

QUESTION BANK

C.A. FINAL

Book – F01 – A02

Including Selected Bare Act Provisions.

(Students are advised to use colour markers to mark / high light the matter as directed in class.)

DIRECT TAXES

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CAPITAL GAINS

Part AA

Basics of Capital Gains

Question 1 (capital gains fundamentals) (Revision / Home work) (CG ID 31)

The Partnership firm of M/s. ABCD sold the asset acquired by one of its partners A which he had given to firm as capital contribution at book value of 300,000 on 30-06-2012. At the time of distribution of the asset of the erstwhile firm which was reconstituted thereafter it claimed that the sum paid by A to the retiring partners in past Mr. M (Rs. 35,000) and N (Rs. 55,000) at time of his admission should be treated as a part of cost of acquisition in addition to the cost that had been originally incurred by the erstwhile firm for acquiring the said asset, please discuss whether the claim for deduction is acceptable?

	Your Options are
A	Cost of asset to Firm will be 335,000
B	Cost of asset to Firm will be 355,000
C	Cost of asset to Firm will be 300,000
D	Cost of asset to Firm will be 390,000

Question 2 (capital gains fundamentals) (Revision / Home work) (CG ID 32)

R. Ltd had a liability of Rs. 238.14 crores payable from 1-5-2004 to 1-4-2015 to the sales tax departments of Governments of Maharashtra and Gujarat in respect of Sales Tax deferral scheme. R Ltd. has assigned the said Liability to another Company on Payment of Rs. 55.76 Crores in financial year. Whether surplus i.e. difference of Rs. 182.38 Crores can be directly credited to capital reserve or it must be credited to profit and Loss a/c? Discuss Liability of Capital gain tax ?

	Your Options are
A	182.38 cr will be capital gains
B	182.38 cr will be Business Income
C	182.38 cr will be IFOS
D	182.38 cr will not be taxable at all

Question 3 (capital gains fundamentals) (Revision / Home work) (CG ID 33)

Mr. X has entered into derivative transactions and has incurred loss of Rs. 5,00,000. He claims this loss as a short term capital loss and asks for set off against short term capital gain on sale of share Rs. 200,000. A.O. rejects the claim as according to him the loss is speculation loss. Discuss.

	Your Options are
A	Speculative Business Loss carried forward will be 500,000
B	Business Loss carried forward will be 300,000
C	Business Loss carried forward will be 500,000
D	Speculative Business Loss carried forward will be 300,000

Question 4 (capital gains fundamentals) (Revision / Home work) (CG ID 34)

Mr. X an investor has invested a sum of Rs. 5,00,000 in shares of M/s Y. The said company went into liquidation and since the liabilities were much more than the assets, nothing was distributed to the shareholders. Mr. X wants to claim the loss. Is his contention correct ?

	Your Options are
A	500,000 will be Capital Loss
B	500,000 will be Business Loss
C	Gross Total Income will be 500,000
D	None of the above

Question 6 (capital gains fundamentals) (CG ID 71) (Revision / Home work)

X owns 1,000 partly paid shares in a company. These shares have been fortified by the company for non-payment of call money. X wants to claim Rs.8,000 (i.e., amount paid at the time of application and allotment) as short-term capital loss. Is the claim of X tenable?

	Your Options are
A	8000 is capital loss, as extinguishment of rights
B	8000 is capital loss, as sale of shares back to company
C	8000 is capital loss, as exchange of shares
D	8000 is not assessable at all

Question 7 (capital gains fundamentals) (CG ID 73) (Revision / Home work)

X purchased in 1984-85, 42,000 (non-listed) shares of a company at the rate of Rs. 100 per share with a view to acquiring controlling interest of the company. In 2014-15, he sells the entire lot of 42,000 shares at the market value of Rs. 45 per share. On account of this sale, X wants to claim capital loss of Rs. 3.25 cr in the assessment year. The Assessing Officer finds that X had purchased the shares in 1984-85 at the rate of Rs. 100 per share when the market value of the shares was Rs. 76 per share. According to the Assessing officer, the extra price of Rs. 24 per share was paid by X to acquire the controlling rights of the company. The Assessing Officer, therefore, determines the amount of loss at Rs. 2.42 cr excluding the extra price of Rs. 24 per share. Is the Assessing Officer legally correct?

	Your Options are
A	3.25 cr is capital loss
B	3.25 cr is Business loss
C	2.42 cr is capital loss
D	2.42 cr is Business loss

Question 8 (capital gains fundamentals) (CG ID 74) (Revision / Home work)

A car in personal use for about 6 years is sold at a profit of about Rs. 58,000. Will the gain be taxable?

	Your Options are
A	Capital Gains will be 58,000
B	Capital Gains will be Nil
C	Capital Gains will be Not applicable
D	IFOS will be 58,000

Question 9 (capital gains fundamentals) (CG ID 88) (Revision / Home work)

Mr. X had a leasehold property since 5th May, 2008. The leasehold rights were converted into freehold on 20th May PY by paying 10 lakhs. The said property was sold on 10th January PY for 35 lakhs. The assessee claimed the capital gain as long-term capital gain. The Assessing Officer contended the same as short-term as the property was acquired by converting the leasehold right into freehold right only on 20 May, 2014. Is Mr. X justified in his claim?

	Your Options are
A	Capital gains will be Long term
B	Capital gains will be Short term
C	Capital gains will be Long term but no indexation on 10 lakhs
D	Capital gains will be Long term subject to indexation on 10 lakhs

Question 5 (capital gains fundamentals) (CG ID 35)

Mr. Albert a full time practicing C.A aged 55 years. He disclosed the following for the computation of his income :-

		Rs.
1.	Income from profession	2,00,000
2.	Short term capital gain on sale of shares	10,00,000
3.	Sale of Silver Utensils (inherited from his grand father.)	3,50,000
4.	Long term capital gain on equity shares as 10,00,000 on which STT is paid.	10,00,000
5.	Income from other sources (profit on sale of spontaneous growth of plant on agricultural land referred to in 7 to 9 below)	3,00,000
6.	Profit on sale of loose diamonds (inherited from his mother)	800,000
7.	Profit on sale agricultural land near Mumbai pune highway (situated at 3 km from Mumbai and having population of 3 lakhs) (Possession of land is handed over however sale deed is not registered as on 31 st of March.)	12,00,000
8.	Profit on sale agricultural land near Mumbai Nashik highway (situated at 7 km from Mumbai and having population of 3 lakhs)	850,000
9.	Profit on sale agricultural land near Mumbai Ahmedabad highway (situated at 9 km from Mumbai and having population of 23 lakhs)	12,25,000

MCQ1	In relation to (3) above Your Options are
A	Taxable as Capital Gains
B	Taxable as IFOS
C	Taxable as Business Income
D	Not Taxable

MCQ2	In relation to (6) above Your Options are
A	Loose Diamonds are not jewellery, however taxable as capital gains
B	Loose Diamonds are not jewellery, thus not taxable as capital gains
C	Loose Diamonds are not jewellery, however taxable as business income
D	Loose Diamonds are jewellery, however taxable as capital gains

MCQ3	In relation to (7) above Your Options are
A	It is Rural Agricultural Land and not taxable to capital gains
B	It is Rural Agricultural Land and taxable to capital gains
C	It is Not Rural Agricultural Land and not taxable to capital gains
D	It is Not Rural Agricultural Land and taxable to capital gains

MCQ4	In relation to (8) above Your Options are
A	It is Rural Agricultural Land and not taxable to capital gains
B	It is Rural Agricultural Land and taxable to capital gains
C	It is Not Rural Agricultural Land and not taxable to capital gains
D	It is Not Rural Agricultural Land and taxable to capital gains

MCQ5	In relation to (9) above Your Options are
A	It is Rural Agricultural Land and not taxable to capital gains
B	It is Rural Agricultural Land and taxable to capital gains
C	It is Not Rural Agricultural Land and not taxable to capital gains
D	It is Not Rural Agricultural Land and taxable to capital gains

MCQ6	In relation to (7) above Your Options are
A	It is a transfer by means of sale
B	It is a transfer by means of 53A of Transfer of property act
C	It is a deemed transfer
D	It is transfer by taking advance monies.

MCQ7	In relation to (5) above Your Options are
A	It is not an agricultural income
B	It is an agricultural income
C	It is Business income
D	It is not a taxable income

Property basics and 53A of TOP's act

Question 1 (CG ID 36)

A flat was booked on 1-4-2014, by paying Rs. 50,000, Rs. 4,00,000 were paid in instalments during financial year 2015-16. Rs. 1,00,000 was paid on taking possession on 30-6-17. Flat was sold on 1-3-18 for Rs. 7,00,000.

1. whether the Capital Gain is Long Term or Short Term ?
2. Would it make any difference if the flat is sold on 31-5-2017 before taking possession ?
3. How COA will be indexed ?

Question 2 (CG ID 02)

R owns a plot of land acquired on 1-6-1994 for a consideration of Rs. 2 lakhs. He enters into an agreement to sell the property on 15-3-PY for a consideration of Rs. 5 lakhs. In part performance of the contract, he handed over the possession of land on 21-3-PY on which date he received the full consideration. As on 31-3-PY, the sale was not registered. Discuss the liability to capital gain. Computation need not be made.

Answer / Notes :-

Bare Act Provisions

2(14) "capital asset" means—

- (a) **property of any kind** held by an assessee, whether or not connected with his business or profession;
- (b) any **securities held by a Foreign Institutional Investor** which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),
- (c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth proviso thereof;

but **does not include**—

- (i) **any stock-in-trade** other than the securities referred to in sub-clause (b), consumable stores or raw materials held for the purposes of his business or profession ;
- (ii) **personal effects**, that is to say, **movable property (including wearing apparel and furniture)** held for **personal use by the assessee or any member of his family dependent on him, but excludes**—

- (a) jewellery;
- (b) archaeological collections;
- (c) drawings;
- (d) paintings;
- (e) sculptures; or
- (f) any work of art.

