free insurance. Therefore, it is a case of composite supply. In this case, the transport of passenger, institutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary. Hence, GST rate applicable in this case shall be the GST rate of transportation of passenger by air.

Problem 4 :

Mr. Ram being a dealer in laptops, sold laptop to a customer in Laptop Bag, for Rs. 55,000. CGST and SGST for laptop @ 18% and for laptop bag @ 28%. What would be the rate of tax leviable? Also find the GST liability.

Solution : If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary.

Therefore, it is a composite supply and the rate of tax would that as applicable to the laptop. Hence, applicable rate of GST 18% on Rs.55,000. CGST is Rs.4,950 and SGST is Rs. 4,950

Problem 5 :

Mr. A booked a Rajdhani train ticket, which includes meal. Is it composite supply or mixed supply?

Solution : It is a bundle of supplies. It is a composite supply where the products cannot be sold separately. The transportation of passenger is, therefore, the principal supply.

Rate of tax applicable to the principal supply will be charged to the whole composite bundle.

Therefore, rate of GST applicable to transportation of passengers by rail will be charged by IRCTC on the booking of Rajdhani ticket.

Problem 6 :

Big Bazar offers a free bucket with detergent purchased. Is it composite supply or mixed supply? Assume rate of GST for detergent @ 28% and bucket @ 18%.

Solution : This is a mixed supply. These items can be sold separately. Product which has the higher rate will apply on the whole mixed bundle.

Problem 7:

XYZ Ltd. is a manufacturer of cosmetic products, supplied a package consisting of hair oil (GST Rate -18%), Sun screen cream (GST Rate - 28%), Shampoo (GST rate - 28%) and hair comb (GST Rate -12%). The Price per package is Rs. 500 (exclusive of taxes). 10,000 packages were supplied by the company to its dealers. Determine the nature of supply and its tax liability.

Solution : This supply would be regarded as mixed supply, since in this case each of the goods in the package have individual identity and can be supplied separately, but are deliberately supplied conjointly for a single consolidated price. The tax rates applicable in case of mixed supply would be the rate of tax attributable to that one supply (goods, or services) which suffers the highest rate of tax from amongst the supplies forming part of the mixed supply. Therefore, the package will be chargeable to 28% GST.

The tax liability will be arrived as under :

Particulars	Rs.
Value of taxable supply per package	Rs. 500
No. of packages	<u>10,000</u>
Total Taxable Value of supply	Rs. 50,00,000
Applicable GST Rate	28%
Total Tax liability	Rs.14,00,000

Problem 8 :

A Ltd. a manufacturing concern in Rajasthan has opted for composition scheme furnishes you with the following information for Financial Year 2018-19. It requires you to determine its composition tax liability and total tax liability. In Financial Year 2017-18 total value of supplies including inward supplies taxed under reverse charge basis are Rs. 68,00,000. The break up of supplies are as follows –

Particulars	Rs.
(1) Intra State Supplies of Goods X chargeable @ 5% GST	30,00,000
(2) Intra State Supplies made which are chargeable to GST at Nil rate	18,00,000
(3) Intra state supplies which are wholly exempt under section 11 of CGST Act, 2017	2,40,000
(4) Value of inward supplies on which tax payable under RCM (GST Rate 5%)	5,00,000
(5) Intra State Supplies of Goods Y chargeable @ 18 % GST	30,00,000

Solution: The composite tax liability of A Ltd. shall be as under :

(1) Computation of Aggregate Turnover and composite tax :

Particulars	Rs.
(1) Supplies made under forward charge	30,00,000
(2) Supplies made which are chargeable to GST at Nil rate	18,00,000
(3) Supplies which are wholly exempt under section 11 of CGST Act, 2017	2,40,000
(4) Value of inward supplies on which tax payable under RCM (GST Rate 5%) (not to be included)	NIL
(5) Intra State Supplies of Goods Y chargeable @ 18 % GST	30,00,000
Aggregate turnover	30,00,000
Rate of composite tax	2%
Total Composite tax [Rs. 30,00,000 × 2%]	60,000

(2) Tax payable under reverse charge basis:

Particulars	Rs.
Value of inward supplies on which tax payable under RCM	5,00,000
Rate of GST	5%
Tax payable under RMC	<u>25,000</u>
Total Tax liability (Rs. 60, 000 + 2, 5000)	85,000

6.5 Place of Supply

Under the GST environment, Place of Supply (PoS) of Goods and Services is the most important concept because the chargeability of GST is based on three pillars.

- Taxable event i.e supply
- Time of supply of Goods / Services (point of taxation)
- Place of Supply of Goods and Services.

Therefore it can be said that Place of Supply is very significant for computation of tax under GST regime. In case the Place of Supply is wrongly determined, it has vast implication under provision of Section 77. According to that section if a person wrongly collect and paid the CGST and SGST assuming the transaction is a Intra-State supply, while the actual transaction is a Inter-State supply, shall refund the CGST/SGST and paid IGST along with interest and vice versa. Under GST it is very important to determine

the nature of supply because it's only after determining the same we can make sure the tax that is to be collected and paid. Hence, in case the nature of supply is Inter-State we shall apply Integrated Goods and Service Tax (IGST) on the transaction and in case of Intra-State supply we need to apply both i.e. Central Goods and Service Tax (CGST) and State Goods and Service Tax (SGST). As per Section 7 of IGST Act, a transaction is said to be a Intra-State supply if the location of supplier and the Place of Supply of goods and services are in same state or same Union Territory. As per Section 8 of IGST Act, a transaction is said to be a Inter-State supply if the location of supplier and the Place of Supply of goods and services are two different States or two different Union Territory or one in Union Territory and another is State Territory. Inter- State supplies also includes the supply of goods or services imported into India, where LoS (location of supplier) is outside India and PoS (Place of Supply) is in India, and supply of goods and services exported from India, where LoS in India but PoS is outside India. Apart from this, there are some specified transactions which actually looks like Intra- State supplies but deemed to be a Inter- State supplies, for example supplies made to or by SEZ units even within the State would be considered as Inter- State Supplies. All Intra-State supplies are governed by Central GST Act and State/ Union Territory GST Act, 2017 and applicable taxes are CGST plus SGST/UGST. So imposition of two different kinds of taxes on the same transaction indicates the equal share of taxes by Central and State/ UT Government. All Inter-State supplies are governed by the IGST Law applicable levy on the transaction is IGST. This IGST include the share of both Central Government and respective state/ UT Government which is consider as the Place of Supply. Thus the concept of Place of Supply is the utmost important from the point of Government to determine which State or Union Territory will get the share of IGST and it is also important for the business to identify which taxes to be imposed depending upon whether the transaction is Inter Sate supply or Intra- State supply.

6.5.1 Scope of the Provisions

Sections 10 to 13 of the IGST Act, 2017 indicate the principles to determine the Place of Supply.

1. Section 10 governs the Place of Supply of goods other than goods imported into and exported from India.
2. Section 11 governs the Place of Supply of Goods imported into or exported from India.
3. Section 12 governs the Place of Supply of services, where location of supplier and location of recipient is in India.
4. Section 13 governs the Place of Supply of services, where the location of supplier or location of recipient is outside India.

It is important to state that where Sections 10 and 12 deal with domestic transaction but Sections 11 and 13 deal with cross border transactions of goods and services. Also Sections 10 and 11 cover the Place of Supply of goods, but Sections 12 and 13 cover the supply of services, both are independent provisions.

6.5.2 Place of Supply of goods other than export and import

According to the related provisions, Rules governing the Place of Supply of Goods other than Imports and export (for Domestic supply) are as under-

1) *where the supply involves movement of goods:*

Supply involves movement of goods whether by the supplier or the recipient, the Place of Supply of such goods shall be the location of the goods when the movement of goods terminates for delivery to the recipient. This implies that place of supplier or receiver is of no consequence to determine the Place of Supply when it comes to those transactions which involve the movement of goods. The place where delivery terminates i.e. where the ownership is passed on shall be critical to determine the Place of Supply.

Case study 1:

A Ltd. of West Bengal sold 300 units of computer to Info Traders of Bihar, to be delivered at his office at Jharkhand. Place of Supply of goods is Jharkhand and IGST will be levied as it is a Inter- State supply.

2) *where the goods are delivered on the direction of a third person:*

where the goods are delivered by the supplier to a recipient on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the **principal place of business** of such person. When goods are delivered to a party on the direction of a third person the Place of Supply will be the location of such third person and not where the delivery terminates.

Case study 2:

Samanta Traders, a dealer in Furniture, located in west Bengal place an order to Rahim traders located at Assam, for 100 units of Chairs, with the direction that to deliver the Chairs to City College of Kolkata, West Bengal, who is the customer of Samanta Traders.

There are two legs of the Transaction

Leg 1: Samanta Traders and Rahim Traders, Place of Supply is West Bengal and IGST will be levied as Inter- State sale.

Leg 2: Samanta Traders and City College (having registered under GST), PoS of goods is West Bengal and Intra- State supply, CGST plus SGST will be charged.

3) Where supply involves no movement of goods:

Where the supply does not involve movement of goods, whether, by the supplier or the recipient, the Place of Supply shall be the location of such goods at the time of the delivery to the recipient. However, when goods are of such nature which does not require any movement, Place of Supply shall be the location of such goods.

Case study 3:

Silk Traders of Gujarat Sold 20 pieces of silk salwar to Amit traders of west Bengal at Gujarat show room. Here the transaction is Intra -Sate Supply of goods, as Place of Supply is Gujarat.

4) When Goods are Installed :

Where the goods are assembled or installed at site, the Place of Supply shall be the place of such installation or assembly.

Case study 4:

Ramco Limited registered in Bihar opens a new office in Delhi. It purchases 10 ACs to be installed at its Delhi office from Patil electronics in Bihar. In this case, the location of the supplier is Bihar, but a Place of Supply of goods will be Delhi. Hence, IGST will be levied.

5) Goods on Board a conveyance :

In case the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the Place of Supply shall be the location at which such goods are taken on board. This provision includes those purchases which are done while travelling on a conveyance.

Case Study 5:

Mr. Mehta is travelling on a cruise liner from Mumbai to Goa. He purchases a book from the in-house store in the cruise liner. These books were on-boarded from Mumbai. Registered place of business of the book shop is in Mumbai. Place of location of supplier is Maharashtra and Place of Supply of goods , in this case, will be Maharashtra. This is an Intra-State supply, and CGST and SGST will be charged.

6.5.3 Place of Supply of services other than export and import

Broad principles governing the Place of Supply of services where the location of service supplier (provider) and recipient (Receiver) is in India, are 13 in numbers, out of which 1 is general principle and 12 are specific situation based principles. For the most supplies of services, the places of supply of services are determined by “General

Rule”. However, some supplies are subject to special rules for fixing the Place of Supply of services, depending upon the nature of services referred in those respective rules.

1) General Rules:

Where both supplier and recipient are located in India, the Place of Supply of service would be:

- a) When the service supplied or provided to persons registered under the GST the Place of Supply of service is the location of registered person.

Case Study 7:

Mr. Rahaman is the chartered accountant of West Bengal, provided professional services to ABC Ltd, of Assam. The PoS of the Service is the location of Registered person. Here it is Assam. So Mr. Rahaman will charge IGST for his service as Inter- State Supply.

- b) When the services are provided to an un-registered person but the address exists on records of the supplier of service, the Place of Supply of service is the location of service recipient of to un-registered persons.

Case study 8:

Samanta Furniture of Kolkata is providing services of renting of furniture to Amit of Midnapur. Then the location of supply of services is at West Bengal, hence Intra- States supply. So both CGST and SGST will be levied.

- c) When the services are provided to an un-registered person but the address doesn't exists on records of the supplier of service, the Place of Supply of service is the location of service supplier or provider.

Case study 9:

Infotech Kolkata is providing computer repair services to Rahul of Jharkhand, unregistered person and address is not available in its records. In this situation Place of Supply is location of service provider i.e West Bengal (Intra-State supply)

The general rule has been framed keeping in the view the difference between B to B and B to C supplies. The rule is very well aligned with the overall philosophy of GST Act which is destination based consumption tax.

2) Specific Rules :

- a) Place of Supply of the Services in relation to immovable property is the location of the immovable property without differentiating the B to B and B to C supplies (Availing input tax credit from a state where the service receiver has no place of business may difficult). The rule covers

- Services like architecture, interior decoration, construction or any others similar in nature.
 - Services of accommodation for staying in hotel, guest house, lodge, inn etc. or for organising any function or events.
- b) Place of Supply for the restaurant and catering services personal grooming, health and beauty services etc., is the location of actual performance.
- c) Place of Supply for services like training and performance appraisal is the
- For Registered service recipient –location of the service recipient (can claim input tax credit)
 - For un-registered recipient – place of actual performance (no question of claiming input tax credit)
- d) Place of Supply for the services provided by way of admission to an event or amusement park or any other place is the location of the event or park without differentiating the B to B and B to C supplies.
- e) Place of Supply for the services provided by way of organising such events and other ancillary services in this connection is the
- For Registered service recipient –location of the service recipient (can claim input tax credit)
 - For un-registered recipient – location of actual performance.(no question of claiming ITC). If the event is outside India then location of service recipient will be Place of Supply for un-registered person..
- f) Place of Supply for the services transportation of goods, including mail or courier is the
- For Registered service recipient –location of the service recipient (can claim input tax credit)
 - For un-registered recipient – location where goods are handed over for transportation
- g) Place of Supply for the services of **Passenger transportation** is
- For Registered service recipient –location of the service recipient (can claim input tax credit)
 - For un-registered recipient – location where passenger embarks on a conveyance for the continuous journey.
- h) Place of Supply for the services on the board of conveyance like aircraft, vessel, train, motor vehicles is the first departure point of the conveyance of that journey.

- i) Place of Supply for the telecommunication services like data transfer, broadcasting, cable and DTH services to any person has been prescribed differently
- For fixed line, leased circuits, cable or dish antenna – place of installation
 - For post paid mobile/ internet connection – location of billing address.
 - For pre paid mobile/ internet connection – address of the selling agent or the location of sale in different situation.

This is largely in the line with the provision followed by other developed nations.

- j) Place of Supply for banking and financial services including services of stock broking firm shall be
- Location of receiver is available in records - the location of service receiver.
 - Location of receiver is not available in records – the location of service provider

Such provision is similar to the previous provision in service tax.

- k) Place of Supply for insurance services shall be the location of the service recipient in case of business or otherwise.
- l) A special rule is framed for the advertising services provided to the government whether central or state / union territory. Place of Supply is the respective state for which the advertisement is meant for.

After discussing the principles governing PoS for the entire domestic supplies of services, it may be seen that overall objective of the principle is to capture the location of consumption of services and to ascertain the PoS accordingly.

6.5.4 Illustration

Problem 1 :

- (a) What shall be the place of supply and kind of GST chargeable, if R of Delhi makes a supply of goods to G of Gujarat?
- (b) What shall be your answer if G is also located in Delhi?

Solution : (a) The place of supply in this case shall be Gujarat where the movement goods terminate and it will be a case of inter-State supply liable to IGST.

(b) On the other hand, if G is also located in Delhi, the place of supply shall be Delhi and it will be a case of intra-state supply liable to CGST and Delhi SGST.

Problem 2 : R of Ghaziabad (UP) comes to Delhi and wishes to buy a washing machine for his residence at Ghaziabad. He visited a showroom of washing machine of G in Delhi. G agreed to transport and deliver the washing machine to R at his residence in Ghaziabad for a sum of Rs. 20,000 including transportation charges.

- (a) What shall be the place of supply and kind of GST chargeable in this case?
- (b) Will the situation be different if R agrees to take the washing machine himself to Ghaziabad?

Solution : (a) In this case, supply involves movement of goods from Delhi to Ghaziabad (UP) and responsibility of movement of goods is of the supplier G. The place of supply in this case shall be Ghaziabad where the movement terminates for delivery. Hence, it shall be a case of inter-state supply and liable to IGST.

- (b) The situation will not be different if R agrees, that he will himself move the goods to Ghaziabad.

Problem 3 :

R of Delhi has supplied goods to G of Ambala (Haryana). During the movement of goods G directed R to transfer the documents of title to S of Chandigargh (Union Territory). What shall be the 'place of supply' and kind of GST chargeable in this case?

Solution : The place of supply of such goods shall be Chandigargh (Union Territory) and it will be a case of Inter-State supply liable to IGST.

Problem 4 :

R of Haryana, books an order to supply toys to J of Jaipur (Rajasthan). R places the order on G Toys Ltd. Mumbai, the manufacturer of such toys and instructs G Toys Ltd. to deliver the toys directly to J of Jaipur to save the transportation cost. What shall be the place of supply and kind of GST Chargeable in this case?

Solution : In this case goods are delivered to J in Jaipur by G Toys Ltd. the supplier of goods located at Mumbai on the direction of R. Delivery of goods by G Toys Ltd. to J of Jaipur (Rajasthan) shall be considered as supply to R of Haryana and the place of supply of this transaction shall be Haryana being the principal place of business of R. This supply shall be considered as inter-state supply and shall be subject to IGST which will be charged by G Toys Ltd. of Mumbai in his invoice raised to R of Haryana.

Problem 5 :

R of Mumbai (Maharashtra) enters into an agreement with G to Ammedabad (Gujrat) for installation of a machine in his factory at Goa.

- (a) What shall be the place of supply and kind of GST chargeable to this case
- (b) What shall be your answer if the machine has to be mstalled on G's factory at Pune (Maharashtra)

Solution : (a) The place of supply in this case shall be the place of installation of machine i.e. Ahmedabad (Gujrat). Thus it will be a case of inter-state supply and R will have to pay IGST at Delhi.

- (b) If this machine has to be installed by R on behalf of G in Pune (Maharashtra). It will be a case of intra-state supply and R will have to pay CGST and Maharashtra SGST at Mumbai.

Problem 6 :

R, a flight caterer, of Gurgaon (Haryana) has loaded food and drinks on Air India aircraft at Delhi on its flight from Mumbai to Amritsar via Delhi for passengers on board. What shall be the place of supply and kind of GST chargeable in this case?

Solution : The place of supply in this case shall be Delhi from where foods and drinks were loaded on the aircraft and it will be a case of inter-State supply as R is in Gurgaon (Haryana) and the place of supply is in Delhi. Thus R will have to pay IGST at Delhi.

Problem 7 :

A ticket for anywhere travel in India is issued by Jet Airways to R. How would you determine the 'place of supply' in this case?

Solution : In this case the place of embarkation will not be available at the time of issue of invoice as the right to passage is for future use. Accordingly, place of supply cannot be the place of embarkation. In such case, the place of supply of such service shall be determined in accordance with the provisions of section 12(2) i.e. if the services are made to—

- (a) a registered person, it shall be the location of such person;
- (b) any person, other than a registered person it shall be—
 - (i) the location of the recipient where the address on record exists: and
 - (ii) the location of the supplier of services in other cases.

Problem 8 :

A person travels from Delhi to Chennai and back to Delhi. How would you determine the place of supply in this case?

Solution : The place of supply shall be determined as under:

If the person is registered, the place of supply shall be the location of recipient. If the person is not registered, the place of supply for the for on ward journey from Delhi to Chennai shall be Delhi, the place where he embarks.

However, for the return journey, the place of supply shall be Chennai as the return journey has to be treated as separate journey.

Problem 9 :

From the following information determine the place of supply of goods as per IGST Act, 2017, where the goods are delivered by the supplier to a recipient on the direction

of a third person during the course of movement of goods. Also determine the nature of supply -whether inter state or intra-state supply?

Supplier and his location	Location of the buyer (third person)	Recipient and his location	Place of delivery of the goods
A Ltd. Jaipur	A Ltd. Jaipur	M Ltd. Mumbai	Mumbai
A Ltd. Jaipur	M Ltd. Mumbai	B Ltd. Jaipur	Jaipur
A Ltd. Jaipur	S Ltd. Surat	M Ltd. Mumbai	Mumbai
A Ltd. Jaipur	M Ltd. Mumbai	P Ltd. Mumbai	Mumbai

Solution: The place of supply of goods shall be determined as under—

Supplier and his location	Location of the buyer (third person)	Recipient and his location	Place of delivery of the goods	Place of Supply (As per Section 10(1)(b) shall be the principal place of business of third person i.e. buyer)	CGST/IGST
A Ltd. Jaipur	B Ltd. Jaipur	M Ltd. Mumbai	Mumbai	Jaipur	Intra-State - CGST
A Ltd. Jaipur	M Ltd. Mumbai	B Ltd. Jaipur	Jaipur	Mumbai	Inter-State - IGST
A Ltd. Jaipur	S Ltd. Surat	M Ltd. Mumbai	Mumbai	Surat	Inter-State - IGST
A Ltd. Jaipur	M Ltd. Mumbai	P Ltd. Mumbai	Mumbai	Mumbai	Inter-State - IGST

Problem10 :

Determine place of supply of goods in the following cases and also state the nature of supply and the type of tax leviable:

Supplier and his location	Recipient and his location	Place of assembly/ installation of goods
A Ltd. Jaipur	B Ltd. Jaipur	Kolkata
A Ltd. Jaipur	M Ltd. Mumbai	Surat
A Ltd. Jaipur	S Ltd. Surat	Allahabad
A Ltd. Jaipur	M Ltd. Mumbai	Jaipur

Solution : The place of supply shall be determined as under—

Supplier and his location	Recipient and his location	Place of assembly/ installation of goods	Place of Supply	Nature of supply and tax leviable
A Ltd. Jaipur	B Ltd. Jaipur	Kolkata	Kolkata	Inter-State -IGST
A Ltd. Jaipur	M Ltd. Mumbai	Surat	Surat	Inter-State -IGST
A Ltd. Jaipur	S Ltd. Surat	Allahabad	Allahabad	Inter-State -IGST
A Ltd. Jaipur	M Ltd. Mumbai	Jaipur	Jaipur	Intra-State - CGST

6.6 Time of Supply/ Point of Taxation

GST is payable on supply of goods or services. A supply consists of elements that can be segregated or separated in respect to time, like purchase order or agreement for sale, provision of services, despatch of goods, delivery of goods. Payment, entry of payment or amount deposited to Bank. So at which of these points of time, will GST become payable? Will it become payable when an agreement to supply goods or services are provided or when invoice is issued or when payment is made? What happens if the goods are delivered over a period of time? What happens if the services are provided over a period of time? Provision relating to 'time of supply' provides answer to all such questions that arise on the timing of the liability to pay CGST and SGST/UTGST (Intra-State supply) and IGST (Inter-State Supply) as time of supply fixes the point of time when the liability to pay tax arises.

6.6.1 Time of Supply of Goods, u/s 12 of CGST Act

Time of Supply of Goods under forward charge

The time of supply of goods shall be

- Date of issue of tax invoice [When invoice is issued within time limit of issue of invoice]
- Last date on which invoice ought to have been issued [When invoice is not issued within time limit]
- Date of receipt of payment
–Earlier of the above three

Note : 1. Time limit for issue of invoice for supply of goods

- Where supply involves movement of goods → at the time or before the removal of goods.
- Where supply does't involve movement of goods → at the time or before the delivery of goods.
- In case of continuous supply of goods: → at the time or before the time of issuance of periodical statement.

Note: 2. Date of receipt of payment shall be

- (a) Date on which the payment is recorded in the books of accounts of the supplier
- (b) Date on which the payment is credited to the supplier's Bank A/c

Note : 3. If the payment received is upto Rs. 1000 in excess of the invoice amount, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of goods for such excess value.

Note: 4. When the payment is received in instalments, the time of supply shall be determined separately for each instalment.

6.6.2 Time of Supply of Services

Time of supply of services under forward charge

Section 13(2) CGST Act prescribed the manner for determination of time of supply in case of supply of services under forward charge:

Case 1 : Invoice has been issued within time limit u/s 31

The time of supply shall be

- (a) Date of issue of invoice
- (b) Date of receipt of payment

Earlier of the above two.

Case 2 : Invoice has not been issued within time limit u/s 31

The time of supply shall be

- (a) Date of provision of service
- (b) Date of receipt of payment

Earlier of above two

Note: 1. Time limit for issue of invoice

- (a) For Banking and Financial institution-within 45 days from the provision of service
- (b) For other case–whihin 30 days from the date of provision of service.

Note: 2. Date of receipt of payment shall be

- (a) Date on which the payment is recorded in the books of accounts of the supplier
- (b) Date on which the payment is credited to the supplier's Bank A/c

Note : 3. If the payment received is upto Rs. 1000 in excess of the invoice amount, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of goods for such excess value.

Note: 4. When the payment is received in instalments, the time of supply shall be determined separately for each instalment.

6.6.3 Time of Supply of vouchers

In case of supply of vouchers by a supplier, the time of supply (TOS) shall be

- (a) The date of issue of voucher → If supply is identifiable at the point
- (b) The date of redemption of Voucher → if supply is not identifiable at that point of issue of voucher.

Where it is not possible to determine the time of supply u/s 12, then time of supply shall be

- (a) Date on which periodic return has to be filed
- (b) In other case → the date on which tax is paid.

6.6.4 Supply of Goods under Reverse Charge Mechanism (RCM)

Section 12(3) of CGST Act provides that in case of supply of goods under RCM, the time of supply shall be

- (a) Date on which the goods received
- (b) Date of payment earlier of
 - (i) Date of payment by Debiting Bank A/c
 - (ii) Date of Book entry
- (c) Date immediately following 30 days from the date of issue of invoice.

6.6.5 Time of Supply of Service under RCM

- (a) Transaction between non-associate enterprises

Section 13(3) of CGST Act provides that in case of supply of services taxable under RCM the time of supply shall be

- (i) Date of payment
- (ii) Date immediately following 60 days from the date of issue of invoice.

Note: If Time to supply (TOS) can't be determined as above parameters, then the TOS is the date of book entry of services in the Books of recipient.

- (b) Transaction between associated enterprises. TOS shall be earlier of
 - (i) Date of payment
 - (ii) Date of debit entry in the books of accounts of the recipient of services.

6.6.6 Time of Supply in case of change in the rate of tax [u/s 13 of CGST Act]

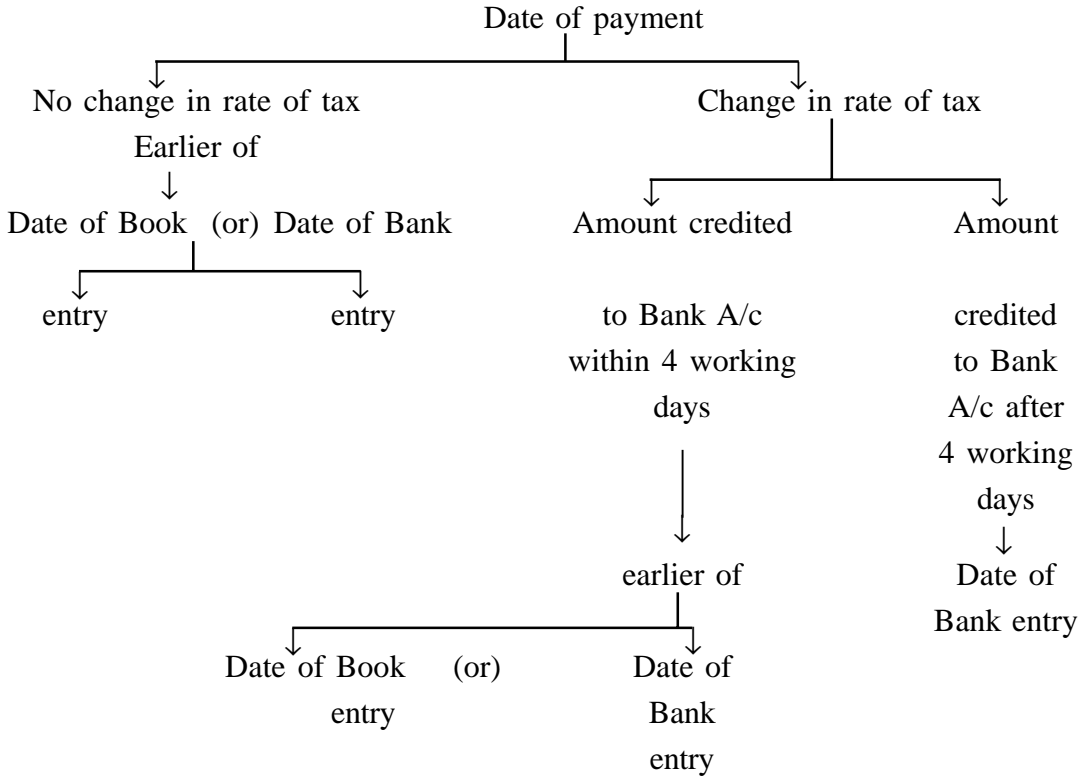
When there is a change in the rate of tax in respect of goods or services, the time of supply shall be determined as follows.

Situations	Supply completed	Invoice issued	Payment Made	TOS (Time of supply)	Applicable Rate
1.	Before change	After change	After change	Earlier of Date of invoice and date of payment	New rate
2.	Before change	Before change	After change	Date of issue of invoice	Old rate
3.	Before change	Before change	Before change	Date of receipt of payment	Old rate
4.	After change	Before change	Before change	Earlier of Date of Invoice and date of payment	Old rate
5.	After change	After change	After change	Date of Receipt of payment	New rate
6.	After change	Before change	Before change	Date of issue of Invoice	New rate

Note: Normally the date of receipt of payment is the date of credit in the bank A/c of the recipient of payment [suppliers] or the date of Book entry by the supplier in their books of account.

However, in case of change in the rate of tax, the date of receipt of payment is the date of credit in the bank A/c if such credit is after 4 working days from the date of change in rate of tax.

6.6.7 Date of Payment of Tax



6.6.8 Illustration

Problem 1 :

Determine the Time of supply in each of the following independent cases in accordance with provisions of Section 12 of the CGST Act, 2017 in case supply involves movement of goods.

SI. No.	Date of Removal	Date of invoice	Date when goods made available to recipient	Date of receipt of payment
1.	01-10-2017	02-10-2017	03-10-2017	15-11-2017
2.	03-10-2017	01-10-2017	04-10-2017	25-11-2017
3.	04-11-2017	04-11-2017	06-11-2017	01-10-2017

Solution: Time of supply of goods in each of the above cases has been given in following table—

SL. No.	Removal	Date of Invoice	Date of goods made available to recipient	Date when receipt of payment	Date of Supply (TOS)	Time of Reasons
1.	01-10-2017	02-10-2017	03-10-2017	15-11-2017	01-10-2017	Since, invoice is not issued on or before the date of removal of goods and payment is received after the date of removal, hence time of supply is date of removal of goods.
2.	03-10-2017	01-10-2017	04-10-2017	25-11-2017	01-10-2017	TOS is date of issuance of invoice since invoice is issued prior to date of removal of goods and payment is received after the date of invoice.
3.	04-11-2017	04-11-2017	06-11-2017	01-10-2017	01-10-2017	TOS is date of receipt of payment since invoice is issued after date of receipt of payment.