Explanation 1.—For the purposes of this sub-clause, "jewellery" includes—

- (a) **ornaments made of gold, silver, platinum** or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
- (b) **precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.**

Explanation 2.—For the purposes of this clause—

- (a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the *Explanation* to section 115AD;
- (b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

- (iii) **agricultural land in India**, not being land situate—
- (a) in any area which is comprised within the **jurisdiction of a municipality** (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of **not less than ten thousand**; or
- (b) in any area within the distance, measured aerially,—
- (I) **not being more than two kilometres**, from the local limits of any municipality or cantonment board referred to in item (a) and which has a **population of more than ten thousand but not exceeding one lakh**; or
- (II) **not being more than six kilometres**, from the local limits of any municipality or cantonment board referred to in item (a) and which has **a population of more than one lakh but not exceeding ten lakh**; or
- (III) **not being more than eight kilometres**, from the local limits of any municipality or cantonment board referred to in item (a) and which has a **population of more than ten lakh**.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

- (iv) 6 per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;
- (v) Special Bearer Bonds, 1991, issued by the Central Government ;
- (vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

Explanation.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever;

2(42A) "short-term capital asset" means a capital asset held by an assessee for **not more than thirty-six months** immediately preceding the date of its transfer :

Provided that in the case of a **security (other than a unit) listed in a recognized stock exchange in India or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963)** or a unit of an equity oriented fund or a zero coupon bond, the provisions of this clause shall have effect as if for the words "thirty-six months", the words "**twelve months**" had been substituted:

Provided further that in case of a **share of a company** (not being a share listed in a recognised stock exchange) or a unit of a Mutual Fund specified under clause (23D) of section 10, which is transferred during the period beginning on the 1st day of April, 2014 and ending on the 10th day of July, 2014, the provisions of this clause shall have effect as if for the words "thirty-six months", the words "**twelve months**" had been substituted:

[**Provided also** that in the case of a **share of a company (not being a share listed in a recognised stock exchange in India)**,³[**or an immovable property, being land or building or both,**] the provisions of this clause shall have effect as if for the words "thirty-six months", the words "**twenty-four months**" had been substituted.

Explanation 1.—(i) In determining the **period for which any capital asset** is held by the assessee—

- (a) in the case of a share held in a company in liquidation, there shall be excluded the period subsequent to the date on which the company goes into liquidation ;
- (b) in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in sub-section (1) of section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section ;

Following sub-clause (ba) shall be inserted after sub-clause (b) of clause (i) of Explanation 1 to clause (42A) of section 2 by the Finance Act, 2018, w.e.f. 1-4-2019 :

- (ba) *in the case of a capital asset referred to in clause (via) of section 28, the period shall be reckoned from the date of its conversion or treatment;*
- (c) in the case of a capital asset being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a transfer referred to in clause (vii) of section 47, there shall be included the period for which the share or shares in the amalgamating company were held by the assessee ;
- (d) in the case of a capital asset, being a share or any other security (hereafter in this clause referred to as the financial asset) subscribed to by the assessee on the basis of his right to subscribe to such financial asset or subscribed to by the person in whose favour the assessee has renounced his right to subscribe to such financial asset, the period shall be reckoned from the date of allotment of such financial asset ;
- (e) in the case of a capital asset, being the right to subscribe to any financial asset, which is renounced in favour of any other person, the period shall be reckoned from the date of the offer of such right by the company or institution, as the case may be, making such offer ;
- (f) in the case of a capital asset, being a financial asset, allotted without any payment and on the basis of holding of any other financial asset, the period shall be reckoned from the date of the allotment of such financial asset ;

- (g) in the case of a capital asset, being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a demerger, there shall be included the period for which the share or shares held in the demerged company were held by the assessee ;
- (h) in the case of a capital asset, being trading or clearing rights of a recognised stock exchange in India acquired by a person pursuant to demutualisation or corporatisation of the recognised stock exchange in India as referred to in clause (xiii) of section 47, there shall be included the period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation;
- (ha) in the case of a capital asset, being equity share or shares in a company allotted pursuant to demutualisation or corporatisation of a recognised stock exchange in India as referred to in clause (xiii) of section 47, there shall be included the period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation;
- (hb) in the case of a capital asset, being any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees), the period shall be reckoned from the date of allotment or transfer of such specified security or sweat equity shares;
- (hc) in the case of a capital asset, being a unit of a business trust, allotted pursuant to transfer of share or shares as referred to in clause (xvii) of section 47, there shall be included the period for which the share or shares were held by the assessee;
- (hd) in the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47, there shall be included the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee;
- (he) in the case of a capital asset, being share or shares of a company, which is acquired by the non-resident assessee on redemption of Global Depository Receipts referred to in clause (b) of sub-section (1) of section 115AC held by such assessee, the period shall be reckoned from the date on which a request for such redemption was made;
- (hf) *in the case of a capital asset, being equity shares in a company, which becomes the property of the assessee in consideration of a transfer referred to in clause (xb) of section 47, there shall be included the period for which the preference shares were held by the assessee;*]
- (hg) in the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in clause (xix) of section 47, there shall be included the period for which the unit or units in the consolidating plan of a mutual fund scheme were held by the assessee;
- (hh) in the case of a capital asset, being a unit or units in a segregated portfolio referred to in sub-section (2AG) of section 49, there shall be included the period for which the original unit or units in the main portfolio were held by the assessee;

(ii) In respect of capital assets other than those mentioned in clause (i), the period for which any capital asset is held by the assessee shall be determined subject to any rules which the Board may make in this behalf.

Explanation 2.—For the purposes of this clause, the expression "security" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

Explanation 3.—For the purposes of this clause, the expressions "specified security" and "sweat equity shares" shall have the meanings respectively assigned to them in the *Explanation* to clause (d) of sub-section (1) of section 115WB.

Explanation 4.—For the purposes of this clause, the expression "equity oriented fund" shall have the meaning assigned to it in **(a) of the Explanation to section 112A;**

(42B) "short-term capital gain" means capital gain arising from the transfer of a short-term capital asset ;

2(47) "transfer", in relation to a capital asset, includes,—

- (i) the **sale, exchange or relinquishment** of the asset ; or
- (ii) the **extinguishment of any rights** therein ; or
- (iii) the **compulsory acquisition** thereof under any law ; or
- (iv) in a case where the asset is **converted by the owner** thereof into, **or is treated by him** as, **stock-in-trade of a business carried on by him**, such conversion or treatment ; or
- (iva) the **maturity or redemption of a zero coupon bond**; or
- (v) any transaction involving the **allowing of the possession of any immovable property to be taken** or retained in **part performance** of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or
- (vi) **any transaction** (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the **effect of transferring, or enabling the enjoyment of, any immovable property.**

Explanation 1.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;

Capital gains.

45. (1) Any profits or gains arising from the **transfer of a capital asset** effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be **deemed to be the income** of the previous year in which the **transfer took place**.

Mode of computation.

48. The income chargeable under the head "Capital gains" shall be computed, **by deducting from the full value of the consideration received** or accruing as a result of the transfer of the capital asset the following amounts, namely :—

- (i) **expenditure incurred wholly and exclusively** in connection with such transfer;
- (ii) the **cost of acquisition of the asset and the cost of any improvement** thereto;
- (iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in sub-section (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner

Provided that in the case of an assessee, who is **a non-resident**, capital gains arising from the transfer of a capital asset being **shares in, or debentures** of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the **same foreign currency** as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising **from every reinvestment thereafter in,** and sale of, shares in, or debentures of, an Indian company :

Provided further that where **long-term capital gain arises from the transfer of a long-term capital asset**, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "**indexed cost of acquisition**" and "**indexed cost of any improvement**" had respectively been substituted:

Provided also that nothing contained in the first and second provisos shall apply to the capital gains arising from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A:

Provided also that **nothing contained in the second proviso shall apply** to the long-term capital gain arising from the transfer of a long-term capital asset, being a **bond or debenture other than**—

- (a) **capital indexed bonds** issued by the Government; or
- (b) **Sovereign Gold Bond** issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015:

Provided also that in case of an **assessee being a non-resident**, any gains arising on account of **appreciation of rupee against a foreign currency** at the time of **redemption of rupee denominated bond** of an Indian company ⁶⁹[held] by him, **shall be ignored** for the purposes of computation of full value of consideration under this section:

Provided also that where **shares, debentures or warrants referred to in the proviso to clause (iii) of section 47** are transferred under **a gift or an irrevocable trust**, the **market value on the date of such transfer shall be deemed to be the full value of consideration received** or accruing as a result of transfer for the purposes of this section :

Provided also that **no deduction** shall be allowed in computing the income chargeable under the head "Capital gains" in respect of any **sum paid on account of securities transaction tax** under Chapter VII of the Finance (No. 2) Act, 2004.

Explanation.—For the purposes of this section,—

- (i) "foreign currency" and "Indian currency" shall have the meanings respectively assigned to them in section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);
- (ii) the conversion of Indian currency into foreign currency and the reconversion of foreign currency into Indian currency shall be at the rate of exchange prescribed in this behalf;
- (iii) "indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, ⁷⁰[2001], whichever is later;
- (iv) "indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;
- (v) "Cost Inflation Index", in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent of average rise in the Consumer Price Index (urban) for the immediately preceding previous year to such previous year, by notification in the Official Gazette, specify, in this behalf.

Cost with reference to certain modes of acquisition.

49. (1) Where the capital asset **became the property of the assessee**—

- (i) on any distribution of assets on the total or partial partition of a Hindu undivided family;
- (ii) under a gift or will;
- (iii) (a) by succession, inheritance or devolution, or
 - (b) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or
 - (c) on any distribution of assets on the liquidation of a company, or
 - (d) under a transfer to a revocable or an irrevocable trust, or
 - (e) under any such transfer as is referred to in clause (iv) or clause (v) or clause (vi) or clause (via) or clause (vial) or clause (viab) or clause (vib) ⁷¹[or clause (vic)] or clause (vica) or clause (vicb) or clause (vicc) or clause (viiac) or clause (viiad) or clause (viiac) or clause (viiad) or clause (viiac) or clause (viiad) or clause (viiac) or clause (viiad) or clause (viiac) or clause (viiad) or clause (xiii) or clause (xiiib) or clause (xiv) of section 47;
- (iv) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969,

the cost of acquisition of the asset shall be **deemed to be the cost for which the previous owner of the property** acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Explanation.—In this sub-section the expression "**previous owner of the property**" in relation to any capital asset owned by an assessee means the **last previous owner** of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of this sub-section.

(2) Where the capital asset being a share or shares in an amalgamated company which is an Indian company became the property of the assessee in consideration of a transfer referred to in clause (vii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the amalgamating company.

(2A) Where the capital asset, being a share or debenture of a company, became the property of the assessee in consideration of a transfer referred to in clause (x) or clause (xa) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock, bond or deposit certificate in relation to which such asset is acquired by the assessee.