Problem 2 :

From the following information determine the time of supply if supply involves movement of goods :

SL. No.	Invoice date	Removal of goods	Receipt of payment
1.	15-11-2017	26-10-2017	20-11-2017
2.	26-10-2017	30-10-2017	05-11-2017

Solution: Time of supply of goods in each of the above cases has been given in the following table—

SL. No.	Invoice date	Removal of goods	Receipt of payment	Time of supply	Reasons
1.	15-11-2017	26-10-2017	20-11-2017	26-10-2017	TOS is the date of removal of goods, since Invoice is not issued before removal of goods and payment is received after removal of goods.
2.	26-10-2017	30-10-2017	05-11-2017	26-10-2017	TOS is the date of invoice since the same is issued before removal of goods and payment is received after the date of invoice.

Problem 3 :

Determine the Time of Supply in each of following independent cases in accordance with provisions of Section 12 of the CGST Act, 2017 in case supply involves movement of goods.

S.No.	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account
1.	10-11-2017	20-11-2017	28-11-2017	30-10-2017
2.	30-11-2017	18-11-2017	10-11-2017	28-11-2017

Solution: Time of supply of goods in each of the above cases has been given in following table—

SL. No.	Invoice date (DOI)	Invoice due date	Date of payment i.e. (DOP) Earlier of Payment entry in supplier's books or credit in his bank account	Time of Supply (TOS)	Reason
1.	10-11-2017	20-11-2017	28-11-2017	10-11-2017	TOS shall be earlier of the DOI or DOP .
2.	30-11-2017	18-11-2017	10-11-2017	10-11-2017	TOS shall be earlier of due date of DOI (since actual date of invoice is after duedate) or DOP

Problem 4 :

Determine the Time of Supply in each of following independent cases in accordance with provisions of Section 12 of the CGST Act, 2017 in case recipient of goods is liable to pay tax under reverse charge mechanism.

SI.No.	Date of invoice	Date of receipt of goods	Date of payment in books	Date when payment debited in bank account
1.	01-10-2017	05-10-2017	10-10-2017	12-10-2017
2.	01-10-2017	15-10-2017	10-10-2017	12-10-2017
3.	01-10-2017	15-10-2017	12-10-2017	10-10-2017
4.	01-10-2017	15-11-2017	18-11-2017	20-11-2017

Solution Time of Supply of goods in each of the above cases has been given in the following table—

SL. No.	Date of invoice	Date of receipt of goods	Date of payment in books	Date when payment debited in bank account	Time of Supply (TOS)	Reasons
1.	01-10-2017	05-10-2017	10-10-2017	12-10-2017	05-10-2017	TOS is date of receipt of goods
2.	01-10-2017	15-10-2017	10-10-2017	12-10-2017	10-10-2017	TOS is date of payment in books.
3.	01-10-2017	15-10-2017	12-10-2017	10-10-2017	10-10-2017	TOS is date when payment is debited in bank account.
4.	01-10-2017	15-11-2017	18-11-2017	20-11-2017	01-11-2017	TOS is the date immediately following 30 days from the date of issue of invoice by the supplier.

Problem 5:

From the following information determine the time of supply if supply is taxed under reverse charge basis:

SL. No.	Date of invoice issued by supplier	Removal of goods	Receipt of goods	Date of entry in books of accounts of recipient	Date of debit in bank account of recipient
1.	31-12-2017	31-12-2017	20-01-2018	30-01-2018	01-02-2018
2.	31-12-2017	31-12-2017	20-01-2018	05-01-2018	06-01-2018
3.	31-12-2017	28-02-2018	05-03-2018		

Solution : Time of supply of goods in each of the above cases has been given in following table—

SL. No.	Date of invoice issued by supplier	Removal of goods	Receipt of goods	DOP is earlier of the date of entry in books or date of debit in bank account	Time of Supply (TOS)	Reasons
1.	31-12-2017	31-12-2017	20-01-2018	30-01-2018	20-01-2018	Earlier of (i) receipt of goods or (ii) date of payment by the recipient.
2.	31-12-2017	31-12-2017	20-01-2018	05-01-2018	05-01-2018	Earlier of (i) receipt of goods or (ii) date of payment by the recipient.
3.	31-12-2017	28-02-2018	05-03-2018	-	31-01-2018	Earlier of (i) the date of receipt of goods or (ii) date immediately following 30 days after the date of issue of invoice.

Problem 6 :

Determine the time of supply in each of following independent cases in accordance with provisions of CGST Act, 2017:

SL. No.	Date of actual provision of service	Time / Date / of Invoice, Bill or Challan as the case may be	Date on which payment received
1.	10-11-2017	30-11-2017	15-12-2017
2.	10-11-2017	30-11-2017	15-11-2017
3.	10-11-2017	30-11-2017	15-11-2017 (Part) and 10-12-2017 (remaining)
4.	10-11-2017	30-11-2017	06-11-2017 (Part) and 09-11-2017 (remaining)
5.	10-11-2017	30-11-2017	06-11-2017 (Part) and 16-11-2017 (remaining)
6.	10-11-2017	12-12-2017	30-04-2018
7.	10-11-2017	12-12-2017	05-11-2017 (Part) and 25-12-2017 (remaining)
8.	10-11-2017	22-12-2017	12-12-2017

Solution: Time of supply of services in each of the above cases has been given in the following table—

SL No.	Date of provision of service	Date of Invoice	Date of receipt of payment	Time of Supply	Remarks
1.	10-11-2017	30-11-2017	15-12-2017	30-11-2017	Invoice issued within 30 days and before receipt of payment.
2.	10-11-2017	30-11-2017	15-11-2017	15-11-2017	Invoice issued within 30 days but payment received before invoice.
3.	10-11-2017	30-11-2017	15-11-2017 (Part) and 10-12-2017 (remaining)	15-11-2017 and 30-11-2017 for respective amounts	Invoice issued within 30 days. Part payment received before invoice and remaining payment after invoice. As per Explanation (i) The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
4.	10-11-2017	30-11-2017	06-11-2017 (Part) and 09-11-2017	06-11-2017 and 09-11-2017 for the respective amount	Invoice issued within 30 days. However, the advance has been received in two before the date of completion of service. Thus, date of receipt of such advance shall be treated as TOS. As per Explanation (i) The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

SL No.	Date of provision of service	Date of Invoice	Date of receipt of payment	Time of Supply	Remarks
5.	10-11-2017	30-11-2017	06-11-2017 (Part) and 16-11-2017 (remaining)	06-11-2017 and 16-11-2017 for for the respective amounts	Invoice issued within 30 days. Part payment (in the form of advance) received before issue of invoice and remaining payment received after completion of service. As per Explanation (i) The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
6.	10-11-2017	12-12-2017	30-04-2018	10-11-2017	Invoice not issued within 30 days and payment received after completion of service.
7.	10-11-2017	12-12-2017	05-11-2017 (Part) and 25-12-2017 (remaining)	05-11-2017 and 10-11-2017 for respective amounts	Invoice not issued within 30 days. Part payment received as advance before completion of service and remaining payment received subsequently. As per Explanation (i) The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Problem 7:

From the following information determine the time of supply of services :

SL. No.	Date of completion of service	Invoice date	Payment entry in supplier's books	Credit in bank account	
1.	20-10-2017	21-10-2017	26-10-2017	30-10-2017	Rs. 5,00,000 is received as advance on 30-10-2017 and balance amount Rs. 6,80,000 is received on 06-12-2017.
2.	20-10-2017	30-10-2017	24-10-2017	22-10-2017	
3.	16-11-2017	26-12-2017	28-01-2018	29-01-2018	
4.	01-12-2017	30-10-2017 30-10-2017	30-10-2017 06-12-2017	30-10-2017 08-12-2017	

Solution: Time of supply of services in each of the above cases has been given in following table—

SL. No.	Date of completion of service	Invoice date	DOP- Earlier of the date when payment is entered in books or credited in bank account	Time of supply	Reasons
1.	20-10-2017	21-10-2017	26-10-2017	21-10-2017	Earlier of date of invoice or date of payment since invoice is issued within 30 days of completion of service.
2.	20-10-2017	30-10-2017	22-10-2017	22-10-2017	Earlier of date of invoice or date of payment since invoice is issued within 30 days of completion of service.
3.	16-11-2017	26-12-2017	28-01-2018	16-11-2017	Since invoice is not issued within 30 days of completion of service and advance payment is not received, the date of completion of provision of service shall be considered.
4.	01-12-2017	30-10-2017 30-10-2017	30-10-2017 06-12-2017	30-10-2017 30-10-2017	Since Rs. 5,00,000 is received as advance prior to completion of service, TOS - date of receipt of such advance. For balance amount of Rs. 6,80,000, TOS is date of invoice.

6.7 Value of Supply

GST is payable on supply of goods or services for a consideration in the course or furtherance of business.

$$\text{GST} = \text{value of supply} \times \text{Rate of GST}$$

Sections of CGST Act prescribe the mechanism for the determining the value of a supply Provided.

- (a) Supply is made between unrelated persons;
- (b) Price is the sole consideration for supply.

Where value of a supply can't be determined u/s 15 of CGST Act, the same has to be determined as per relevant to the provision of 'Chapter IV-Determination of value of

supply' of CGST Rules. However, the provision of these rules have been excluded from the syllabus of M.Com therefore they have not been discussed.

Section 15(1) of CGST Act provides that the taxable value of any Supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said Supply of goods or services or both. However, Section 15(1) of CGST can't be adopted where,

- (a) transaction of Supply takes place between two related persons
- (b) price charged is not the sole consideration
- (c) supply is made for non-monetary consideration

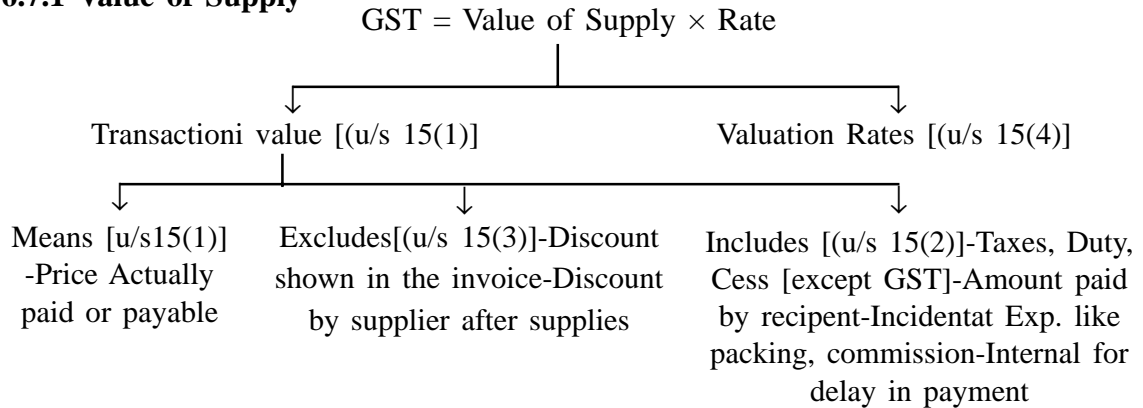
Section 15(2) of CGST Act lists down various itmes which are to be charged or added with transaction value of a Supply as follows:

- (a) Any types of taxes, cess, duties, fees and charged levied by other laws (irrespective of the fact whether they have charged seperately or not) other than GST [SGST, CGST, UTGST, IGST, GST compensation cess].
- (b) Any amount which is payable by supplier in relation to such supply but paid by recipient of supply and not included in the price of the goods or services or both.
- (c) Incidental expenses including commission, packing etc. charged by the supplier or anything else done by the supplier in relation to the supply at the time of or before the delivery of goods or supply of services.
- (d) The value of taxable supply shall include not only the base price but also the charges for delay in payment, like, interest, late fine, penalty etc.
- (e) Subsidies directly related to the price of supply is the part of taxable value, provided it is not paid by Central Government or State Government.

Section 15(3) of CGST Act lists down item which are to be excluded while calculating transaction value of supply as follows:

- (a) Discount which are allowed before or at the time of supply are allowed to be deducted from the value of supply if such discount has been shown properly in the invoice.
- (b) Discount allowed after supply are allowed to be deducted from the value of supply if all the following conditions are satisfied:
 - (i) Such discount is allowed in terms of an agreement that existed at the time of supply.
 - (ii) Such discount has been worked out invoice-wise.
 - (iii) Input tax credit as is attributed to the discount on the basis of document issue by the supplier has been reversed by the recipient of the supply.

6.7.1 Value of Supply



6.7.2. Illustration

Mr. Ramakant, a manufacturer provided the following particulars. Compute the value of machine when Mr. Ramakant has to deliver machine to factory of recipient.

Particulars	Rs.
Price of the machine	2,00,000
Packing charges	20,000
Designing charges	40,000
Transit insurance	2,000
Freight outward	6,000
Installation	10,000
Cash discount	4% on price of machine

Solution :

	Rs.
Price of the machine	2,00,000
Add : Items to be added u/s 15(2)	
Packing charges	20,000
Designing charges	40,000
[as incident to supply]	
Transit insurance	2,000
Freight outward	6,000
Installation	10,000
[as connected to supply]	<u>78,000</u>
Less : Items to be deducted u/s 15(3)	2,78,000
Cash discount [2,00,000×4%]	(8,000)
Value of supply	<u><u>2,70,000</u></u>

Note : Here value of supply is based on transaction value as

- (i) Supplier and recipient are not related
- (ii) Price is the sole consideration.

Problem 2 :

Mr. Rahul provides the following information about taxable supplies–

Value of machine (including GST @ 12%) = Rs. 5,00,000

Already added

1. Testing charges	Rs. 10,000
2. Installation Planning (Pre-delivery)	Rs. 20,000
2. Weighing charges	Rs. 30,000

Note:

1. Subsidy from Government	Rs. 40,000
2. Subsidy from NGO	Rs. 10,000
3. Trade discount	Rs. 20,000

Calculate the value of supply.

Solution:

	Rs.
Value of machine	5,00,000
Add: Testing charges (as already included)	-
Installation charges (as already included)	-
Weighting charges (as already included)	-
Subsidy from NGO	10,000
Subsidy from Government	-
	5,10,000
Less: Trade Discount [assuming not deducted]	20,000
value including GST	4,90,000
Less: GST [4,90,000 × 12/112]	52,500
Value of supply	4,37,500

Problem 3:

From the following information determine the value of taxable supply as per provisions of Section 15 of the CGST Act, 2017. Contracted value of supply of goods (including GST @ 18%) Rs. 11,00,000. The contracted value of supply includes the following :

	Rs.
(1) Cost of primary packing	10,000
(2) Cost of protective packing at recipient's request for safe transportation	15,000
(3) Design and engineering charges	85,000
Other information:	
(i) Commission paid to agent by recipient on instruction of supplier	5,000
(ii) Freight and insurance charges paid by recipient on behalf of supplier	75,000

Give reasons with suitable assumptions where necessary.

Solution:

Computation of value of taxable supply of goods :

Particulars	Rs.	Rs.
Contracted value of supply of goods		11,00,000
(1) Cost of primary packing	Nil	
(2) Cost of protective packing at recipient's request for safe transportation	Nil	
(3) Design and engineering charges	Nil	
Add: Commission paid to agent by recipient on instruction of supplier	5,000	
Freight and insurance charges paid by recipient on behalf of supplier	75,000	80,000
Cum tax value		11,80,000
Less: GST @ 18% [Rs. 11,80,000 x 18 / 118]		1,80,000
Value of taxable supply		10,00,000

Working Notes :

For the purpose of determining the value of taxable supply, the following adjustments shall be made-

- (1) cost of primary packing and protective packing at recipient's request for safe transportation charged by supplier from the recipient shall be included for

determining the value of taxable supply. Since it is already included in the value, no treatment is required.

- (2) any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of taxable supply. Hence design and engineering charges shall also be included in the value of taxable supply. Since it is already included in the value, no treatment is required.
- (3) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply. Thus, commission paid to agent by recipient on instruction of supplier and freight and insurance charges incurred by recipient on behalf of supplier shall form part of value of taxable supply.
- (4) value of supply shall not include any taxes or cesses levied under CGST Act, SGST Act, UTGST Act and the GST(compensation to States) Act, if charged separately by the supplier.

Problem 4:

From the following information determine the value of taxable supply as per provisions of section 15 of the CGST Act, 2017.

Value of machine (including GST @ 12%) : Rs. 15,00,000

The invoice value includes the following.

(1) Taxes (other than CGST/SGST/IGST) charged separately by the supplier	15,000
(2) Weighment and loading charges	25,000
(3) Consultancy charges in relation to pre-installation planning	10,000
(4) Testing Charges	2,000
(5) Inspection Charges	4,500
Other information:	
(i) Subsidy received from Central government for setting up factory in backward region	51,000
(ii) Subsidy received from third party for timely supply of machine to recipient	50,000
(iii) Trade discount actually allowed shown separately in invoice	24,000

Solution:

Computation of Value of taxable supply of Goods

Particulars	Rs.	Rs.
Value of Machine	-	15,00,000
Less : Deductions		
(1) Taxes other than CGST/SGST/IGST charged separately by the supplier		
(2) Weighment and loading charges	-	
(3) Consultancy charges in relation to pre-installation planning	-	
(4) Testing Charges	-	
(5) Inspection charges charged before supply		
(6) Trade discount actually allowed shown separately in invoice	24,000	(24,000)
Add: Subsidy received from third party for timely supply of machine to recipient		50,000
Cum tax value		15,26,000
Less: GST @ 12% [Rs.15,26,000 x 12/112]		1,63,500
Value of taxable supply		<u>13,62,500</u>

Problem 5:

Computation of value of taxable supply and tax payable. Determine the value of taxable supply as per Section 15 of the CGST Act, 2017 and the Rules thereof :

Contracted sale price of goods (including CGST and SGST @ 5%)	10,56,000
The contracted sale price includes the following elements of cost :	
(i) Cost of drawings and design	5,000
(ii) Cost of primary packing	2,000
(iii) Cost of packing at buyer's request	4,000
(iv) Freight and insurance from 'place of removal' to buyer's premises	43,000

A discount of Rs. 6,000 was given by the supplier at the time of supply of goods. CGST and SGST is levied @ 5 % .

Solution:

Computation of Assessable value :

Particulars	Rs.	Rs.
Contracted sale price of goods		10,56,000
Less : Discount	6,000	(6,000)
Cum tax value		10,50,000
Less: GST @ 5% [Rs.10,50,000 x 5 / 105]		50,000
Value of taxable supply		10,00,000

Working Notes :

- (1) any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of taxable supply. Hence drawing and design charges, cost of packing (even at buyer's request) shall form a part of the transaction value of the supply. Since these are already included in the value of the goods, hence separate treatment is not required.
- (2) The value of supply shall include any taxes, duties, cess, fees and charges levied under any law for the time being in force other than the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.
- (3) The value of supply shall not include any discount which is given before or at the time of supply.

6.8 Summary

From the above discussion we could understand the concept of supply; scope of supply, composite supply and mixed supply; place and time of supply; Date of payment of GST; and value of supply.

6.9 Questions

1. Define the following terms as per CGST Act. 2017.

a) Goods	b) Services	c) Consideraton
d) Business	e) Person	f) Related Person
g) Supply		
2. What do you mean by considertions under CGST Act?
3. In which cases, supply without consideration may be treated as supply for GST purposes?
4. Which activities are treated neither as supply of goods nor as supply of services under GST?
5. What do you mean by Composite Supply?
6. When a supply would be treated as Composite Supply?
7. When a spply would be treated as a Mixed Supply?

8. Briefly describe the provisions for Place of Supply of goods (other than export and import).
9. What would be the time of supply of goods under Reverse Charge Mechanism?
10. How do you determine the time of supply if there is a change in tax rate?
11. How do you value the supplies for tax purposes?

Multiple Choice Questions (MCQ)

1. Where a supply of service is made from a place of business for which the registration has been obtained, the location of supplier of service shall be
 - (a) the location of such place of business
 - (b) the location of the usual place of residence of the supplier
 - (c) either the location of such place of business or the location of the usual place of residence of the supplier
 - (d) any of the above
2. Where a supply of service is made from a fixed establishment elsewhere i.e. a place other than the place of business for which registration has been obtained, the location of supplier of service shall be
 - (a) the location of such place of business
 - (b) the location of such fixed establishment
 - (c) the location of the usual place of residence of the supplier
 - (d) any of the above?
3. Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be
 - (a) the location of the goods at the time at which the movement of goods terminates delivery to the recipient
 - (b) the location of the goods at the time from which the movement of goods originates for delivery to the recipient
 - (c) the location of such goods at the time of the delivery to the recipient
 - (d) any of the above
4. Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents

- of title to the goods or otherwise the place of supply of goods shall be
- (a) the principal place of business of such third person
 - (b) the principal place of business of the recipient of goods
 - (c) the principal place of business of supplier of goods
 - (d) none of the above
5. Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply of goods shall be
- (a) the location of such goods at the time of the delivery to the recipient
 - (b) the location of the supplier
 - (c) the location of the recipient
 - (d) any of the above
6. Where the goods are assembled or installed at site, the place of supply of goods shall be
- (a) the location of the supplier
 - (b) the location of the recipient
 - (c) the place of such installation or assembly
 - (d) any of the above
7. Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply of goods shall be
- (a) the location of the supplier
 - (b) the location of the recipient
 - (c) the location at which such goods are taken on board
 - (d) any of the above
8. Where the service are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply of goods shall be
- (a) the location of the supplier
 - (b) the location of the recipient
 - (c) the first scheduled point of departure of that conveyance for the journey
 - (d) any of the above
9. Where restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery is provided to

- the registered person, the place of supply of such service shall be
- (a) the location of such registered person
 - (b) the location of the supplier of services
 - (c) either the location of such registered person or the location of the supplier of services
 - (d) any of the above
10. Where restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery is provided to any person other than a registered person, the place of supply of such service shall be
- (a) the location of the supplier of services
 - (b) the location of the recipient of services
 - (c) the location of the recipient where the address on record exists and the location of the supplier of services in other cases
 - (d) any of the above
11. Where the services in relation to training and performance appraisal are provided to a registered person, the place of supply of such service shall be
- (a) the location of the supplier of services
 - (b) the location of such registered person
 - (c) either the location of such registered person or the location of the supplier of services
 - (d) any of the above
12. Where the services in relation to training and performance appraisal are provided to a person other than a registered person, the place of supply of such service shall be
- (a) the location of the supplier of services
 - (b) the location where the services are actually performed
 - (c) the location of the recipient of services
 - (d) any of the above
13. Where services are provided by way of admission to a cultural, artistic, sporting, scientific or educational, entertainment event, the place of supply of such service shall be
- (a) the location of the supplier of services

- (b) the location of the recipient of services
 - (c) the place where the event is actually held
 - (d) any of the above
14. Where the services are provided to a registered person by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events, the place of supply of such service shall be
- (a) the location of the supplier of services
 - (b) the place where the event is actually held
 - (c) the location of such registered person
 - (d) any of the above
15. Where the services are provided to a person other than a registered person by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment including supply of services in relation to a conference, fair, exhibition, celebration of events, the place of supply of such service shall be
- (a) the location of the supplier of services
 - (b) the place where the event is actually held
 - (c) the place where the event is actually held and if the event is held outside India, then of supply shall be the location of the recipient
 - (d) any of the above
16. Where the services by way of transportation of goods, including by mail or courier provided to a registered person, the place of supply of such service shall be
- (a) the location of the supplier of services
 - (b) the location of such registered person
 - (c) the location at which such goods are handed over for their transportation
 - (d) any of the above
17. Where the services by way of transportation of goods, including by mail or courier provided to a person other than a registered person, the place of supply of such service be
- (a) the location of the supplier of services
 - (b) the location of recipient of such services
 - (c) the location at which such goods are handed over for their transportation
 - (d) any of the above

18. Where passenger transportation services are provided to a registered person, the point of supply of such service shall be
- (a) the location of such registered person
 - (b) the place where the passenger embarks on the conveyance for a continuous journey
 - (c) the place where the passenger disembarks from the conveyance
 - (d) any of the above
19. Where passenger transportation services are provided to a person other than a registered person, the place of supply of such service shall be
- (a) the place where the passenger embarks on the conveyance for a continuous journey
 - (b) the place where the passenger disembarks from the conveyance
 - (c) the place of supplier of service
 - (d) any of the above

Answer Key :

<i>1(a)</i>	<i>2(b)</i>	<i>3(a)</i>	<i>4(a)</i>	<i>5(a)</i>
<i>6(c)</i>	<i>7(c)</i>	<i>8(c)</i>	<i>9(a)</i>	<i>10(b)</i>
<i>11(a)</i>	<i>12(b)</i>	<i>13(c)</i>	<i>14(c)</i>	<i>15(c)</i>
<i>16(b)</i>	<i>17(c)</i>	<i>18(a)</i>	<i>19(a)</i>	

Unit - 7 □ GST Management

Structure

7.0 Objectives

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7.14.3 Furnishing of Returns**7.14.4 Furnishing of Returns by Composition Supplier****7.14.5 Filing of Annual Return****7.14.6 Steps in Furnishing Returns****7.15 Payment of Tax****7.15.1 Electronic Cash Ledger****7.15.2 Electronic Credit Ledger****7.15.3 Electronic Liability Register****7.15.4 Illustration****7.16 Summary****7.17 Questions**

7.0 Objectives

The study of this unit will help us to understand—

- Concept and applicability of composition levy;
- Tax rate under GST Composition Scheme;
- Persons eligible for Composition Scheme;
- Restrictions and Validity of Composition levy;
- Goods exempted from GST;
- Services exempted from GST;
- Concept of Reverse Charge Mechanism;
- Time and Supply of goods and services and RCM;
- Concept of Input Tax Credit (ITC) under GST;
- Eligibility for claiming ITC;
- Conditions for availing ITC;
- Returns under GST; and
- Payment of Tax.

7.1 Introduction to Composition Levy

The GST law casts a lot of compliances and procedural burden on taxable person. These include :

- Proper classification of supply of goods/ services
- Correctly determining the applicable rate of tax
- Correct value of supply
- Raising proper invoice
- Maintaining proper records for availing credit of taxes paid on inward supplies
- Discharging monthly tax liability
- Filing monthly return, etc.

Such cumbersome procedures are not in the best interests of small taxpayers. Resultantly, an alternative manner for discharging tax liability has to be prescribed keeping in the mind the interest of small tax payers since the small businessmen and small taxpayers are the backbone of Indian economy. The SMEs (Small Medicem Size) Enterprises in India suffer from various constraints like non-availability of infrastructural facilities, inadequacy of requisite capital etc. for which they are not in a position to comply with the GST Rules and Regulations. To provide them some relief and necessary boost up to go ahead, the GST Council has given them the opportunity to pay certain specified percent of turnover as GST liability without rigorously complying with the GST Rules. The GST law seeks to simplify the compliance procedures for small taxpayers through composition scheme. Section 10 of CGST Act read along with “Composition Rules” of CGST Rules prescribes the regulations governing taxation of persons opting for composition scheme.

7.2 Applicability

A registered person will be eligible to opt for payment of tax under composition scheme if his aggregate turnover did not exceed in the preceding financial year of the following amount:

- (a) North Eastern states including Himachal Pradesh – 75 Lakh
- (b) Other states including Uttarakhand – 150 lakh

7.3 Tax rate under Composition Scheme as percentage of turnover

	CGST	SGST/UTGST	TOTAL GST
Manufacturers (excluding manufactures of notified items)	0.5%	0.5%	1%
Restaurant and catering supply	2.5%	2.5%	5%
Other supplies	0.5%	0.5%	1%

7.4 Aggregate turnover

Aggregate turnover means the aggregate value of –

- All taxable supply (excluding the inward supplies on which tax is payable on reverse charge basis)
- Exempted supplies
- Export of goods or services or both
- Inter-state supplies

of person having the same Permanent Account Number (PAN) but excluding central tax, state tax, union territory tax and cess (on sin goods).

7.5 Persons not eligible for Composition Scheme

The following persons cannot opt for composition scheme and therefore, such persons are required to discharge their tax liability if any in normal manner:

- Supplier of any taxable services other than supplier of restaurant/ catering services;
- Supplier of inter-state outward supplies of goods (however under composition scheme the composition suppliers is free to procure goods from inter-state suppliers).
- Person supplying goods through an electronic commerce operator;
- Manufacturer of goods notified u/s 10(2)(e), i.e. ice cream, pan masala, tobacco and other manufactured tobacco substitutes;
- Casual person as well as non resident taxable person.
- Service provider (except Restaurant and catering).

7.6 Restrictions imposed on Composition Supplier

Multiple restrictions have been imposed on a person who opts for composition levy which has been described below:

- The goods held in stock of composition dealer should have been purchased from registered supplier. Where goods have been purchased from an unregistered supplier, the composition supplier should have paid the applicable tax under reverse charge basis u/s 9(4).
- The composition dealer is required to pay tax under reverse charge basis u/s 9(3) and 9(4) in CGST Act, 2017 if applicable to him.
- A dealer opting for composition scheme should not have been engaged in notified goods u/s 10(2)(e).
- A composition dealer shall mention the words “composition taxable person, not eligible to collect tax” on supplies at the top of every bill of supply (cannot issue Tax Invoice).
- Composition scheme has to be adopted uniformly by all the registered persons having the same PAN. If one such registered person opts for normal scheme, other became ineligible for composition scheme.
- A taxable person opting for composition scheme shall not collect any tax from the recipient on supplies made by him.
- A taxable person opting for composition scheme is not entitled to any credit on input tax paid.

7.7 Intimation of opting for composition levy

- In case an unregistered dealer opts to pay tax under composition scheme, he shall apply for registration in prescribed form (GST REG-01). As and when registration is granted, it shall be deemed that he has given an intimation to pay tax under composition scheme.
- In case of existing registered person who opts to pay tax under composition scheme based on condition given u/s 10 of CGST Act, shall apply in prescribed form prior to commencement of financial year (as eligibility of composition scheme depends on aggregate turnover of last year). The option to pay tax under composition levy shall be effective from the beginning of the financial year for which intimation has been filed.