(2AA) Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in sub-clause (vi) of clause (2) of section 17, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause.

(2AAA) Where the capital asset, being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008 (6 of 2009), became the property of the assessee on conversion as referred to in clause (xiiib) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion.

(2AB) Where the capital gain arises from the transfer of specified security or sweat equity shares, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account while computing the value of fringe benefits under clause (ba) of sub-section (1) of section 115WC.

(2ABB) Where the capital asset, being share or shares of a company, is acquired by a non-resident assessee on redemption of Global Depository Receipts referred to in clause (b) of sub-section (1) of section 115AC held by such assessee, the cost of acquisition of the share or shares shall be the price of such share or shares prevailing on any recognised stock exchange on the date on which a request for such redemption was made.

Explanation.—For the purposes of this sub-section, "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of the *Explanation 1* to sub-section (5) of section 43.

(2AC) Where the capital asset, being a unit of a business trust, became the property of the assessee in consideration of a transfer as referred to in clause (xvii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share referred to in the said clause.

(2AD) Where the capital asset, being a unit or units in a consolidated scheme of a mutual fund, became the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating scheme of the mutual fund.

(2AE) Where the capital asset, being equity share of a company, became the property of the assessee in consideration of a transfer referred to in clause (xb) of section 47, the cost of acquisition of the asset shall be deemed to be that part of the cost of the preference share in relation to which such asset is acquired by the assessee.

(2AF) Where the capital asset, being a unit or units in a consolidated plan of a mutual fund scheme, became the property of the assessee in consideration of a transfer referred to in clause (xix) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating plan of the scheme of the mutual fund.

(2AG) The cost of acquisition of a unit or units in the segregated portfolio shall be the amount which bears, to the cost of acquisition of a unit or units held by the assessee in the total portfolio, the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios.

(2AH) The cost of the acquisition of the original units held by the unit holder in the main portfolio shall be deemed to have been reduced by the amount as so arrived at under sub-section (2AG).

Explanation.—For the purposes of sub-section (2AG) and sub-section (2AH), the expressions "main portfolio", "segregated portfolio" and "total portfolio" shall have the meanings respectively assigned to them in the circular No. SEBI/HO/IMD/DF2/CIR/P/2018/160, dated the 28th December, 2018, issued by the Securities and Exchange Board of India under section 11 of the Securities and Exchange Board of India Act, 1992.

(2B) [***]

(2C) The cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.

(2D) The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived at under sub-section (2C).

(2E) The provisions of sub-section (2), sub-section (2C) and sub-section (2D) shall, as far as may be, also apply in relation to business reorganisation of a co-operative bank as referred to in section 44DB.

Explanation.—For the purposes of this section, "net worth" shall mean the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.

(3) Notwithstanding anything contained in sub-section (1), where the capital gain arising from the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47 is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A, the cost of acquisition of such asset to the transferee-company shall be the cost for which such asset was acquired by it.

(4) Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under clause (vii) or clause (viiia)⁷³[or clause (x)] of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii) or clause (viiia)⁷³[or clause (x)].

(5) Where the capital gain arises from the transfer of an asset declared under the Income Declaration Scheme, 2016, and the tax, surcharge and penalty have been paid in accordance with the provisions of the Scheme on the fair market value of the asset as on the date of commencement of the Scheme, the cost of acquisition of the asset shall be deemed to be the fair market value of the asset which has been taken into account for the purposes of the said Scheme.

⁷⁴[(6) *Where the capital gain arises from the transfer of a specified capital asset referred to in clause (c) of the Explanation to clause (37A) of section 10, which has been transferred after the expiry of two years from the end of the financial year in which the possession of such asset was handed over to the assessee, the cost of acquisition of such specified capital asset shall be deemed to be its stamp duty value as on the last day of the second financial year after the end of the financial year in which the possession of the said specified capital asset was handed over to the assessee.*

Explanation.—For the purposes of this sub-section, "stamp duty value" means the value adopted or assessed or assessable by any authority of the State Government for the purpose of payment of stamp duty in respect of an immovable property.

(7) *Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in sub-section (5A) of section 45, not being the capital asset referred to in the proviso to the said sub-section, the cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section.]*

⁷⁵[(8) Where the capital gain arises from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed and the tax has been paid thereon in accordance with

the provisions of Chapter XII-EB, the cost of acquisition of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in sub-section (2) of section 115TD.]

Following sub-section (9) shall be inserted after sub-section (8) of section 49 by the Finance Act, 2018, w.e.f. 1-4-2019 :

(9) Where the capital gain arises from the transfer of a capital asset referred to in clause (via) of section 28, the cost of acquisition of such asset shall be deemed to be the fair market value which has been taken into account for the purposes of the said clause.

Meaning of "adjusted", "cost of improvement" and "cost of acquisition".

55. (1) For the purposes of sections 48 and 49,—

(a) [***]

(b) "**cost of any improvement**",—

(1) in relation to a capital asset being **goodwill of a business or a right to manufacture, produce or process** any article or thing or right to carry on any business or profession shall be taken to be **nil**; and

(2) in relation to any **other capital asset**,—

(i) where the capital asset became the property of the previous owner or the assessee **before the 1st day of April, 2001**, means all **expenditure of a capital nature incurred in making any additions or alterations** to the capital asset on **or after the said date by the previous owner** or the assessee, and

(ii) in **any other case**, means all expenditure of a **capital nature incurred in making any additions or alterations to the capital asset** by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of section 49, by the previous owner,

but does not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business or profession", or "Income from other sources", and the expression "improvement" shall be construed accordingly.

(2) For the purposes of sections 48 and 49, "cost of acquisition",—

(a) in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,—

(i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and

(ii) in the case falling under sub-clauses (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and

(iii) in any other case, shall be taken to be nil:

Provided that where the capital asset, being goodwill of a business or profession, in respect of which a deduction on account of depreciation under sub-section (1) of section 32 has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after the 1st day of April, 2021, the provisions of sub-clauses (i) and (ii) shall apply with the modification that the total amount of depreciation obtained by the assessee under sub-section (1) of section 32 before the assessment year commencing on the 1st day of April, 2021 shall be reduced from the amount of purchase price;

(aa) in a case where, by virtue of holding a capital asset, being a share or any other security, within the meaning of clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this clause referred to as the financial asset), the assessee—

(A) becomes entitled to subscribe to any **additional financial asset** ; or

(B) is allotted any **additional financial asset** without any payment,

then, subject to the provisions of sub-clauses (i) and (ii) of clause (b),—

(i) in relation to the original financial asset, on the basis of which the assessee becomes entitled to any additional financial asset, means the amount **actually paid** for acquiring the original financial asset ;

(ii) in relation to any **right to renounce** the said entitlement to subscribe to the financial asset, when such right is renounced by the assessee in favour of any person, shall be taken to be **nil** in the case of such assessee ;

(iii) in relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, means the amount **actually paid by him** for acquiring such asset ;

(iiia) in relation to the financial asset **allotted to the assessee without any payment** and on the basis of holding of any other financial asset, shall be taken to be **nil** in the case of such assessee ; and

(iv) in relation to any financial asset purchased by any person in whose favour the right to subscribe to such asset has been renounced, means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount **paid by him** to the company or institution, as the case may be, for acquiring such financial asset ;

(ab) in relation to a capital asset, being equity share or shares allotted to a **shareholder of a recognised stock exchange in India under a scheme for demutualisation or corporatisation** approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), shall be the **cost of acquisition of his original membership** of the exchange:

Provided that the cost of a capital asset, **being trading or clearing rights** of the recognised stock exchange acquired by a shareholder who has been allotted equity share or shares under such scheme of demutualisation or corporatisation, shall be deemed to be **nil**:

(ac) *subject to the provisions of sub-clauses (i) and (ii) of clause (b), in relation to a **long-term capital asset**, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A, acquired **before the 1st day of February, 2018** shall be higher of—*

(i) the cost of acquisition of such asset; and

(ii) lower of—

(A) the fair market value of such asset; and

(B) the full value of consideration received or accruing as a result of the transfer of the capital asset.

Explanation.—*For the purposes of this clause,—*

(a) *"fair market value" means,—*

(i) in a case where the capital asset is listed on any recognised stock exchange as on the 31st day of January, 2018, the highest price of the capital asset quoted on such exchange on the said date:

Provided that where there is **no trading** in such asset on such exchange on the 31st day of January, 2018, the **highest price of such asset on such exchange** on a date **immediately preceding the 31st day of January, 2018** when such asset was traded on such exchange shall be the fair market value;

(ii) in a case where the capital asset is a unit which **is not listed on a recognised stock exchange** as on the 31st day of January, 2018, the **net asset value of such unit** as on the said date;

(iii) in a case where the capital asset is an equity share in a company which is—

(A) **not listed on a recognised stock exchange** as on the 31st day of January, 2018 but listed on such exchange on the date of transfer;

(B) **listed on a recognised stock exchange** on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on the 31st day of January, 2018 by way of transaction not regarded as transfer under section 47,

an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the financial year 2017-18 bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the first day of April, 2001, whichever is later;

(b) "Cost Inflation Index" shall have the meaning assigned to it in clause (v) of the Explanation to section 48;

(c) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43;]

(b) in relation to any other capital asset,—

(i) where the capital asset became the property of the assessee **before the 1st day of April, 2001**, means the cost of acquisition of the asset to the assessee or the **fair market value of the asset** on the 1st day of April, ⁸¹[2001], at the option of the assessee ;

(ii) where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of section 49, and the **capital asset became the property of the previous owner** before the 1st day of April, 2001, means the cost of the capital asset to the previous owner or **the fair market value of the asset** on the 1st day of April, 2001, at the option of the assessee ;

Provided that in case of a capital asset referred to in sub-clauses **(i) and (ii)**, being **land or building or both, the fair market value** of such asset on the 1st day of April, 2001 for the purposes of the said sub-clauses **shall not exceed the stamp duty value, wherever available**, of such asset as on the 1st day of April, 2001.

Explanation.—For the purposes of this proviso, “stamp duty value” means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

(iii) where the capital asset became the property of the assessee on the **distribution of the capital assets of a company on its liquidation** and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the **fair market value of the asset on the date of distribution** ;

(iv) [***]

(v) where the capital asset, being a **share or a stock of a company**, became the property of the assessee on—

- (a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares,
- (b) the conversion of any shares of the company into stock,
- (c) the re-conversion of any stock of the company into shares,
- (d) the sub-division of any of the shares of the company into shares of smaller amount, or
- (e) the conversion of one kind of shares of the company into another kind,

means the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.

(3) Where the **cost for which the previous owner acquired the property cannot be ascertained**, the cost of acquisition to the previous owner means the **fair market value** on the **date on which the capital asset became the property of the previous owner.**

79. Sub. for "1981" by the Finance Act, 2017 (w.e.f. 1-4-2018).

80. Ins. by the Finance Act, 2018 (w.e.f. 1-4-2018).

81. Sub. for "1981" by the Finance Act, 2017 (w.e.f. 1-4-2018).

Reference to Valuation Officer.

55A. With a view to **ascertaining the fair market value of a capital asset** for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer—

- (a) in a case **where the value of the asset as claimed by the assessee is in accordance with the estimate** made by a registered valuer, if the Assessing Officer is of opinion that the value so claimed is at variance with its fair market value;
- (b) in any other case, if the Assessing Officer is of opinion—
 - (i) that the **fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf** ; or
 - (ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (ha) and (i) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation.—In this section, "Valuation Officer" has the same meaning, as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Part AB**Insurance Compensation – 45(1A) / High Value LIP****Question 1 (specific computations, Insurance monies) (Revision / Home work) (CG ID 03)**

A manufacturing company was transporting two of its machines from unit 'A' to unit 'B' (which is at a distance of 100 miles) on 1-9-PY by a truck. On account of a civil disturbance, both the machines were damaged. The insurance company paid Rs. 5 lakhs for the damaged machineries. On these facts, for submitting the return of income for the previous year, your advice is sought as to:

- (i) Whether the damage of machines result in any transfer ?
- (ii) How the amount received from the insurance company are to be treated for taxability ?
- (iii) Would there be any impact on the written down value of the block of plant and machinery ?

Discuss these points in your answer and give your valuable opinion.

Question 2 (specific computations, Insurance monies) (CG ID 48)

Rohit Ltd installed a new plant for Rs. 20,00,000 on Dec. 30, 2008. They received a grant from the central Government exclusively for busying the new plant amounting to Rs. 5,00,000. In September 2010 the new plant was destroyed by fire. The company realized Rs. 10,00,000 from the insurance company and Rs. 2,50,000 from scrap sale. Calculate the profit / loss for this plant. Depreciation allowed for year ending 31-03-09 is Rs. 1,12,500 and for the year ending 31-03-2010 is Rs. 2,08,125.

Question 3 (specific computations, Insurance monies) (CG ID AB03)

Mr. Magan has received maturity amount on 05-March -2022 from life insurance policy details are given below.

Particulars	Situation 1	Situation 2
Policy Issue Year	03-03-2018	03-03-2021
Sum Assured	25,00,000	35,00,000
Annual Premium	2,00,000	3,00,000
Maturity Amount received	18,00,000	8,50,000
Type of life insurance Policy	Unit Linked	Unit Linked

In situation 1 will your answer be different if the sum assured is 18,00,000 instead of 25,00,000.

In situation 2 will your answer be different if maturity amount is received by Mr. Lal upon death of Mr. Magan.

Bare Act Provisions

(1A) Notwithstanding anything contained in sub-section (1), where any **person receives** at any time during any previous year any **money or other assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of—**

- (i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or
- (ii) riot or civil disturbance; or
- (iii) accidental fire or explosion; or
- (iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

then, any profits or gains arising from receipt of such money or other assets shall be **chargeable to income-tax** under the head "Capital gains" and shall be deemed to be the income of such person **of the previous year** in which such **money or other asset was received** and for the purposes of section 48, **value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration** received or accruing as a result of the transfer of such capital asset.

Explanation.—For the purposes of this sub-section, the expression "insurer" shall have the meaning assigned to it in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938).

(1B) Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any amount under a unit linked insurance policy, to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth proviso thereof, including the amount allocated by way of bonus on such policy, then, any profits or gains arising from receipt of such amount by such person shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of such person of the previous year in which such amount was received and the income taxable shall be calculated in such manner as may be prescribed.'

Section 10(10D)

(10D) any sum received under a **life insurance policy**, including the sum allocated by way of bonus on such policy, other than—

- (a) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA; or
- (b) any sum received under a Keyman insurance policy; or
- (c) any sum received under an insurance **policy issued on or after the 1st day of April, 2003** but on or before the 31st day of March, 2012 in respect of which the premium payable for any of the years during the term of the policy **exceeds twenty per cent of the actual capital sum assured**; or
- (d) any sum received under an insurance **policy issued on or after the 1st day of April, 2012** in respect of which the premium payable for any of the years during the term of the policy **exceeds ten per cent of the actual capital sum assured**:

Provided that the provisions of sub-clauses (c) and (d) shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under sub-clause (c), effect shall be given to the Explanation to sub-section (3) of section 80C or the Explanation to sub-section (2A) of section 88, as the case may be :

Provided also that where the policy, issued on or after the 1st day of April, 2013, is for insurance on life of any person, who is—

- (i) a person with disability or a person with severe disability as referred to in section 80U; or
 - (ii) suffering from disease or ailment as specified in the rules made under section 80DDB,
- the provisions of this sub-clause shall have effect as if for the words "ten per cent", the words "fifteen per cent" had been substituted.

Provided also that nothing contained in this clause shall apply with respect to any **unit linked insurance policy, issued on or after the 1st day of February, 2021**, if the amount of premium payable for any of the previous year during the term of such policy **exceeds two lakh and fifty thousand rupees**:

Provided also that if the premium is payable, by a person, for more than one unit linked insurance policies, issued on or after the 1st day of February, 2021, the provisions of this clause shall apply only with respect to those unit linked insurance policies, where the **aggregate amount of premium does not exceed** the amount referred to in fourth proviso in any of the previous year during the term of any of those policies:

Provided also that the provisions of the **fourth and fifth provisos shall not apply to any sum received on the death of a person**:

Provided also that if any difficulty arises in giving effect to the provisions of this clause, the Board may, with the previous approval of the Central Government, issue **guidelines for the purpose of removing the difficulty** and every guideline issued by the Board under this proviso shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and the assessee

Explanation 1.—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration;

Explanation 2.—For the purposes of sub-clause (d), the expression "actual capital sum assured" shall have the meaning assigned to it in the Explanation to sub-section (3A) of section 80C;

Explanation 3.—For the purposes of this clause, "unit linked insurance policy" means a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation 3 of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 issued by the Insurance Regulatory and Development Authority under the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999

Part AC**Conversion of CA into stock in trade - 45(2)****Question 1 (specific computations, 45(2)) (CG ID 42)**

The assessee company purchased a land on 01-01-1972 for Rs. 120,000 (stamp duty value on 01-01-72 Rs. 1350,000) (FMV as on 01-04-2001 – 350,000) the land was acquired for use of industrial purpose. The company on 02-02-2008 (FMV : 10,10,000) decided to go into real estate business and said land is intended to be used for real estate business and company has resolved it dated 15-02-2008 (FMV : 11,00,000) that the land will be used for development of property. The difference has been transferred to general reserve in the accounts and land is now being shown as under the head current assets in the books. The Land is sold during the PY for 13,50,000. Discuss the tax implications.

Question 2 (specific computations, 45(2)) (Revision / Home work) (CG ID 43)

Assessee bank acquired securities as stock in trade on 02-02-2002 for 200 crore. On 02-03-2005 bank converted the securities as capital asset and recorded the book entry at 225 crore (FMV 250 crore). During year it is sold at 300 crores. You are required to discuss tax implications of the same.

Question 3 (specific computations, 45(2)) (CG ID 49)

Mr. Dilip, an individual purchased unlisted shares in Indian companies as investments on 10.5.2005 for Rs. 30 lacs. On June 1, 2008 he started a business a dealer in shares and transferred 50% of such shareholding to the business. The fair market value of the entire shares as on that date was Rs. 60 lacs. The shares held in business were sold by Dilip for Rs. 34 lacs in PY. Compute the taxable income of Mr. Dilip under the relevant hands of income indicating the relevant assessment year.

Bare Act Provisions

45(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of **conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business** carried on by him shall be chargeable to income-tax as his income of the **previous year in which** such stock-in-trade is **sold or otherwise transferred by him** and, for the purposes of section 48, the **fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration** received or accruing as a result of the transfer of the capital asset.

Part AD**De-Mat of securities - 45(2A)****Question 1 (specific computations, DE-mat of shares) (Revision / Home work) (CG ID 06)**

R furnishes the following information:

No. of shares	Month and year of purchase	Shares dematted month and year
1,000	March 1992	July, 1999
500	March 1995	-
1,000	December 1996	October 1998

He sold 1,500 shares in January out of the dematted shares. He seeks your advice as to the taxability towards capital gains. Discuss the provisions of law.

Question 2 (specific computations) (CG ID 56)

Mrs. Sanghvi acquired 1000 listed shares in January 1998 at a cost of Rs. 2 lacs. The company allotted one bonus share for every 2 shares held in March 2008. She sells 1,250 in April of PY for a consideration of Rs. 10 lacs. The demat account has been entered first with bonus shares and thereafter with original shares. The transaction is subject to securities transaction tax. Determine the capital gains.

FMV as on 1.4.01 is Rs. 60 per share.

FMV as on 31.01.18 is Rs. 1,000 per share.

Answer / Notes :-

Bare Act Provisions

(2A) Where any person has had at any time during previous year any **beneficial interest in any securities**, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and **shall not be regarded as income of the depository** who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories Act, 1996, and for the purposes of—

- (i) section 48; and
- (ii) proviso to clause (42A) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

Explanation.—For the purposes of this sub-section, the expressions "beneficial owner", "depository" and "security" shall have the meanings respectively assigned to them in clauses (a), (e) and (l) of sub-section (1) of section 2 of the Depositories Act, 1996.

Part AE**Partnership firms 45(3) and 45(4) and 9B****Question (specific computations, partnership firms) (CG ID 44)**

Mr. A is admitted as partner in firm M/s ABC. He transfers capital asset on 01-03 to firm as his capital contribution. Market value of the asset on date of transfer is 50,00,000 however firm has recorded it at book value of 30,00,000. Capital asset was acquired by Mr. A in 1971 for Rs. 10,00,000.