7.7.1 Validity of composition levy

- The option exercised by a registered person to pay tax under composition scheme shall remain valid till the time he satisfies all the condition mentioned u/s 10.
- The option to pay tax under this scheme shall lapse from the day on which the aggregate turnover during the financial year exceeds the specified limit (Rs. 75 lakh/ 150 lakh).
- Such person has to pay normal tax from the day he ceases to satisfy any of the condition prescribed for composition levy.
- Further, he is required to file intimation about the withdrawal from the scheme in a prescribed form within 7 days.

7.8 Illustration

Problem 1:

XYZ Ltd., a manufacturing concern had effected intra-state taxable supply of Rs. 20,00,000 and inter-state taxable supply of Rs. 25,00,000 in Financial year 2017-18. The company wants to opt for composition scheme under Section 10 of CGST Act, 2017. As a GST consultant advise XYZ Ltd. whether it can opt for composition scheme.

Solution : As per provisions of Section 10 of CGST Act, 2017, a manufacturer can opt for composition scheme if he is not engaged in making any inter-State outward supplies of goods. In this case since XYZ Ltd. has effected inter-state taxable supply of goods, it cannot opt for composition scheme.

Problem 2:

Mr. A, a retailer who keeps no inventories, presents the following information for the year -

- (1) Purchases of goods : Rs. 50 lakhs (GST @ 5%).
- (2) Sales (at fixed selling price inclusive of all taxes): Rs. 60 lakhs (GST on sales @ 5%). Discuss whether he should opt for composition scheme if composite tax is 1% of turnover. Expenses of keeping detailed statutory records required under the GST Laws will be Rs. 1,20,000 p.a., which shall get reduced to Rs. 50,000 if composition scheme is opted for. Other expenses are Rs.3,00,000 p.a.

Solution: The cost to the ultimate consumer under two schemes is as under -

Particulars	Normal GST Scheme*	Composition Scheme
Cost of goods sold (*No credit under composition scheme, hence, cost of goods sold will be higher)	50,00,000	52,50,000
Add: Costs of maintaining records	1,20,000	50,000
Add: Normal Expenses	3,00,000	3,00,000
Total Costs	54,20,000	56,00,000
Sales (inclusive of all taxes)	60,00,000	60,00,000
Less: Tax (GST = 60 lakh x 5 /105); (Composite Tax = 60 lakh x 1%)	2,85,714	60,000
Sales (net of taxes)	57,14,286	59,40,000
Profit of the dealer (Sales, net of taxes - Total Costs)	2,94,286	3,40,000

Conclusion: It is apparent that while cost to ultimate consumer, in both the cases remains same, the profit of the dealer is higher if the dealer opts for composition scheme. Hence, composition scheme should be opted.

Problem 3:

Applicability of composition scheme: XYZ Ltd. is having two factories. One factory is located in Rajasthan, manufacturing readymade garments and another factory located in Gujarat engaged in manufacturing auto components. The turnover details of Financial Year 2017-18 are as under:

Articulars	Rs.
(1) Intra-State supply of readymade garments in Rajasthan	28,00,000
(2) Intra-State supply of auto- components in Gujarat	18,00,000
Total Value of taxable supplies	46,00,000

The company wants to opt for composition scheme for factory in Rajasthan and tax at normal rates in Gujarat. Advise.

Solution: According to Section 10(2) of CGST Act, 2017, All Registered person having same PAN have to opt for Composition Scheme. If one opts for regular levy for one

registered place, others become ineligible for composition levy. Thus, XYZ Ltd. cannot opt for composition scheme in Rajasthan and pay normal tax in Gujarat.

Problem 4:

The aggregate turnover of R & Sons, a registered firm during the financial year 2017-18 is Rs. 5,00,000. During the financial year 2018-19, the aggregate turnover for the firm till 12.10.2018 is Rs. 800,000. On 13.10.2018 it issues three invoices of Rs. 1,50,000, Rs. 80,000 and Rs. 90,000. Will the firm Die to pay GST and if so on what amount?

Solution : R & Sons shall be liable to pay GST under normal scheme on all the three invoices as its turnover on 13.10.2018 exceeds Rs. 1 crore.

Problem 5:

R Ltd. is manufacturing ice cream and its turnover in the financial year 2016-17 was Rs. 70,00,000.

(a) Can R Ltd. opt for composition scheme during the financial year 2017-18?

(b) What will be your answer if R Ltd. is a trader of ice cream?

Solution : (a) As per section 10(2)(e), the Government on the recommendation of the council can issue notification in case of manufacturer of certain goods who will not be allowed to opt for composition scheme.

The Government has since issued a notification where the manufacturer of ice cream shall not be entitled to opt for composition scheme even if his aggregate turnover is within the limit of Rs. 1 crore prescribed.

Hence, R Ltd. cannot opt for composition scheme.

(b) R Ltd. in this case is a trader and not a manufacturer. Therefore, he can opt for composition scheme.

Problem 6:

R of Delhi, a trader, wishes to make Inter-State sale of goods during the financial year 2017-18. Can he opt for composition scheme?

Solution : As per section 10(2)(c), a person who is engaged in making any Inter-State outward supply of goods is not eligible to opt for composition scheme. Hence, R will not be entitled to opt for composition scheme if he makes an Inter-State sale.

Problem 7:

R, a trader, is selling tobacco and pan masala from his shop at Delhi. Can he opt for composition scheme? If so what are the conditions to be satisfied.

Solution : As per notification issued under section 10(2)(e), a registered person who is a manufacturer of tobacco and pan masala cannot opt for composition scheme. But R in this case is not a manufacturer but a trader, hence he can opt for composition scheme.

Problem 8:

R is having its head office located in New Delhi. It has two branches located in Noida, (UP) and Gurugram (Haryana).

- (a) Can he opt for composition scheme?
- (b) Can he opt for composition scheme in case of Delhi and Noida and the normal scheme for Gurugram?

Solution : (a) R can opt for composition scheme for all the branches provided the aggregate turnover of all the branches does not exceed Rs. 1 crore as he will be having one PAN number for all the branches.

(b) R cannot opt for composition scheme in this case as he has to opt for composition scheme for all the branches because the registration of all the branches are on the basis of same PAN number.

7.9 Introduction to Exemption under GST and Reverse Charge Mechanism (RCM)

Section 11 of CGST Act and Section 6 of IGST Act empower the government to grant exemption from tax if it is necessary in Public Interest to do so, on recommendation of GST Council by notification or a special order.

7.10 Goods Exempted from Tax

A list of items has been notified as exempted from GST. Every day items used by the common man have been included in the list of exempted items. Items like unbranded atta/ mayda/ besan, unpacked food grains, milk, egg, curd, lassi and fresh vegetable are among the items exempted from GST.

7.11 Services Exempted from Tax

A very detailed notification have been issued under GST law providing exemptions on supply of various services. Here we discuss few of them.

Health care Sector

- (a) Health care services by a clinical establishment / an authorised medical practitioner.
- (b) Services provided by way of transportation of patient in an ambulance.
- (c) Services by a veterinary clinic for the health of animals or birds.
- (d) Services provided by blood banks

Amusement/ Entertainment Sector

- (a) Services provided by an artists by way of a performance [not brand ambassador] in the folk or classical art form of music, dance or theatre and consideration charged doesn't exceeds Rs. 1,50,000 per event.
- (b) Services by way of admission to a museum, national park, zoo etc.
- (c) Service by way of right to admission to the following event
 - (i) circus, dance, drama or ballet.
 - (ii) award function, concert, musical performance
 - (iii) sporting event—where consideration doesn't exceeds Rs. 250 per person.

Transportation of Passanger

- (a) Services of transportation of passanger by railways [other than first class or AC Coach]
- (b) Services of transportation of passanger through
 - (i) Metro
 - (ii) Monorail
 - (iii) tram
 - (iv) Inland waterways.
 - (v) Public transport
 - (vi) Metered Cab or auto rickshaws [other than Radio Taxi]
 - (vii) Stage carriage other than AC stage carriage.
 - (viii) Non-AC contract carriage

Transportation of Goods

- (a) Services of transportation of goods by way of road [except the services of Goods Transportation Agency (GTA) or courier Agency] or by way of Inland water ways.

- (b) Services by way of transportation of Goods by rail or a vessel from one place in India to another of following goods
 - (i) Defence of Military equipment
 - (ii) Newspaper or magazine
 - (iii) agricultural produce
 - (iv) milk, salt and food grain including flours, pulses and rice.
- (c) Services provided by a GTA by way of transport in a goods carriage of
 - (i) agricultural produce
 - (ii) Goods where consideration charged in a single carriage not exceeding Rs. 1500
 - (iii) Goods, where consideration charged for transportation of all such goods not exceeding Rs. 750.

Financial/Banking sector

- (a) Interest charged as a consideration of deposit, loans, or advances [other than interest in credit card] except loan processing charge.

Sports Sector

- (a) Services provided to a recognised sports body [BCCI, CAB etc.] by
 - (i) Player, referee, coach, umpire team manager
 - (ii) Other recognised sports body

Note : Indian Premier League, Indian Super League are established on the line of Franchisee-system. These franchisees are not recognised sports body.

Food/ Agricultural Sector

- (a) Services relating to cultivations of plants and rearing of all life form of animals (other than horses) by way of
 - (i) Agricultural Operation
 - (ii) Supply of farms labour
 - (iii) Processes carried out at agricultural farm (tending, pruning, cutting, drying, clearing, trimming etc.)
 - (iv) Relating of Agro-machinery
 - (v) Loading, unloading, packing, storing of agricultural produce.
 - (vi) Agricultural extension services. (eg-farmers educations or training)
 - (vii) Services by way of slaughtering of animals.

Public Convenience Service

- (a) Services by way of public conveniences such as provision of facilities of bathroom, washrooms, toilets etc.
- (b) Services of public libraries
- (c) Services by way of access to a road or bridge on payment of toll charges
- (d) Transmission or distribution of electricity

Education Sector

- (a) Services provided by an educational institution to its student, faculty and staff
- (b) Services provided by any one to an educational institution by way of
 - (i) Transportation of students, faculty and staff
 - (ii) Security, clearing, house keeping.
 - (iii) Admission, examination
- (c) Services by way of training or coaching in recreational activities relating to arts, or culture or sports by charitable entities.

Services provided by specified person

- (a) Legal services provided by advocates
- (b) Tour operator services to foreign tourist
- (c) Services of journalist by way of collecting or providing news
- (d) Services by a person by way of conduct of any religious ceremony.

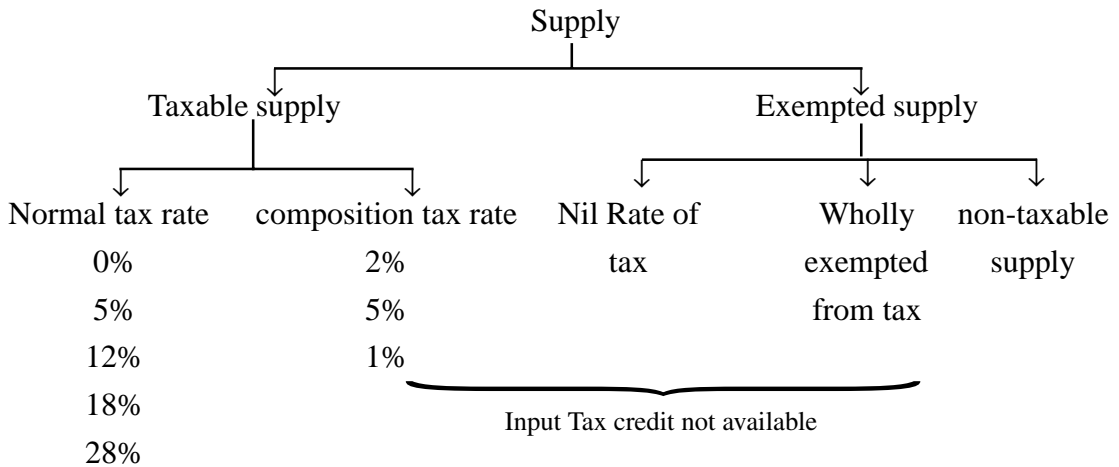
Renting of immovable property/ motor vehicles

- (a) Services by way of renting of residential dwelling for use as residence
- (b) Services by a hotel, inn, guest house having declared tariff of a unit of accommodation below Rs. 1000 per day.
- (c) Renting of religious place meant for general public.
- (d) Services by way of giving on hire
 - (i) to state transport undertaking.
 - (ii) to goods transport agency.

Services related to Government

- (a) Services by RBI
- (b) Services by foreign diplomatic mission
- (c) Services by Central Government/ State Government **excluding**

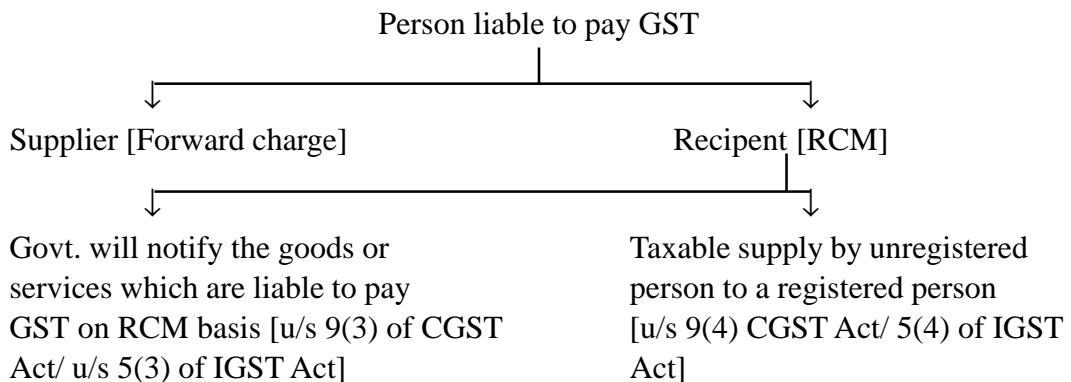
- (i) Services by postal department-Speed post, Parcel post, Life insurance.
- (ii) Transportation of goods /passanger
- (iii) Services in relation to an aircraft or a vessel.
- (iv) any services provided to business entity.



7.12 Reverse Charge Mechanism (RCM)

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like import and other notified supplies the GST liability may be cast on the recipient under the RCM (Reverse Charge Mechanism). RCM means the liability to pay tax lies on the recipient of supply of goods or services instead of the supplier of such goods or services in normal Cases.

7.12.1 Person liable to pay GST under RCM



-Suspended till 31.03.2018

Section 9(3) of CGST Act and Section 5(3) of IGST Act empower the Government to notify on the recommendation of the GST Council, specific categories of supply of goods or services, the tax on which shall be paid on reverse charge basis by the recipient of such supply and all provision of GST law shall apply to such recipients as if he is the person liable for paying tax in relation to the supply of such goods or services or both.

7.12.2 Notified Goods under RCM [includes]

Description	Supplier	Recipient
1. Unshelled/ unpeeled cashew nuts.	Agriculturist	Any registered person
2. Bidi wrapper leaves (Tendu)	Do	Do
3. Tobacco Leaves	Do	Do
4. Silk Yarn	Any person who manufactures silk yarn from raw silk	Do
5. Used vehicles/old or used goods/waste and scrap/seined and confiscated goods	Government [CG/SG/Local authority]	Do
6. Lottery ticket supply	Govt. [SG/ Local authority/ union territory]	Lottery Distributor or selling agent

7.12.3 Notified services under RCM [includes]

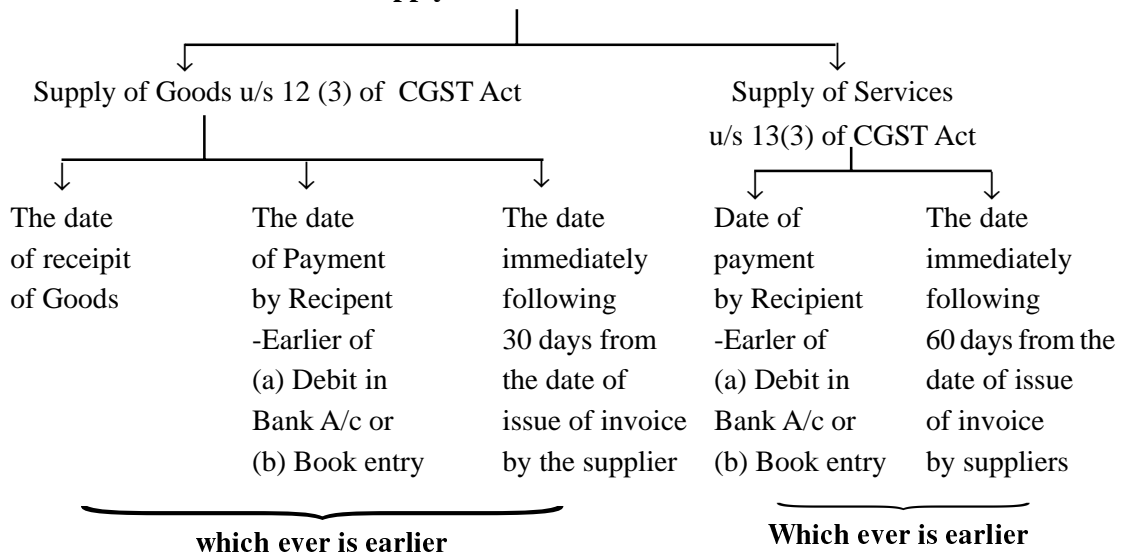
Description	Supplier	Recipient
1. GTA services	Goods Transport Agency	Any of the following taxable person <ul style="list-style-type: none"> ● Factory ● Co-operative Society ● Person registered Under GST Law ● Body Corporate ● Partnership firm
2. Sponsorship services	Any person	<ul style="list-style-type: none"> ● Any body corporate ● Partnership firm
3. Legal service	Avocates or legal firm	<ul style="list-style-type: none"> ● Any business entity
4. Service of directors of a company [not employee]	Director of a company	<ul style="list-style-type: none"> ● Company or ● Body corporates

Description	Supplier	Recipient
5. Services by Insurance agent	An Insurance agent	<ul style="list-style-type: none"> • Insurance Compnay
6. Service by recovery agent	A recovery agent	<ul style="list-style-type: none"> • Banking Compnay
7. Services by author, music composer, photographer, artists by way of permitting the use of copy right relating to original literacy, dramatic musical work	Author Music Composer artist	<ul style="list-style-type: none"> • Publisher • Music company • producer
8. Any services supplied by a person located outside India to any person loacted in India.	Person located outside	Person located in India

7.12.4 Time of Supply of Goods and Services under RCM

The time of supply is the point when the supply is liable to GST. In RCM the recipient is liable to pay GST. Thus the time of supply for supplies under RCM is different from the supplies which are under forward charge.

Time of Supply of Goods & Services under RCM



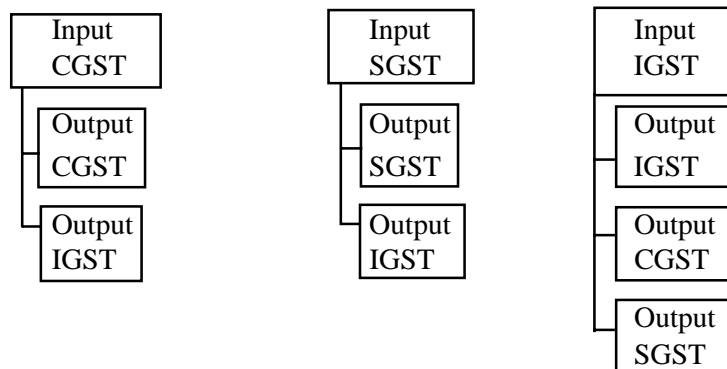
Note : Invoice is to be issued by supplier, but recipient is also required to make an invoice to book credit of GST paid.

7.13 Input Tax Credit (ITC) under GST

In earlier Indirect tax regime, the credit mechanism for indirect taxes levied by the Union Government was governed by the CENVAT Credit Rules 2004, and the credit mechanism for State-level VAT on sale of goods was governed by the State under their respective VAT legislations. VAT legislation allowed input tax credit of VAT on input and capital goods for transaction within the state, but not on input and capital goods purchased from outside the state on which CST was paid. However, CENVAT credit Rules 2004 allowed availing and utilisation of credit of duty. Tax paid on both goods (capital and inputs) and services by the manufacturer and the service providers across the country. This resulted in cascading of taxes leading to increase in cost of goods/services.

Simultaneous introduction of GST at both central and state levels has integrated taxes on goods/services for the purpose of set off relief and ensured that the cascading effect prevalent under the earlier regime get removed, there by establishing a continuous chain of set off from the original producer's point/service provider's point upto the retailer's level/ consumer's level.

Input tax credit (ITC) of CGST and SGST/UTGST will be available through the supply chain, but cross utilisation of credit will not be possible, i.e. CGST credit can't be utilised for payment of SGST/UTGST and UTGST/SGST credit can't be utilised for payment of CGST. However cross utilisation will be allowed between CGST/SGST/UTGST and IGST. i.e. credit of IGST can be utilised for payment of CGST/SGST/UTGST and vice versa.



7.13.1 Eligibility for claiming ITC under GST

- (i) A registered person is entitled to claim input tax credit charged on inward supply of goods and/or services if such goods/services are used or intended to be used in course or furtherance of business u/s 16(1).

- (ii) Where goods and/or services are used partly for non-business purpose and partly for business purpose, ITC attributable only to business purpose can be taken by the registered person. [u/s 17(1)].

e.g.-A registered person purchased 5 computer but 1 computer is being used for personal purpose and others for business. ITC will not be available for the computer used for personal purpose.

- (iii) Where goods and/or services are partly used for making exempt supplies for taxable supplies, ITC attributable to taxable supplies and zero-rated supplies can be taken by the registered person.

e.g.- A registered person purchased 20 containe for the purpose of business, out of which 6 containers tire used for goods which are exempted and 2 containers are used for zero rated supply. Hence credit is available for 14 containers.

7.13.2 Important definitions

- (a) **Input:** Input means any goods other than capital goods used or itended to be used by a supplier in the course or furtherance of business [u/s 2(59) of CGST Act]
- (b) **Capital goods:** Capital goods mean goods, the value of which is cpitalised in the books of accounts of the person claiming input tax credit and which are used or intended to be used in course or furtherance of business [u/s 2(19) of CGST Act].
- (c) **Input Services :** Input services means any service used or inteded to be used by a supplier in the course or furtherance of business [u/s 2(60) of GST Act]
- (d) **Exempt Supply :** Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply [u/s 2 (47) of GST Act]
- (e) **Zero-Rated Supply :** Zero-Rated Supply means any of the following supplies of goods or services or both namely
- (i) Export of goods/services or both
 - (ii) Supply of goods or services or both

7.13.3 Condition for availing ITC u/s 16(2)

- (1) Input tax credit can be availed on the basis of possession of tax paying document. (invoice, Debit note, Bill of entry etc.)

- (2) The person taking credit of taxes paid on procurement of goods and/or services must have received the goods and /or services. It is not necessary that goods have been received actually in the premises of recipient. It includes delivery to others person on the direction of the registered person.
- (3) In order to claim credit, the supplier should have paid the said amount of tax to appropriate government in cash or by way of utilisation of input tax credit as admissible.
- (4) The registered person taking input tax credit must have submitted the details of his inward supplies in GSTR-2 by 15th of following month in which the supplies were received.
- (5) A registered person is required to pay the value of goods and/or services to the supplier along with the applicable taxes within 180 days from the date of issue of invoice.
- (6) The time limit for availment of credit shall be earlier of following two dates
 - (a) Due date of filing return for the month of September of the succeeding financial year (or)
 - (b) Date of filing of the relevant annual return.

7.13.4 Blocked Credit

Generally, input tax credit is available on almost every input and input service used for supply of taxable goods or services. However, there is a small list of items provided U/S 17(5) of CGST Act on which input tax credit is not admissible.

- (a) Inward supplies on which tax has been paid under the composition scheme.
- (b) Inward supplies received by non-resident taxable person.
- (c) Goods/Services used for personal consumption
- (d) Goods which are lost, stolen, destroyed, gifted or distributed as free sample.
- (e) Motor vehicles and conveyance [with some exceptions].
- (f) Travel benefits to employees on vacation such as LTC or home travel concession.

7.13.5 Illustration

Problem 1 :

From the following information determine the amount of Input Tax Credit admissible to ABC Ltd. in respect of various inputs purchased during the month of September, 2017.

Purchase	CGST & SGST (Rs.)
(1) Goods purchased without invoice	25,000
(2) Goods purchased from PQR Ltd. (Full Payment is made by ABC Ltd. to PQR Ltd. against such supply but that has not been deposited by PQR Ltd.)	1,20,000
(3) Purchase of goods not to be used for business purposes	18,000
(4) Purchases of goods from TT Ltd, (Invoice of TT Ltd. is received in month of September, 2017, but goods were received in month of October 2017)	24,000
(5) Goods purchased against valid invoice from FF Ltd., Tax has been deposited by FF Ltd. ABC Ltd. has made payment to FF Ltd. for such purchases in the month of October 2017	36,000
Answer :	
(1) Goods purchased without invoice	[WN-1] -
(2) Goods purchased from PQR Ltd.	[WN-2] -
(3) Purchase of goods not to be used for business purposes	[WN-3] -
(4) Purchase of goods from TT Ltd. (Invoice of TT Ltd. is received in month of September 2017, but goods were received in month of October 2017)	[WN-4] -
(5) Goods purchased against valid invoice from FF Ltd., Tax has been deposited by FF Ltd. ABC Ltd., has made payment to FF Ltd. for such purchases in the month of October 2017.	[WN-5] 36,000
Total admissible Input tax credit for the month of September 2017.	36,000

Working Note:

- (1) No Input tax credit will be available since ABC Ltd. is not in possession of valid tax paying document.
- (2) As per Section 16(2), no registered person shall be entitled to the credit of any input tax in respect of any supply of goods unless the tax charged in respect of such supply has been actually paid to the Government. Since PQR Ltd. has not deposited the tax to the credit of Government, No ITC can be claimed by ABC Ltd.

- (3) A registered person shall be entitled to take input tax credit on goods which are used or intended to be used in the course or furtherance of his business. Since ABC Ltd. has purchased the goods for non business purpose, hence no credit will be admissible on such purchases.
- (4) Input tax credit is admissible only when registered person has received such goods. Since the goods are received in the month of October, 2017, input tax credit cannot be taken in the month of September, 2017.
- (5) Input tax credit shall be admissible in month of September, 2017 even if payment is made by ABC Ltd., in month of October, 2017.

Problem 2 :

S Ltd. a registered manufacturer of Jaipur entered in a contract with a supplier for supply of Input 'X' in October, 2017. As per contract it was agreed that 10,000 kgs of Input 'X' will be supplied for Rs. 7,28,000 (inclusive of CGST and SGST @ 6% each) in 4 lots, Invoice of Rs. 7,28,000 has been issued with supply of first lot of Input 'X'. Following further information has been provided regarding supply of Input received in subsequent lots.

Briefly explain whether S Ltd. is eligible to take credit on proportionate basis.

Input 'X' (in lots)	Quantity in Kgs	Date of Receipt of Supply
First Lot	2,500	19-10-2017
Second lot	3,000	21-10-2017
Third Lot	1,500	12-11-2017
Fourth Lot	3,000	01-12-2017

Answer : No. S Ltd. is not eligible to take credit on proportionate basis. As per the provision of Section 16(2), where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment. Therefore, in the given case, Input 'X' has been received in lots hence, the credit of tax of Rs. 78,000 i.e. $(Rs. 7,28,000 \times 12 \div 112)$ paid on such input shall be taken by S Ltd. only after the fourth lot.

Problem 3 : Determine the amount of input tax credit available with Diamond Manufacturing Ltd. in respect of the following items procured by them in the month of January 2018.

Item	GST paid in Rs.
i) Raw materials	75,000
ii) Food and beverages & catering services are used in the guest house primarily for stay of the newly recruited employees.	60,000
iii) Inputs used for making structures for support on plant and machinery	1,25,000
iv) Capital goods used as part components for use in the manufacture of final product	85,000
Answer : Statement showing eligible input tax credit to Diamond Manufacturing Ltd.	
Items	GST paid in Rs.
i) Raw materials	75,000
ii) Food and beverages & catering services are used in the guesthouse primarily for stay of the newly recruited employees.	Not allowed
iii) Inputs used for making structures for support on plant and machinery	1,25,000
iv) Capital goods used as parts components for use in the manufacturer of final product	85,000
Total credit allowed	2,85,000

Problem 4 :

ABC India Ltd. is engaged in the manufacture of some taxable goods. It purchased the following goods in the month of October, 2017

Item	GST paid in Rs.
i) Raw material used for production of the final product	1,20,000
ii) Goods used for generation of electricity for captive consumption	25,000
iii) Goods used for providing free warranty—Value of such free warranty provided by ABC India Ltd. is included in price of the final product and is not charged separately from the customers	10,000
iv) Light diesel oil	5,000

Note : ABC India Ltd. also purchased High Speed Diesel oil by paying central excise duty of Rs. 12,000, which is also used in the manufacturer of taxable output.

Compute the amount of input tax credit available to ABC India Ltd.

Answer: Statement showing Input Tax Credit of ABC India Ltd.

Item	GST paid in Rs.
i) Raw material used for production of the final product	1,20,000
ii) Goods used for generation of electricity for captive consumption	25,000
iii) Goods used for providing free warranty–Value of such free warranty provided by ABC India Ltd. is included in price of the final product and is not charged separately from the customers	10,000
iv) Light diesel oil	15,000
v) High Speed Diesel oil	Not allowed
Total input tax credit	1,70,000

7.14 Returns under GST

Under any taxation system filing of return is the most important compliance procedure which enables the tax administrators to estimate tax collection for a particular period and determine the correctness and completeness of tax compliances at taxpayer's level. The basic feature of return filing system in GST includes electronic filing of return. Uploading of invoice level information and **auto-populated** information relating to input tax credit from return of supplier to that recipient, invoice-level information matching and auto reversal of ITC in case of mismatch. Section 37 to 48 of CGST Act read along with CGST rules prescribe the provisions relating to filing of return under GST. Same provision is applicable under IGST Act by virtue of section 20.