Question (specific computations, partnership firms) (CG ID 50)

X and Y form a partnership firm. Soon after formation of the firm X brings on July 10, the following assets as his capital contribution:

	Gold	Silver
Fair market value on the date of transfer by X to firm	5,40,000	72,000
Amount recorded in books of account	6,00,000	50,000
Actual cost	30,000	12,000
Year of acquisition	1984-85	PY

Rs. 6,50,000 is credited in the capital account of X in the firm.

Is X chargeable to tax in this case?

Question (specific computations, partnership firms) (CG ID 51-A)

M/s Hiramal a firm consisting of three partners namely Mr. A, Mr. B and Mr. C. Firm is in business since past 12 years. During the year ending 31.03.X1 Mr. A has retired. His capital account shows the credit balance of 15,00,000 (including fix capital of 200,000). At time of retirement it is agreed by the firm that he will be paid 18,25,000 in full and final settlement. During the year his capital account is closed and it is transferred to loan account of the said partner. However payment is made to him in the year ending 31.03.X2.

You are required to

- Compute the income of partner as well as firm.
- Compute the income of partner as well as firm on the assumption that capital account shows the credit balance of 20,00,000 (including fix capital of 200,000).
- Compute the income of partner as well as firm on the assumption that Mr. A has not retired from the firm however amount is withdrawn for his personal reason and used for purpose of marriage of his daughter.

Question (specific computations, partnership firms) (CG ID 51-B)

M/s XYZ a firm was formed 10 years back. It consist of X, Y and Z three partners. On March 10, the assets of firm was distributed to partners. The following assets are distributed to partners:

	Residential house (Taken by X)	Listed Government securities (Taken by Y)	Car (Taken by Z)
Fair market value on March 10,	22,60,000	50,000	30,000
Agreed value as per dissolution deed	11,70,000	46,000	32,000
Cost of acquisition	40,000	5,000	-
Cost of acquisition as per section 50	-	-	8,000
Year of acquisition	1949-50	2003-04	2008-09
Fair market value on April 1, 2001	3,00,000	N.A.	N.A.

You are required to :-

- Determine the amount of chargeable capital gains where distribution of asset to partner is upon dissolution of firm on March 10.
- Determine the amount of chargeable capital gains where distribution of asset to partner is upon retirement of Partner X, Y and Z. Capital Account on March 10 reflects 15,00,000, 20,00,000 and 15,00,000 and amount withdrawn including above assets is 18,00,000, 18,00,000 and 18,00,000 respectively for each of partners X, Y, and Z.
- Determine the amount of chargeable capital gains where distribution of asset to partner is in form of withdrawal of assets by partner and no money is withdrawn from firm.
- Suppose in situation 2 above, motor car is stock in trade of the firm purchased for 9,000.

Question (specific computations, partnership firms) (Revision / Home work) (CG ID 04)

A firm consisting of four partners was dissolved consequent to the death of one of the partners. The remaining partners reconstituted the firm immediately, without discontinuance of the business, and carried on the business as before. The inventory of stocks on the date of dissolution was valued at cost, which was lower than the market value and all other assets were valued at book value, for the purpose of transfer to the reconstituted firm. The Assessing Officer, while arriving at the total income of the firm as constituted prior to dissolution, valued the stocks as well as the other assets at market value. You are required to comment on the correctness of the Assessing Officer's action.

Question (specific computations, partnership firms) (Revision / Home work) (CG ID 05)

A firm RGS had an immovable property purchased out of the firm's funds for Rs. 6,00,000. On 31-3-2001, the property was divided among the partners equally by making entries in the capital accounts of the partners. The property was subsequently sold on 1-7-PY for Rs. 9,00,000. The Assessing Officer assessed the resultant capital gain in the hands of the firm. Discuss the validity of the order of the Assessing Officer.

Question (specific computations, partnership firms) (Revision / Home work) (CG ID 72)

X is a partner in a firm, A co., along with three other persons. On December 31, the firm is dissolved and X takes over the following assets :

	Plant and machinery (depreciation is claimed by the firm)	Residential house Premises (no depreciation is claimed)
Fair market value of assets on December 31	6,50,000	48,00,000
Agreed value of assets taken over by X as per dissolution deed	4,60,000	18,50,000
Cost of acquisition (*as per section 50)	3,10,000	90,000
Year of acquisition	1970	1940
Fair market value on April 1, 2001	---	4,40,000

Discuss whether A Co. is liable for tax on any capital gains.

Will X be able to claim depreciation in respect of plant and machinery on Rs. 6,50,000 ?

Bare Act Provisions

45(3) The profits or gains arising from the **transfer of a capital asset by a person to a firm or other association of persons or body of individuals** (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the **previous year in which such transfer takes place** and, for the purposes of section 48, the **amount recorded in the books of account of the firm, association or body** as the value of the capital asset shall be **deemed to be the full value of the consideration** received or accruing as a result of the transfer of the capital asset.

(4) Notwithstanding anything contained in sub-section (1), where a specified person receives during the previous year any **money or capital asset or both** from a specified entity in **connection with the reconstitution** of such specified entity, then any profits or gains arising from receipt of such money by the specified person shall be chargeable to income-tax as income of such specified entity under the head “Capital gains” and shall be **deemed to be the income of such specified entity** of the previous year in which such **money or capital** asset or both were received by the specified person, and notwithstanding anything to the contrary contained in this Act, such profits or gains shall be determined in accordance with the following formula, namely:—

$$A = B + C - D$$

Where,

A = **income chargeable to income-tax** under this sub-section as income of the specified entity under the head “Capital gains”;

B = value of any **money received** by the specified person from the specified entity on the date of such receipt;

C = the amount of **fair market value of the capital asset** received by the specified person from the specified entity on the date of such receipt; and

D = the amount of **balance in the capital account (represented in any manner)** of the specified person in the books of account of the specified entity at the time of its reconstitution:

Provided that if the value of “A” in the above formula is negative, its value shall be deemed to be zero:

Provided further that the balance in the capital account of the specified person in the books of account of the specified entity is to be **calculated without taking into account the increase in the capital account** of the specified person **due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.**

Explanation 1.—For the purposes of this sub-section,—

(i) the expressions “reconstitution of the specified entity”, “specified entity” and “specified person” shall have the meanings respectively assigned to them in section 9B;

(ii) “self-generated goodwill” and “self-generated asset” mean goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.

Explanation 2.—For the removal of doubts, it is clarified that when a capital asset is received by a specified person from a specified entity in connection with the reconstitution of such specified entity, the provisions of this sub-section shall operate in addition to the provisions of section 9B and the taxation under the said provisions thereof shall be worked out independently.

Income on receipt of capital asset or stock in trade by specified person from specified entity.

9B. (1) Where a specified person receives during the previous year any **capital asset** or **stock in trade** or **both** from a specified entity in connection with the **dissolution or reconstitution** of such specified entity, then the specified entity shall be **deemed to have transferred such capital asset or stock in trade or both**, as the case may be, to the specified person in the year in which such capital asset or stock in trade or both are received by the specified person.

(2) Any profits and gains arising from such deemed transfer of capital asset or stock in trade or both, as the case may be, by the specified entity shall be—

- (i) **deemed to be the income of such specified entity** of the previous year in which such capital asset or stock in trade or both were received by the specified person; and
- (ii) **chargeable to income-tax as income of such specified entity** under the head “Profits and gains of business or profession” or under the head “Capital gains”, in accordance with the provisions of this Act.

(3) For the purposes of this section, **fair market value of the capital asset or stock in trade or both on the date of its receipt by the specified person** shall be deemed to be the full value of the consideration received or accruing as a result of such deemed transfer of the capital asset or stock in trade or both by the specified entity.

(4) If any difficulty arises in giving effect to the provisions of this section and sub-section (4) of section 45, the Board may, with the approval of the Central Government, issue guidelines for the purposes of removing the difficulty.

(5) Every guideline issued by the Board under sub-section (4) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the assessee.

Explanation.— For the purposes of this section,—

(i) “**reconstitution of the specified entity**” means, where—

(a) one or more of its partners or members, as the case may be, of such specified entity **ceases to be partners or members**; or

(b) one or more new partners or members, as the case may be, are **admitted in such specified entity** in such circumstances that one or more of the persons who were partners or members, as the case may be, of the specified entity, before the change, continue as partner or partners or member or members after the change; or

(c) all the partners or members, as the case may be, of such specified entity continue with a **change in their respective share or in the shares of some of them**;

(ii) “specified entity” means a **firm or other association of persons or body of individuals** (not being a company or a co-operative society);

(iii) “specified person” means a person, who is a **partner of a firm or member of other association of persons or body of individuals** (not being a company or a co-operative society) in any previous year.

Section 48(iii) – Relevant Extract

The income chargeable under the head "Capital gains" shall be computed, **by deducting from the full value of the consideration** received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

(iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in **sub-section (4) of section 45**, the amount chargeable to income-tax as income of such specified entity under that sub-section which is **attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner**:

Part AF**Compulsory Acquisition - 45(5)****Question 3 (specific computations, compulsory acquisition) (CG ID 52)**

The Government compulsorily acquired land of Mr. Balaji in June 2009 and paid compensation of Rs. 5,00,000 in April 2010. The land was acquired by Mr. Balaji in May 1998 for Rs. 3,00,000. Mr. Balaji claimed more compensation and court awarded additional compensation of Rs. 8 lakhs in January 2016 and it was paid in April 2016. Compute the taxable capital gain from the above transaction indicating the relevant assessment year. Expenses in connection with compulsory acquisition were Rs. 20,000 and for obtaining enhancement of compensation was Rs. 40,000.

Question 4 (specific computations, compulsory acquisition) (CG ID 53)

The Central Government acquires a house property owned by X on October 17, 2009. This property was purchased on April 10, 1976 for Rs. 76,000 (cost of improvement incurred during 2005-06: Rs. 40,000 and fair market value of the property on April 1, 2001 was Rs. 1,32,000). The Government awards Rs. 5,67,000 as compensation out of which Rs. 1,00,000 is received on May 4, 2011 and Rs. 4,67,000 is received on April 1, 2012. Expenditure incurred by X for getting compensation fixed: Rs. 2,000. Being aggrieved against the award, X files an appeal. The Bombay court, as per order dated August 1, 2011, enhanced the compensation from Rs. 5,67,000 to Rs. 8,50,000 (legal expenditure incurred in court's proceedings : Rs 10,000). X receives the additional compensation of Rs. 2,83,000 on April 15, PY. Compute the income under the head "Capital gains". Does it make any difference if the additional compensation is received by X's son after the death of X?

Question 1 (specific computations, compulsory acquisition) (Revision / Home work) (CG ID 07)

R Ltd., a public limited company, engaged in the generation and distribution of power had its business acquired by the Government in June, 2003. Certain items of plant and machinery used by the company in its business were taken over by the Government at a price which resulted in the company realizing a surplus of Rs. 26,60,000 over its written down value. The compensation was received by the company in April, which was accepted by it under protest. The company proceeded to initiate arbitration proceedings under law and was granted an additional compensation Rs. 16 lakhs. This was decided by the arbitrators in December and received by the company in March.

The company claims that the assessment of the company to tax should not be made since the business was completely taken over by the Government in June, 2003 and at the time of final determination of compensation in March, the company did not exist. Do you agree to the company's claim ? Discuss with reference to the assessment year(s) to which the claim to tax, if any, can be related.

Question 2 (specific computations, compulsory acquisition) (Revision / Home work) (CG ID 08)

A plot of land purchased 5 years back by Ram Janki trust was acquired by Government of India for construction of an over-bridge in Mumbai. The compensation awarded by Revenue Authorities was at Rs. 5,00,000. The trust preferred an appeal against the order for increase in the compensation awarded to it. The appellate authority increased the compensation by further Rs. 4 lakhs in August, 2009 but the amount was actually received in April, 2010. You are required to compute the capital gains, if any, arising to the trust in respect of additional compensation by it and state the year of its taxability.

Bare Act Provisions

45(5) Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a **transfer by way of compulsory acquisition** under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the **consideration for such transfer is enhanced or further enhanced** by any court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely :—

- (a) the capital gain computed with reference to the **compensation awarded in the first instance** or, as the case may be, the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as income under the head "Capital gains" **of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received;** and
- (b) the amount by which the compensation or consideration is **enhanced or further enhanced by the court,** Tribunal or other authority shall be **deemed to be income chargeable** under the head "Capital gains" **of the previous year in which such amount is received** by the assessee :
Provided that any amount of compensation received in pursuance of an **interim order of a court,** Tribunal or other authority shall be **deemed to be income chargeable under the head "Capital gains"** of the previous year in which the final order of such court, Tribunal or other authority is made;
- (c) where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation or consideration referred to in clause (a) or, as the case may be, enhanced compensation or consideration referred to in clause (b), and subsequently such compensation or **consideration is reduced by any court,** Tribunal or other authority, such assessed **capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced** by such court, Tribunal or other authority to be the full value of the consideration.

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

- (i) in relation to the amount referred to in clause (b), the cost of acquisition and the cost of improvement shall be taken to be *nil*;
- (ii) the provisions of this sub-section shall apply also in a case where the transfer took place prior to the 1st day of April, 1988;
- (iii) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head "Capital gains", of such other person.

Part AG

Bare Act Provisions

(5A) Notwithstanding anything contained in sub-section (1), where the **capital gain arises to an assessee**, being an **individual or a Hindu undivided family**, from the transfer of a capital asset, being land or building or both, under a **specified agreement**, the capital gains shall be chargeable to income-tax as income **of the previous year in which the certificate of completion** for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, the **stamp duty value, on the date of issue of the said certificate, of his share**, being land or building or both in the project, **as increased by the consideration received in cash**, if any, shall be **deemed to be the full value of the consideration** received or accruing as a result of the transfer of the capital asset :

Provided that the **provisions of this sub-section shall not apply** where the assessee **transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place** and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.

Explanation.—For the purposes of this sub-section, the expression—

- (i) "competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force;
- (ii) "specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;
- (iii) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.]

(6) Notwithstanding anything contained in sub-section (1), the difference between the repurchase price of the units referred to in sub-section (2) of section 80CCB and the capital value of such units shall be deemed to be the capital gains arising to the assessee in the previous year in which such repurchase takes place or the plan referred to in that section is terminated and shall be taxed accordingly.

Part AH

Buy Back of Shares and Securities – 46A

Question 1 (Buy Back) (CG ID 84)

On June 6, 1984, X purchases 1,000 shares (face value Rs. 10 per share) in A Ltd. for Rs. 12,000. Under a scheme of buy-back of its own shares, A Ltd. purchases these shares on October 10 PY, for a consideration of Rs. 4,60,000. On October 10, PY, A Ltd. has an accumulated profit of Rs. 50,00,000. Find out the income chargeable to tax. Is there any dividend income under section 2(22) ?

Answer / Notes :-

Bare Act Provisions

Capital gains on purchase by company of its own shares or other specified securities.

46A. Where a **shareholder or a holder of other specified securities** receives any consideration from any company for **purchase of its own shares or other specified securities** held by such shareholder or holder of other specified securities, then, subject to the provisions of section 48, the **difference between the cost of acquisition and the value of consideration received by the shareholder or the holder of other specified securities**, as the case may be, shall be deemed to be the capital gains arising to such **shareholder** or the holder of other specified securities, as the case may be, in the year in which such shares or other specified securities were purchased by the company.

Explanation.—For the purposes of this section, "specified securities" shall have the meaning assigned to it in *Explanation* to section 77A of the Companies Act, 1956 (1 of 1956).

Relevant Extract of Section 10

10(34A) any income arising to an assessee, being a shareholder, on account of buy back of shares by the company as referred to in section 115QA;

Relevant Extract of Section - 115QA

Tax on distributed income to shareholders – Refer in the chapter of corporate taxation

Part AI
Financial Assets

Question 1 (Taxation of 112, 111A) (CG ID 09)

R acquires 10,000 equity shares of R Ltd., listed in stock exchanges in India and abroad and a constituent of BSE 500 on 15-3-2013 @ Rs. 2,250 per share. Fair market value of the shares on 31st January 2018 is 1600 per share. He transfers the shares at Rs. 5,000 per share on 31-12-PY. The brokerage and securities transactions tax deducted were at 0.5% and 0.1% respectively. Examine the liability of R to income tax. Will your answer be different, if instead of selling the shares in the market R privately transferred the shares to his son at the same price ?

Will your answer be different if Fair market value of the shares on 31st January 2018 is 3600 per share or may be even 6600 per share.

Question 2 (Taxation of 112, 111A) (CG ID 55)

Mr.A acquired 2000 shares listed in National Exchange for Rs. 5 lakhs during 2012-13. Company allotted him equal value of bonus shares during 2014-15. Second bonus issue was made during March PY when he received 1 bonus share for every 2 shares held by him. The entire shares held in the company have been sold by him on 8th of August PY @ 1,100/- per shares on which securities transaction tax was paid. Determine the taxable capital gain indicating the nature of capital gain. Fair market value of the shares on 31st January 2018 is 600

Question 3 (settlement of disputes) (CG ID 10)

Discuss the following:

1. R entered into an agreement with G for the purchase of a property of Rs. 10 lakhs and paid Rs. 10,000 as earnest money. On G failing to execute a conveyance in respect of the property, a suit for specific performance was filed by R. the suit was comprised and R agreed to receive Rs. 50,000 by way of damages and gave up his right to specific performance. What will be the position of this amount under the Income-tax Act.
2. An assessee acquired 1,000 shares of R Ltd. at Rs. 100 per share on 1-4-1975. The company issued bonus shares in the ratio of 1:1 in April 2004 and a further issue in the ratio of 1:2 in April 2008. The assessee sold in June-PY the bonus shares allotted to him in April 2008 at Rs. 175 per share (FMV as 31/01/2018 is Rs. 100 per share).The market value of the shares as on 1-4-2001 is Rs. 250 per share. What is the capital gain assessable in the hands of the assessee?

Question 4 (Previous owner and Indexation) (CG ID 11)

R was allotted 3,000 equity shares of a widely held company on 1-3-2009 of the value of Rs. 10 each. R gifted 2,000 shares to his son G on 30-11-PY on which day the share is quoted at Rs. 50. G disposed of 1,000 shares at Rs. 80 per share on 15-3-PY. What are the consequences of the transaction in the hands of G ? Discuss.

Question 5 (Debentures to shares) (CG ID 54)

Mr. X purchases convertible debentures for Rs. 4,88,000 during May 2002. The debentures were converted into shares in June 2006. These shares were sold for Rs. 10,00,000 in August. The brokerage expenses are Rs. 30,000. Compute the capital gain taxable of Mr. X.

Question 6 (Debentures to shares) (CG ID 58)

X gets 1,000 partly convertible debentures (face value Rs. 100) of A Ltd. (cost being Rs. 200 per debenture) at the time of original allotment to him on May 16, 2004. As per terms of allotment A Ltd. converts 60 per cent portion of each debenture into 2 equity shares of face value of Rs. 10 on July 1, 2012. On September 10, PY, X transfers 2,000 equity shares in A Ltd. @ Rs. 300 per share and 1,000 (non-convertible portion) debentures @ Rs. 310 per debenture. Find out the amount of capital gains chargeable to tax.

Part AJ**Company in liquidation - 46****Question (specific computations, company in liquidation) (CG ID 12)**

R Private Ltd. went into liquidation on 1-6-PY. The company was seized and possessed of the following funds prior to the distribution of assets to the shareholders:

	Rs.
Share capital	5,00,000
Reserves prior to 1-6-PY	3,00,000
Excess realization in the course of liquidation	5,00,000
Total	13,00,000

There are 5 shareholders, each of whom received Rs. 2,60,000 from the liquidation in full settlement. You are required to examine the various issues and advise the shareholders about their liability to income-tax.

Question (specific computations, company in liquidation) (CG ID 13)

R had purchased 5,000 equity shares in M/s. Kamat & Co. Ltd. at the rate of Rs. 2 per share (on 16-4-1985). M/s. Kamat & Co. Ltd. goes into liquidation on 30-6-PY. The Balance Sheet of the company as on the date of liquidation stood as under:

	Rs.		Rs.
50,000 equity shares	12,00,000	10,000 debentures in Patel & Co. Ltd. (Cost Rs. 10,00,000)	30,00,000
Accumulated profits	30,00,000	Cash in hand	12,00,000
Total	42,00,000	Total	42,00,000

On liquidation tax, the assets are distributed to the shareholders. In the process, R gets 1,000 debentures (market value Rs. 3,00,000) and 50,000 cash during the year. He transfers the entire debentures on 10-3-PY for Rs. 3,20,000. Indicate the tax consequences of these transactions.