7.14.1 Furnishing details of outward supplies

- (i) U/s 37 of CGST Act, every registered person including casual registered person is required to furnish return (statement) capturing details of outward supplies.
- (ii) Form : GSTR-1
- (iii) Period : Monthly through Electronic submission
- (iv) Time limit: 10th day of immediately succeeding month

7.14.2 Furnishing details of inward supplies

- (i) Every registered person including casual registered person is required to furnish a statement capturing details of inward supplies
- (ii) Form-GSTR-2.
- (iii) Periodicity : Monthly basis through Electronic submission.
- (iv) Time limit: After 10th day but on or before 15th day immediately succeeding month.

Note: Details of outward supplies for a month furnished by a supplier are communicated and made available electronically to the respective recipient of supply in form GSTR-2A through GST common portal after 10th day of the succeeding month. The recipient is provided an opportunity to add, correct or detail in a two-way communication process. After completion of such modification the recipient files the details of inward supplies during tax period (monthly or quarterly for composition levy) in Form GSTRN-2 by 15th day of that month.

7.14.3 Furnishing of return

- (i) U/s 39 of CGST Act, every registered person including casual registered person is required to furnish return capturing consolidated retails [outward and inward supplies and tax liability.]
- (ii) Form: GSTR-3
- (iii) Periodicity: Monthly basis through Electronic submission

7.14.4 Furnishing of return by Composition Supplier

- (i) A dealer, who has opted for composition scheme, as prescribed u/s 10 of CGST Act, is required to furnish his return as per the required particulars
- (ii) Form : GSTR-4
- (iii) Periodicity: Quarterly basis through Electronic submission
- (iv) Time Limit: Within 18 days from the expiry of quarter.

7.14.5 Filing of Annual Return

- (i) U/s 44 of CGST Act, all taxpayers filing regular returns [u/s 39] are required to file an annual return.
- (ii) Form: GSTR-9 (Regular tax payer)
GSTR-9A (composition Tax payer)
- (iii) Time limit: 31st December of next financial year.

7.14.6 Steps in furnishing of Returns

Step 1 : Filing of GSTR-1

The tax payer will upload the final GSTR-1 by 10th day of the month succeeding the month during which the supplies have been made. Modification in GSTR-1 would be allowed from 15th day to 17th day of the month on the basis of details uploaded by the respective purchaser in GSTR-2.

Step 2 : Auto-Population of GSTR-2A

GST common portal will auto populate GSTR-2A of tax payer based on invoice details reported by the supplier. While every taxpayer will be able to see the invoices uploaded by the respective supplier, they can finalise their GSTR-2 only after the last date of filing GSTR-1.

Step 3 : Filling of GSTR-2

The invoice auto-populated in GSTR-2A will be accepted/ rejected/ modified by the purchaser in the GSTR-2. He will also be able to add additional invoice details in his GSTR-2 which have not been uploaded by their suppliers, provided he is in possession of valid invoice and he has actually received such supplies. The taxpayer can then file their GSTR-2 between 10th and 15th day of the month succeeding the month during which the supplies have been received.

Step 4 : Reconciliation of outward and inward supplies

Tax payer will have the option to reconcile their inward supplier with the details of outward suppliers furnished by the respective suppliers to find out whether the respective suppliers have missed out uploading any invoices in their respective GSTR-1.

The recipient can prompt the suppliers to accept the inward supplies as uploaded by them the suppliers can accept / reject the modification made by the recipient between 15th day and 17th day and amend GSTR-1 accordingly.

Step 5 : Finalisation of GSTR-3

Finalisation of GSTR-1 and GSTR-2 would enable tax payer in finalizing their GSTR-3. GST common portal would auto generate part A of GSTR-3 for the tax payer.

GSTR would show the amount that will be credited debited to the ITC (input tax credit) ledger of the taxpayer. The tax payer will fill in the details of ITC that he intends to utilise for payment of taxes. Any balance amount will have to be paid by the taxpayer as cash. The return would also show the late fee and interest payable if any.

Step 6 : Payment of Taxes and submission of GSTR-3

Any payment made through Challans gets credited to Electronic cash ledger. Payment of taxes has to be done by debiting Electronic cash ledger. The tax payer shall pay the self-assessed tax and submit his return.

7.15 Payment of Tax

Introduction of E-ledger is a unique feature under the GST regime. Electronic ledgers or E-ledgers are the statements of cash and input tax credit in respect of every registered tax payer. In addition, each tax payer shall also have an electronic tax liability register.

7.15.1 Electronic Cash Ledger

Electronic cash ledger, maintained on GST common portal is a statement which reflects deposits made in cash by a tax payer along with details of TDS/ TCS deposited on his account. The amounts recorded in Electronic cash ledger can be used for making any payment towards tax, interest, penalty, fees or any other amount on account of GST.

Two modes have been prescribed for payment of Tax:

Mode A: (i) Internet Banking

(ii) Use of credit card/ Debit card without any restriction on the amount

Mode B: Over the counter (Maximum amount of Rs. 10,000 per challan per tax period)

7.15.2 Electronic Credit Ledger

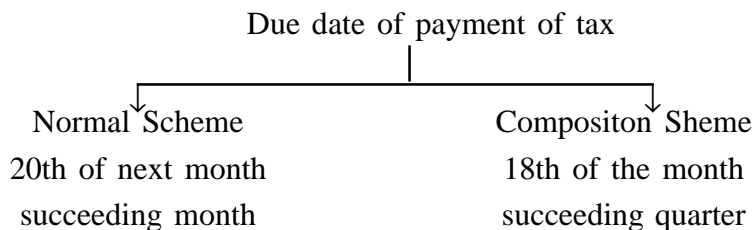
Electronic credit ledger, maintained on GST common portal, is a statement which reflects the details of ITC (input tax credit) as self assessed by a dealer in his returns. The amount recorded in Electronic Credit Ledger can be used only to make payment of output taxes. Other amount such as interest, penalty, fees can't be paid through utilising ITC. Further, where a registered person is liable to pay tax under Reverse Charge Mechanism, such tax need to be discharged in cash only and ITC can't be utilised.

7.15.3 Electronic Liability Register

Electronic Liability Register, maintained on GST common portal is a statement which reflects the total tax liability of a taxpayer for a particular period.

Interest on delayed payment of Tax: Section 50 of CGST Act requires a person to pay interest in the following situations.

(a) Tax paid after the expiry of prescribed period (i.e. delay in payment of tax)



- (b) Excess claim of input tax credit.
- (c) Excess reduction in output tax liability

Rate of interest

For Situation (a) : 18% p.a [as notified]

For situation (b) & (c) : 24% p.a [as notified]

Time period

Starting from the date following the due date of payment to the actual date of payment of tax.

7.15.4 Illustration

Illustration 1 :

M/S Romit Pvt. Ltd. supplied goods worth Rs. 10,00,000 to M/S Gita Ltd. in the month of September, 2017 plus GST @ 12%. M/S Romit Pvt. Ltd. Paid GST on 5th December 2018. The amount of tax credit is 70,000, available in the books Find the interest payment u/s 50.

Solution :

Tax [GST]	Rs. 1,20,000
Less: Input tax Credit	Rs. 70,000
Tax payable	Rs. 50,000

- (i) Due date of payment of tax for the month of Sept. 2017 is 20th October, 2017.
- (ii) Date of actual payment is 5th December 2018.
- (iii) Delay in payment 411 days [21st Oct. 2017 to 5th December, 2018]
- (iv) Rate of interest = 18% p.a
- (v) Interest u/s 50 = [Rs. 50,000 × 18% × 411/365]
= 10,134/-

Illustration 2 :

ABC Ltd. had reduced its output tax liability of Rs. 2,25,000 in contravention of provision in the month of Jan 2018 by a ITC which is ineligible. As a result, department issues show cause notice u/s 74 of CGST Act along with interest. ABC Ltd. paid the tax on 5.03.2018. Find the interest U/S 50

Solution :

- (i) Excess claim of credit of Rs. 2,25,000.
- (ii) Rate of Interest = 24% for 13 days
- (iii) Interest = [Rs. 2,25,000 × 24% × 13/365] = Rs. 1923.

Problem 1:

M/s X Ltd. being a registered person supplying taxable goods in the following manner:

Particulars	Rs.
Intra-State supply of goods	18,00,000
Inter-State supply of goods	13,00,000
Intra-State purchases	13,00,000
Inter-State purchases	1,50,000
ITC at the beginning of the relevant tax period:	
CGST	1,30,000
SGST	1,30,000
IGST	1,70,000

(i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.

(ii) Inward and outward supplies are exclusive of taxes.

All the conditions necessary for availing the input tax credit have been fulfilled. Compute the net GST payable by M/s X Ltd. during the tax period. Make suitable assumptions.

Solution:**Statement showing input tax credit (i.e. Electronic Credit Ledger)**

Particulars	CGST(Rs.)	SGST(Rs.)	IGST(Rs.)
Opening balance	1,30,000	1,30,000	1,70,000
Add: ITC for the tax period	1,17,000	1,17,000	27,000
Total credit	2,47,000	2,47,000	1,97,000

Statement showing Net GST payable by M/s X Ltd. for the tax period

Particulars	CGST(Rs.)	SGST(Rs.)	IGST(Rs.)
Output tax	1,62,000*	1,62,000*	2,34,000**
Less : ITC allowed	2,47,000	2,47,000	1,97,000
Sub-total	85,000	85,000	37,000
Less: CGST credit adjusted against IGST	37,000	Nil	-37,000
Net GST liability	Nil	Nil	Nil
Excess ITC c/f	48,000	85,000	Nil

* Rs. 18,00,00 × 9/100 = Rs. 1,62,000;

** Rs. 13,00,000 × 18/100 = Rs. 2,34,00.

Problem 2:

Mr. A has output Tax Liability of Rs. 1,00,000 towards CGST & SGST/IGST and Rs.20,000 towards IGST and also interest payable of Rs. 1800.

Explain the manner of discharge tax liability by Mr. A in the following two independent cases:

- i) Input tax credit available of CGST & SGST is Rs.25,000 each & IGST is Rs.25,000
- ii) Input tax credit not available.

Solution: Case (i): In case Input Tax credit available-

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic credit ledger	Input Tax Credit	25,000	25,000	25,000		75,000
	Net output tax liability	25,000	25,000	-		50,000
	IGST Credit set off	5,000	-	-		5,000
		(Note-1)				
Electronic cash ledger	Cash to be deposited	20,000	25,000	-	1800	46,800
					(Note-2)	

Note:

- 1) IGST Credit can be adjusted against CGST & SGST.
- 2) Interest cannot be adjusted with Input Tax credit

Case (ii): In case Input Tax Credit is not available

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic Liability Ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic Cash Ledger	Amount to be deposited	50,000	50,000	20,000	1,800	1,21,800

Problem 3:

Y Ltd. is operating in two states West Bengal and Bihar. The tax liability for the month of August 2017 is as follows—

Tax Liability	West Bengal	Bihar
1. Output CGST Payable	25,000	10,000
2. Output SGST Payable	10,000	5,000
3. Output IGST Payable	3,000	2,500
4. Input CGST	8,000	13,000
5. Input SGST	15,000	1,500
6. Input IGST	12,000	16,000

Calculate the tax payable for the month of August 2017.

Solution :

Net Tax payable for the month of August is as follows-

Particulars	West Bengal			Bihar		
	CGST	SGST	IGST	CGST	SGST	IGST
Output tax (a)	25,000	10,000	3,000	10,000	5,000	2,500
Input credit available for setoff (b)	8,000	15,000	12,000	13,000	1,500	16,000
Input credit adjusted (c) [lower of a & b]	8,000	10,000	3,000	10,000	1,500	2,500
Tax payable after setting off ITC (d=a-c)	17,000	-	-	-	3,500	-
Input Tax available for further set-off (e = b-c)	-	5,000	9,000	3,000	-	13,500
Inter Adjustment of ITC	9,000	-	(9,000)	-	3,500	(3,500)
			(Note-1)			
Net Tax payable in cash	8,000	-	-	-	-	-
Input credit carry forwarded to next month	5,000	-	3,900	-	10,000	
	-					

Notes:

1. IGST Input tax credit can be adjusted against output tax of liability of IGST, CGST, SGST, UTGST (set off can be done in same order)
2. SGST Input tax credit cannot be adjusted against output CGST & Vice-Versa.
3. CGST & SGST Input tax credit of one state cannot be adjusted against output CGST & SGST of other state (same principle is applicable to IGST credit also).

7.16 Summary

From the above discussion we could understand the concept of composition scheme; Goods exempted from GST; Services exempted from GST; Reverse charge mechanism; Input Tax credit; Return under GST; and Payment of Tax.

7.17 Questions

1. What is Composition Scheme?
2. What would you consider to determine aggregate turnover?
3. List out the persons who are not eligible for Composition Scheme.
4. List the services which are exempted from GST.
5. Who are liable to pay GST under Reverse Charge Mechanism (RCM)?
6. How do you determine the time of supply of goods and services under RCM?
7. Describe the mechanism of input tax credit under GST.
8. What are the conditions to be fulfilled to get Input Tax Credit (ITC)?
9. When the ITC is not admissible?
10. Describe the steps involved in furnishing return under GST.
11. Write a short notes on-
 - a) Electronic cash ledger
 - b) Electronic credit ledger.

Unit - 8 □ Customs Duties

Structure

8.0 Objectives

8.1 Introduction

8.2 Definition

8.3 Types of Customs Duties

8.3.1 Basic Customs Duty

8.3.2 Additional Duty of Customs

8.3.3 Special Customs Duty

8.3.4 Protective Duties

8.3.5 Safeguard Duty

8.3.6 Countervailing Duty

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8.3.9 National Calamities Contingent Duty of Customs

8.4 Levy of and Exemption from Customs Duties

8.5 Valuation of Goods for the Purpose of Assessment

8.6 Clearance of Imported Goods

8.6.1 Restrictions on Custody and Removal of Imported Goods

8.6.2 Entry of Goods on Importation

8.7 Clearance of Goods for Home Consumption

8.8 Clearance of Export Goods

8.8.1 Entry of Goods for Exportation

8.9 Drawback

8.9.1 Drawback on Imported Materials used in the Manufacture of Goods which are Exported

8.9.2 Prohibition and Regulation of Drawback in certain Cases

8.10 Summary

8.11 Questions

8.0 Objectives

After studying this unit we will be able to understand the concept of Customs Duties; Levy and Exemptions from Customs Duties; Valuation and Clearances of goods under Customs Duties.

8.1 Introduction

After independence, manufacturing industries grew and trade expanded. Customs Act, 1962 was passed to consolidate Sea Customs Act, Land Customs Act & provisions for air customs.

Basic Acts :

There are two Acts, which form part of customs Law in India, namely, the Customs Act, 1962 and the Customs Tariff Act, 1975 :

1. The Customs Act, 1962

The Customs Act, 1962 is the basic Act for levy of customs duty in India. It contains various provisions relating to imports and exports of goods and merchandize as well as baggage of persons arriving in India.

Objects of the Act

The customs act is a consolidation of the provisions relating to sea, land and air customs. The main purpose of Customs Act, 1962 is the prevention of illegal imports and exports of goods. The objects of the Act, as defined in its Preamble are “to consolidate and amend the law relating to customs”.

Application of the Act

The Act extends to the whole of India. It was extended to Sikkim vide Notification No. 185/79-Customs, dated 1st September, 1979, w.e.f. 1st October, 1979.