Question (specific computations, company in liquidation) (CG ID 87)

X holds 10 per cent of equity shares of ABC Ltd. (cost of acquisition on April 1, 1969 of 1,500 shares : Rs. 75,000; fair market value on April 1, 2001 : Rs. 80,000). ABC Ltd. goes into liquidation on December 31,. Balance sheet of ABC Ltd. as on December 31, is given below. Determine the net income of (a) the company, and (b) X.

Capital and liabilities	Rs.	Assets and properties	Rs.
Share capital (15,000 shares of Rs100)	15,00,000	Total assets comprising land and building on Which no depreciation is claimed	
P & L Account	75,000	(amount Realized on December 20, Rs. 1,41,00,000	
General reserve	8,25,000	And cost of liquidation : Rs.45,000)	50,00,000
Sundry creditors	26,00,000	(acquired On April 1, 1997 : Rs. 43,93,091)	
	50,00,000		50,00,000

Question (specific computations, company in liquidation) (CG ID 87-A) (Home work)

Eden Fabs Private Ltd. went into liquidation on 31.07.PY. The company was seized and possessed of the following funds prior to the distribution of assets to the shareholders :

	Rs.
Share capital (issued on 01.04.2012)	8,00,000
Reserves prior to 31.07.PY	4,00,000
Excess realization in the course of liquidation	6,00,000
Total	18,00,000

There are 8 shareholders ,each of whom received Rs. 2,25,000 from the liquidator in full settlement. You are required to examine the various issues and advice the shareholders about their liability to Income tax.

Bare Act Provisions

Capital gains on distribution of assets by companies in liquidation.

46. (1) **Notwithstanding anything contained in section 45**, where the assets of a company are **distributed to its shareholders on its liquidation**, such distribution shall **not be regarded as a transfer** by the company for the purposes of section 45.

(2) Where a **shareholder on the liquidation of a company receives any money or other assets from the company**, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, **as reduced by the amount** assessed as **dividend** within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be **deemed to be the full value of the consideration** for the purposes of section 48.

Part AK**Not regarded as transfer - 47****Question 1 (Not regarded as transfer) (CG ID 16)**

An individual was the sole proprietor of a business. His net investment in the business, on 01-4-PY, was Rs. 20 lakhs represented by:

	Rs.	Rs.
Fixed assets		18,00,000
Current assets		10,00,000
		28,00,000
Current liabilities	5,00,000	
Loans	3,00,000	8,00,000
		20,00,000

Finding himself unable to carry on business by himself and also to attract additional capital, he formed a private limited company in April-PY with an authorized capital of Rs. 1 crore. At the time of formation of the company, A and his wife had subscribed to 100 equity shares each-fully paid in cash on 10-6-PY. A transfers his individual business in entirety, as going concern, to the private limited company for Rs. 40 lakhs for issue of shares in the following manner:

Preference Shares:	
Wholly to Mrs. A and her sister Mrs. G (in joint names)	1,50,000 Shares
Equity Shares:	
Mr. A	1,30,000 Shares
Mr. C, major son of A	20,000 Shares
Mr. D, friend of A	30,000 Shares
Mrs. E, a married sister of A	20,000 Shares
Mr. F, husband of Mrs. E	50,000 Shares

The shares of the face value of Rs. 10 each are to be issued fully paid up. No other purchase consideration for the transfer of the business to the company was due.

Required:

- (i) Ascertain whether in A's hands any tax liability will be due; if so, also indicate the assessment year relevant for this.
- (ii) If, on 10-5-AY, A sold 10,000 equity shares allotted to him, at Rs. 50 per share, to a friend, what will be the consequences ?

Question 3 (Not regarded as transfer) (CG ID 40)

X Co. Ltd. was amalgamated with Y Co. Ltd. on 30.04.PY. X Co. Ltd. was engaged in real estate and whereas Y Co. Ltd. was engaged in manufacture of textile articles. Y Co. Ltd. after amalgamation altered its objects clause of Memorandum of Association, to carry on real estate business. The stock in trade of X Co. Ltd. (being vacant lands) was taken over at Rs. 110 lakhs by Y Co. Ltd. as against their original cost of Rs. 125 lakhs to X Co. Ltd. for the purpose of amalgamation. Y Co. Ltd incurred Rs. 25 lakhs towards development of those lands obtained on amalgamation. It sold the entire land for Rs. 160 lakhs during the year. Determine the tax implication of the transaction in the hands of Y Co. Ltd.

Question 5 (Not regarded as transfer) (CG ID 45)

Balance sheet of partnership firm as on 31st march is as under

Capital and liabilities	
Capital account of Mr. A	6,00,000
Capital account of Mr. B	3,00,000
Creditors	1,00,000
Assets	
Land (FMV : 13 WDV : 1.2)	2,00,000
Building (FMV : 10 WDV : 0.7)	1,00,000
Machinery (FMV : 12 WDV : 2)	3,00,000
Stock in trade (FMV : 5)	4,00,000

Now the firm is taken over by the company and firm is dissolved. Discuss the tax treatment of the same.

Question 6 (Not regarded as transfer) (CG ID 57)

X Ltd. owns the following assets:

	Units of UTI (debt-oriented)	House property
Cost of acquisition	Rs. 1,40,000	Rs. 70,000
Date of acquisition	March 10, 2008	March 10, 2008

These capital assets (no depreciation is claimed) are transferred by X Ltd. to its wholly-owned Indian subsidiary company – S Ltd. on April 1, 2015. On July 7, PY these assets are transferred by S Ltd. for a consideration of Rs. 4,50,000 (i.e., units: Rs. 2,15,700, house property: Rs. 2,34,800). Compute the capital gain chargeable to tax in the case of S Ltd.

Question 2 (Not regarded as transfer) (Revision / Home work) (CG ID 17)

R held 2,000 shares in G Ltd. This company amalgamated with another company during the previous year. Under the scheme of amalgamation, R was allotted 1,000 shares in the new company. The market value of shares so allotted is higher by Rs. 50,000 than the value of holding in G Ltd. The Assessing Officer proposes to treat the transaction as an exchange and to tax Rs. 50,000 as capital gain. Is he justified ? Discuss.

Question 6 (Not regarded as transfer) (CG ID 85) (Revision / Home work)

X is a member of DEL Stock Exchange. He purchased the membership ticket on March 2, 1956 for Rs. 5,000. The fair market value on April 1, 2001 is Rs. 6,000. The Stock Exchange is converted into a company on November 1, 2014. Consequently, on November 1, 2014, X is allotted 1,000 shares in DEL Stock Exchange Ltd. and a ticket to trade in DEL Stock Exchange Ltd. X transfers 1,000 shares in DEL Stock Exchange Ltd. on December 1, for Rs. 2,00,000 and the right to trade in DEL Stock Exchange Ltd. for Rs. 45,000, find out the amount of capital gains chargeable to tax.

Question 7 (Not regarded as transfer) (CG ID 86) (Revision / Home work)

X Ltd. owns the following assets :

	Goodwill	Shares (non-listed)	House property
Cost of acquisition	Self-generated	Rs. 1,38,600	Rs. 96,000
Date of acquisition	-*	March 10, 2011	March 10, 2012

(*Since the commencement of business on November 1, 1981).

These capital assets (no depreciation is claimed) are transferred by X Ltd. to its wholly-owned Indian subsidiary company S Ltd. on April 1, 2017. On July 7, these assets are transferred by S Ltd. for consideration of Rs. 10,50,000 (i.e., goodwill : Rs. 6,00,000, shares : Rs. 2,15,700, house property : Rs. 2,34,800). Compute the capital gain chargeable to tax in the case of S Ltd. for the year.

Bare Act Provisions

Transactions not regarded as transfer.

47. Nothing contained in section 45 shall apply to the following transfers :—

- (i) any distribution of capital assets on the total or partial partition of a Hindu undivided family;
- (ii) [***]
- (iii) any transfer of a capital asset under a gift or will or an irrevocable trust :

Provided that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued by the Central Government in this behalf;

- (iv) any transfer of a capital asset by a company to its subsidiary company, if—
 - (a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and
 - (b) the subsidiary company is an Indian company;
- (v) any transfer of a capital asset by a subsidiary company to the holding company, if—
 - (a) the whole of the share capital of the subsidiary company is held by the holding company, and
 - (b) the holding company is an Indian company :

Provided that nothing contained in clause (iv) or clause (v) shall apply to the transfer of a capital asset made after the 29th day of February, 1988, as stock-in-trade;

- (vi) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;
- (via) any transfer, in a scheme of amalgamation, of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company, if—
 - (a) at least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and
 - (b) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated;

- (viaa) any transfer, in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 (10 of 1949), of a capital asset by the banking company to the banking institution.

Explanation.—For the purposes of this clause,—

- (i) "banking company" shall have the same meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
 - (ii) "banking institution" shall have the same meaning assigned to it in sub-section (15) of section 45 of the Banking Regulation Act, 1949 (10 of 1949);
- (viab) any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign company, referred to in the *Explanation 5* to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly,

its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, if—

(A) at least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

(B) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated;

(vib) any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company;

(vic) any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if—

(a) the shareholders holding not less than three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated :

Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 (1 of 1956) shall not apply in case of demergers referred to in this clause;

(vica) any transfer in a business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank **or to the converted banking company;**

(vicb) any transfer by a shareholder, in a business reorganisation, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank **or to the converted banking company.**

Explanation.—For the purposes of clauses (vica) and (vicb), the expressions “business reorganisation”, “converted banking company”, “predecessor co-operative bank” and “successor co-operative bank” shall have the meanings respectively assigned to them in section 44DB;

(vicc) any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in the *Explanation 5* to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, if—

(a) the shareholders, holding not less than three-fourths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated:

Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 (1 of 1956) shall not apply in case of demergers referred to in this clause;

(vid) any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking;

(vii) any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if—

(a) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company except where the shareholder himself is the amalgamated company, and

(b) the amalgamated company is an Indian company;

(viiia) any transfer of a capital asset, being bonds or Global Depository Receipts referred to in sub-section (1) of section 115AC, made outside India by a non-resident to another non-resident;

⁶⁶[(viiiaa) any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident;]

(viiab) any transfer of a capital asset, being—

(a) bond or Global Depository Receipt referred to in sub-section (1) of section 115AC; or