Customs Tariff Act—Indian Tariff Act, 1934 was found to be inadequate to meet the needs of expansion of trade and industry. Tariff Revision Committee was formed, which recommended adoption of Brussels Trade Nomenclature of Customs Co-operation Council

(CCCN), with modifications to suit Indian conditions. Accordingly Customs Tariff Act, 1975 was passed, which came into effect in 1976. The Act provided explanatory, clarificatory and interpretative rules and notes, which enabled proper classification of goods. Later, Customs Cooperation Council developed a new system of nomenclature known as 'Harmonised Commodity Description and Coding System' (HSN) to take into account latest changes in technology and pattern of international trade. On 28th February, 1986, Import schedule to the Customs Tariff Act, 1975 was replaced with a new schedule, based on HSN. This new schedule is expected to (a) reduce classification disputes (b) common code for goods in international trade (c) facilitate computerisation of customs classification and assessment work. [Central Excise Tariff was also replaced by a new tariff based on HSN on 28th February, 1986].

8.2 Definition

“Manufacture” [Sec. 2(1)] includes any process

- (i) Incidental or ancillary to the completion of a manufactured products; and
- (ii) Which is specified in relation to any goods in the Section or Chapter notes of the [first] schedule to the Central Excise Tariff Act 1958 as amounting to manufacture [or;]
- (iii) [Which is specified in relation to any goods in the central government by notification in the Official Gazette as amounting to manufacture] and the word manufacture shall be considered accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods but also any person who engages in their production or manufacture on his own account.

8.3 Types of Duties

The various types of Customs Duties are :

- (a) Basic Customs Duty;
- (b) Additional Customs Duty;
- (c) Special Customs Duty;

- (d) Protective Duties;
- (e) Safeguard Duty;
- (f) Countervailing Duty;
- (g) Anti-Dumping Duty; and
- (h) Export Duty.

8.3.1 Basic Customs Duty

Basic Customs Duty is levied under section 12 of the Customs Act. The rates at which duties of customs shall be levied under the Customs Act, 1962 are specified in the First and Second Schedules to the Customs Tariff Act, 1975. The first Schedule enlists the goods liable to import duty and the Second Schedule enlists the goods liable to export duties.

There are two types of rates of Basic Customs Duty, namely :

- (a) Standard Rates; and
- (b) Preferential Rates.

Standard Rates of Duty :

Standard rates of duty are applicable at the rate specified in Column 4 of the Tariff Schedule against each item/article specified in Column 3. In absence of any Notification for application of preferential rates of duty based on the country of origin, the standard rates of customs duty are invariably applied.

Preferential Rates of Duty :

The Government is empowered under section 25 of the Customs Act to prescribe by issuing Notification, preferential rate duty in respect of imports from certain preferential areas.

As per section 4(3) of the Customs Tariff Act, “Preferential area” means any country or territory, which the Central Government may, by notification in the Official Gazette, declare to be such area.

8.3.2 Additional Duty of Customs

Section 3 of the Customs Tariff Act empowers the Central Government to levy additional duty equal to excise duty. Accordingly, any article, which is imported into

India shall, in addition to standard rate of duty, be liable to an additional duty equal to the excise duty for the time being leviable on a like article, if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

However, in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the official gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different states or if a like alcoholic liquor is not produced or manufactured in any state, then, having regard to excise duty which would be leviable for the time being in different states on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

8.3.3 Special Customs Duty

Special Additional Duty is levied under section 3A of the Customs Tariff Act. Accordingly, any article which is imported into India shall, in addition, be liable to a special additional duty, which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India.

However, until such rate is specified by the Central government, the special additional duty shall be levied and collected at the rate of eight per cent of the value of the article imported into India. The duty chargeable under section 3A shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

8.3.4 Protective Duties

Section 6 of the Customs Tariff Act empowers the Central Government to levy a protective duty based on a recommendation made by the Tariff Commission established under the Tariff Commission Act 1951.

The Central Government may upon receiving such recommendation, if it is satisfied that circumstances exist warranting to take immediate action to provide for the protection of the interests of any industry established in India, it may impose on any goods imported into India in respect of which the said recommendation is made, a duty of customs of

such amount, not exceeding the amount proposed in the said recommendation, as it thinks fit. The duty so imposed on any goods is deemed to have been specified, in the First Schedule as the duty leviable in respect of such goods.

8.3.5 Safeguard Duty

The Agreement on Safeguards has come into existence on 1st January, 1995, which authorises importing countries to provide protection to their domestic producers against serious injury caused or threatened to be caused to them by increased imports. The safeguard measures are intended to be applied only for a short duration with a view to allowing an opportunity to the domestic producers to adjust to the new situation of competition offered by the increased imports.

In India, the Agreement on Safeguards has been implemented recently by introducing a new section 8B in the Customs Tariff Act, 1975 on 1st March, 1997. The Safeguard Duty Rules have been notified on 29th July, 1997.

8.3.6 Countervailing Duty

Countervailing Duty can be imposed under section 9 of the Customs Tariff Act, 1975 to offset any adverse effect of subsidies granted on any goods exported to India.

Section 9 of Customs Tariff Act provides that where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been charged in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose countervailing duty not exceeding the amount of such subsidy.

The countervailing duty chargeable under section 9 shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

Conditions for levy of CVD :

The countervailing duty shall not be levied unless it is determined that—

- (a) The subsidy relates to export performance;
- (b) The subsidy relates to the use of domestic goods over imported goods in the export article; or

- (c) The subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article, unless such a subsidy is for—
- (i) Research activities conducted by or on behalf of persons engaged in the manufacture, production or export;
 - (ii) Assistance to disadvantaged regions within the territory of the exporting country; or
 - (iii) Assistance to promote adaptation of existing facilities to new environmental requirements.

8.3.7 Anti-Dumping Duty

Dumping means export of an article from any country or territory of India at less than its normal value i.e., when the prices at which the goods are exported to India are less than the comparable price for the like product when destined for consumption in the domestic market of the exporting country. Antidumping duty is imposed for offsetting the adverse effects of increased imports, subsidized imports or dumped imports.

The Central Government can impose anti-dumping duty only if the imports of dumped article into India cause and threaten material injury to any established industry in India and materially retards the establishment of any industry in India. If the domestic industry has evidence to show dumping and material injury caused to it by dumped imports, it may make an application to the Director-General (Anti-dumping and Allied duties) in the Ministry of Commerce for an investigation in the matter.

8.3.8 Export Duty

Section 8 of Customs Tariff Act provides for emergency powers to the Central Government to increase or levy export duties. Accordingly, where, in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be increased or that an export duty should be levied and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct and amendment of the Second Schedule to be made, so as to provide for an increase in the export duty leviable or as the case may be, for the levy of an export duty on the article.

8.3.9 National Calamities Contingent Duty of Customs

The Finance Act, 2003 provides for levy of national Calamity Contingent Duty of Customs on goods specified in Schedule VII to the finance Act, 2001 and imported into India by surcharge at the rate specified in the said Schedule VII as amended by Schedule XIII.

8.4 Levy of an Exemption from Customs Duties

Dutiable goods :

- (1) Except as otherwise provided in this act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 [5] or 1975 or any other law for the time being in force, on goods imported into or exported from India.
- (2) The provisions of sub-section (1) shall apply in respect of all the goods belonging to Government as they apply in respect of goods not belonging to Government.

Duty on pilfered goods

If any imported goods are pilfered after unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

8.5 Valuation of Goods for the Purpose of Assessment

For the purpose of the Customs Act 1975 [51 of 1975] or any other law for the time being in force where under a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale for delivery at the time of importation or exportation as the case may be in the course of {international trade where—

- (a) The seller and the buyer have no interest in the business of each other; or
- (b) One of them has no interest in the business of the other, and the price is the sole consideration for the sale or offer for sale }

Power not to recover duties not levied or short levied as a result of general practice :

- (1) Notwithstanding anything contained in this Act, if the Central Government is satisfied—
 - (a) That a practice was or is generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into or exported from India; and
 - (b) That such goods were or are liable—
 - (i) To duty in cases where according to the said practice the duty was not or is being levied; or

- (ii) To a higher amount of duty than what was or is being levied according to the said practice.

Then, the Central Government may, by notification in the Official Gazette direct that the whole of the duty payable on such goods by for the said practice shall not be required to be paid in respect of the goods on which the duty was not or is not being levied or was or is being short-levied in accordance with the said practice.

8.6 Clearance of Imported Goods

8.6.1 Restrictions on custody and removal of imported goods

- (1) Save as otherwise provided in any law for the time being in force all imported goods unloaded within a customs area shall remain in the custody of such persons as may be approved by the Commissioner of Customs until they are cleared for home consumption or the warehoused or are transhipped in accordance with provisions of chapter VIII.
- (2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force :—
 - (a) Shall keep a record of such goods and send a copy thereof to the proper officer :
 - (b) Shall not permit such goods to be removed from the customs area; or otherwise dealt with except under and in accordance with the permission in writing of the proper officer.
- (3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1) that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.

8.6.2 Entry of goods on importation

The importer of any goods other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehouse in the presented form :

Save as otherwise permitted by the proper officer a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

A bill of entry under sub-section may be presented at any time after the delivery of the import manifest or import report as the case may be :

The importer while presenting a bill of entry shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall in support of such declaration produce to the proper officer the invoice, if any relating to the imported goods.

If the proper officer is satisfied that the interest of revenue is not prejudicially affected and there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice-versa.

8.7 Clearance of Goods for Home Consumption

Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty if any assessed thereon and any charges payable under this Act in respect of the same the proper officer may make an order permitting clearance of the goods for home consumption.

Where the importer fails to pay the import duty under this sub-section within five days excluding holidays from the date on which the bill of entry is returned to him for payment of duty he shall pay interest at such rate not below the rate being fixed by the Central Government by notification in the official gazette on such duty till the date of payment of the said duty.

8.8 Clearance of Export Goods

8.8.1 Entry of goods for exportation

- (1) The export of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land a bill of export in the prescribed form.
- (2) The export of any goods while presenting a shipping bill or bill of export shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

Clearance of goods for exportation :

Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same the proper officer may make an order permitting clearance and loading of the goods for exportation.

Transit of certain goods without payment of duty :

Subject to the provisions of section 11 any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the conveyance to any place outside India or any customs station may be allowed to be so transhipment shall be presented to the proper officer in the prescribed form :

Subject to the provisions of section 11 where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transhipment without payment of duty.

Where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transhipment—

- (a) To any major port as defined in the India Ports Act 1908 (15 of 1908) or customs airport at Mumbai, Kolkata, Delhi or Channai or any other customs port or customs airport specified in this behalf by the Government.

8.9 Drawback

When any goods capable of being easily identified which have been imported into India and upon which any duty has been paid on importation—

- (i) Are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or
- (ii) Are to be exported as baggage and the owner of such baggage, for the purpose of clearing it makes a declaration of its contents to the proper entry for export for the purposes of this section and such officer makes an order permitting clearance of the goods for exportation; or
- (iii) Are entered for export by post under section 82 and the proper officer makes an order permitting clearance of the goods for exportation, ninety-eight percent of such duty shall, except as otherwise hereinafter provided, be repaid as drawback, if—

- (a) The goods are identified to the satisfaction of the Assistant Commissioner of Customs [or Deputy Commissioner of Customs] as the goods which were imported; and
- (b) The goods are entered for export within two years from the date of payment of duty on the importation thereof :

Provided that in any particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

Notwithstanding anything contained in sub-section (1) the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances may, by notification in the Official Gazette fix.

The Central Government may make rules for the purpose of carrying out of the provisions of this section and in particular such rules may—

- (a) Provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk may be established;
- (b) Specify the goods which shall be deemed to be not capable of being easily identified and
- (c) Provide for the manner and time within which a claim for payment of drawback is to be filed.

For the purpose of this section :

- (a) Goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16,
- (b) In the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment to duty.

8.9.1 Drawback on imported materials used in the manufacture of goods which are exported

Whereas it appears to the Central Government that in respect of goods of any class or description [manufactured, processed or on which any operation has been carried out in India], being goods which have been entered for export and in respect of which an order

permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer or being goods entered for export by post under section 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer a drawback should be allowed of duties of customs chargeable under this act on any imported material or a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods the Central Government may by notification in the Official Gazette direct that drawback shall be allowed in respect of such goods in accordance with and subject to the rules made under sub-section.

The Central Government may make rules for the purpose of carrying out of the provision of sub-section (1) and in particular such rules may provide—

- (a) For the payment of drawback equal to the amount of duty actually paid on the imported material used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the material of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of the class or description either by manufacturers generally or by processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation and interest, if any, payable thereon;
 - (i) For specifying the goods in respect of which no drawback shall be allowed;
 - (ii) For specifying the goods procedure for recovery or adjustment of the amount of any drawback which had been allowed under sub-section (1) [or interest chargeable thereon];
- (b) For the production of such certificate, documents and other evidence in support of each claim of drawback as may be necessary;
- (c) For requiring the manufacturer or the person carrying on any process or other operation to give access or every part of his manufacturing to any officer of customs specially authorized in this behalf by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to enable such authorized officer to inspect the process of manufacture, process or any other operation carried out and to verify by actual check or otherwise the statement made in support of the claim for drawback;
- (d) For the manner and the time within which the claim for payment of drawback may be filed.

8.9.2 Prohibition and regulation of drawback in certain cases

1. Notwithstanding any thing herein before contained no drawback shall be allowed—

- (a) In respect of any goods the market price of which is less than the amount of drawback due thereon;
- (b) Where the drawback due in respect of any goods is less than fifty rupees.

2. Without prejudice to the provisions of sub-section (1) if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India. It may by notification in the Official Gazette direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

8.10 Summary

From the above discussion we could understand the concept of Customs Duties; Levy and Exemptions of customs Duties; Valuation and Clearances of Goods under Customs Duties.

8.11 Questions

1. Write brief notes on :
 - (a) Customs Act, 1962
 - (b) Customs Tariff Act, 1975
2. What are the different types of Custom Duties?
3. Write short notes on :
 - (a) Countervailing Duty
 - (b) Anti-Dumping Duty
4. What are the various modes of levy of duties under the Customs Act, 1962?
5. Explain the procedure for clearance of the imported goods.
6. How is the assessable value determined under the Customs Act?
7. How can claim for refund of customs duty already paid & under what circumstances?
8. Discuss the provisions of Customs Act, 1962 relating to drawback of duties.
9. Discuss the provisions of the Customs Act relating to goods in transit.

Suggested Readings

Acharjee, M. Goods and Service Tax.

Acherjee, M. Goods and Services Tax.

Ahuja and Gupta, Tax Planning, Bharat Publishers

Banger and Banger: Goods and Services, Aadhya Prakashani.

Chatterjee T.B. and Sony V.: Goods and Services Tax, Book Corporation.

Customs Act, 1962.

Datey, V.S.: Goods and Services Tax, Taxmann.

Datey, V.S.: Indirect Taxes-Law and Practice .

Income Tax Act, 1961 (Amended as per the recent Finance Act)

Singhania and Singhania: Student Guide to Income Tax including GST,
Taxmann.

Singhania, V. K. Direct Taxes, Taxmann

Singhania, V.K. and Kapil, Direct Taxes, Taxmann Publications, New Delhi

Notes