(b) rupee denominated bond of an Indian company; or

(c) derivative ; or

(d) such other securities as may be notified by the Central Government in this behalf,

made by a **non-resident or specified fund** on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

Explanation.—For the purposes of this clause,—

(a) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(b) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43;

(c) "derivative" shall have the meaning assigned to it in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(d) "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

(viiac) any transfer, in a relocation, of a capital asset by the original fund to the resulting fund;

(viiad) any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund;

Explanation.— For the purposes of clauses (viiac) and (viiad),—

(a) "original fund" means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions, namely:—

(i) the fund is not a person resident in India;

(ii) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into; or is established or incorporated or registered in a country or a specified territory as may be notified by the Central Government in this behalf;

(iii) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident; and

(iv) fulfils such other conditions as may be prescribed;

(b) “relocation” means transfer of assets of the original fund, or of its wholly owned special purpose vehicle, to a resultant fund on or before the 31st day of March, 2023, where consideration for such transfer is discharged in the form of share or unit or interest in the resulting fund to,—

(i) shareholder or unit holder or interest holder of the original fund, in the same proportion in which the share or unit or interest was held by such shareholder or unit holder or interest holder in such original fund, in lieu of their shares or units or interests in the original fund; or

(ii) the original fund, in the same proportion as referred to in sub-clause (i), in respect of which the share or unit or interest is not issued by resultant fund to its shareholder or unit holder or interest holder;

(c) “resultant fund” means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which—

(i) has been granted a certificate of registration as a Category I or Category II or Category III Alternative Investment Fund, and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and exchange 15 of 1992. Board of India Act, 1992 or International Financial Services 50 of 2019. Centres Authority Act, 2019; and

(ii) is located in any International Financial Services Centre as referred to in sub-section (1A) of section 80LA;

(vii^{ae}) any transfer of capital asset by India Infrastructure Finance Company Limited to an institution established for financing the infrastructure and development, set up under an Act of Parliament and notified by the Central Government for the purposes of this clause;

(vii^{af}) any transfer of capital asset, under a plan approved by the Central Government, by a public sector company to another public sector company notified by the Central Government for the purposes of this clause or to the Central Government or to a State Government;

(vii**b**) any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.

Explanation.—For the purposes of this clause, "Government Security" shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(vii**c**) any transfer of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015, by way of redemption, by an assessee being an individual;

(vii**i**) any transfer of agricultural land in India effected before the 1st day of March, 1970;

(i**x**) any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Government in the Official Gazette to be of national importance or to be of renown throughout any State or States.

Explanation.—For the purposes of this clause, "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956), to be a University for the purposes of that Act;

(x) any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company;

(x**a**) any transfer by way of conversion of bonds referred to in clause (a) of sub-section (1) of section 115AC into shares or debentures of any company;

⁶⁷[(x**b**) any transfer by way of conversion of preference shares of a company into equity shares of that company;]

(x**i**) any transfer made on or before the 31st day of December, 1998 by a person (not being a company) of a capital asset being membership of a recognised stock exchange to a company in exchange of shares allotted by that company to the transferor.

Explanation.—For the purposes of this clause, the expression "membership of a recognised stock exchange" means the membership of a stock exchange in India which is recognised under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(xii) any transfer of a capital asset, being land of a sick industrial company, made under a scheme prepared and sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) where such sick industrial company is being managed by its workers' co-operative :

Provided that such transfer is made during the period commencing from the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of that Act and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (g**a**) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);

(xiii) any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company

in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company :

Provided that—

- (a) all the assets and liabilities of the firm or of the association of persons or body of individuals relating to the business immediately before the succession become the assets and liabilities of the company;
 - (b) all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the succession;
 - (c) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and
 - (d) the aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession;
 - (e) the demutualisation or corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (xiiia) any transfer of a capital asset being a membership right held by a member of a recognised stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that recognised stock exchange in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (xiiib) any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 (6 of 2009):

Provided that—

- (a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;
- (b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;
- (c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;
- (d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;
- (e) the total sales, turnover or gross receipts in the business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; [***]

- (ea) the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed five crore rupees; and
- (f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

Explanation.—For the purposes of this clause, the expressions "private company" and "unlisted public company" shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009);

- (xiv) where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset or intangible asset to the company :

Provided that—

- (a) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;
- (b) the shareholding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his shareholding continues to remain as such for a period of five years from the date of the succession; and
- (c) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company;
- (xv) any transfer in a scheme for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934), in this regard;
- (xvi) any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government;
- (xvii) any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor.

Explanation.—For the purposes of this clause, the expression "special purpose vehicle" shall have the meaning assigned to it in the *Explanation* to clause (23FC) of section 10;

- (xviii) any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund:

Provided that the consolidation is of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

Explanation.—For the purposes of this clause,—

- (a) "consolidated scheme" means the scheme with which the consolidating scheme merges or which is formed as a result of such merger;
- (b) "consolidating scheme" means the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(c) "equity oriented fund" shall have the meaning assigned to it in clause (38) of section 10;

(d) "mutual fund" means a mutual fund specified under clause (23D) of section 10;

(xix) any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund.

Explanation.—For the purposes of this clause,—

(a) "consolidating plan" means the plan within a scheme of a mutual fund which merges under the process of consolidation of the plans within a scheme of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(b) "consolidated plan" means the plan with which the consolidating plan merges or which is formed as a result of such merger;

(c) "mutual fund" means a mutual fund specified under clause (23D) of section 10.]

Withdrawal of exemption in certain cases.

47A. (1) Where at any time **before the expiry of a period of eight years** from the date of the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47,—

- (i) such **capital asset is converted by the transferee company into, or is treated by it as, stock-in-trade of its business;** or
- (ii) the **parent company or its nominees or, as the case may be, the holding company ceases or cease to hold the whole of the share capital** of the subsidiary company,

the amount of **profits or gains arising from the transfer** of such capital asset **not charged** under section 45 by virtue of the provisions contained in clause (iv) or, as the case may be, clause (v) of section 47 shall, notwithstanding anything contained in the said clauses, be **deemed to be income chargeable under the head "Capital gains" of the previous year in which such transfer took place.**

(2) Where at any time, **before the expiry of a period of three years from the date of the transfer of a capital asset referred to in clause (xi) of section 47,** any of the shares allotted to the transferor in exchange of a membership in a recognised stock exchange are transferred, the amount of profits and gains not charged under section 45 by virtue of the provisions contained in clause (xi) of section 47 shall, notwithstanding anything contained in the said clause, be **deemed to be the income chargeable under the head "Capital gains" of the previous year in which such shares are transferred.**

(3) Where any of the **conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 are not complied with,** the amount of profits or gains arising from the transfer of such capital asset or intangible asset not charged under section 45 by virtue of conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 shall be **deemed to be the profits and gains chargeable to tax of the successor company** for the previous year in which the requirements of the proviso to clause (xiii) or the proviso to clause (xiv), as the case may be, are not complied with.

(4) Where any of the **conditions laid down in the proviso to clause (xiib) of section 47 are not complied with,** the amount of profits or gains arising from the transfer of such capital asset or intangible assets or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be **deemed to be the profits and gains** chargeable to tax of the **successor limited liability partnership** or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.

Part AL**Depreciable assets - 50****Problem 1 (depreciable assets) (CG ID 59)**

Details regarding the opening WDV, additions the year and deletions during the year of 5 block of assets are given below. You are required to compute depreciation or capital gain/ loss for the purpose of income-tax:-

Block	Category of asset	Rate	Opening WDV	Assets put to use for less than 180 days	Assets put to use for 180 days or more	Sold during the year
A.	Building	5%	4,00,000	-	1,00,000	-
B.	Building	10%	12,50,000	2,50,000	-	-
C.	Furniture	10%	2,00,000	-	75,000	-
D.	Motor car	15%	3,00,000	50,000	-	3,10,000
E.	Machinery	15%	4,00,000	-	2,20,000	7,50,000

In respect of Block D above the entire assets in that block is sold during the year and expenses on transfer is Rs. 15,000. In respect of Block E above there are still some assets remaining in that block and expenses incurred for transfer is Rs. 20,000/-

Answer / Notes :-

Bare Act Provisions

Special provision for computation of capital gains in case of depreciable assets.

50. Notwithstanding anything contained in clause (42A) of section 2, where the **capital asset is an asset forming part of a block of assets** in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), the provisions of sections 48 and 49 shall be subject to the following modifications :—

- (1) where the **full value of the consideration received** or accruing as a result of the transfer of the asset together with the full value of such consideration received or accruing as a result of the transfer of any other capital asset falling within the block of the assets during the previous year, **exceeds the aggregate of the following amounts**, namely :—
- (i) expenditure incurred wholly and exclusively in connection with such transfer or transfers;
 - (ii) the written down value of the block of assets at the beginning of the previous year; and
 - (iii) the actual cost of any asset falling within the block of assets acquired during the previous year,
- such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets;**
- (2) where any **block of assets ceases to exist** as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of assets, acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be **deemed to be the capital gains arising from the transfer of short-term capital assets.**

Provided that in a case where goodwill of a business or profession forms part of a block of asset for the assessment year beginning on the 1st day of April, 2020 and depreciation thereon has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this section, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43 shall be deemed to be transfer

Special provision for cost of acquisition in case of depreciable asset.

50A. Where the capital asset is an asset in respect of which a deduction on account of depreciation under clause (i) of sub-section (1) of section 32 has been obtained by the assessee in any previous year, the provisions of sections 48 and 49 shall apply subject to the **modification that the written down value**, as defined in clause (6) of section 43, of the asset, **as adjusted, shall be taken as the cost of acquisition of the asset.**

Part AM**Slump Sale / Sale of Business – 50B****Question 1 (slump sale) (CG ID 20)**

Your client, A Ltd. has two industrial undertakings-one engaged in production of audio music CDs and cassettes and the other engaged in production of video CDs. As a restructuring drive, the company has decided to sell its undertaking producing video CDs as a going concern by way of slump sale for Rs. 500 lakhs (Fair Value 450 Lakhs) to new company called T Ltd., in which it holds 75% equity shares. The balance sheet of A Ltd. as on 31-3-PY reads as follows: (Rs. In lakhs)

	Audio Unit	Video Unit
Fixed assets	150	225
Debtors	150	112.5
Inventories	75	37.5
Liabilities	42	75
Paid up share capital		Rs. 378 lakhs
General Reserve		Rs. 222 lakhs
Share premium		Rs. 33 lakhs
Revaluation Reserve		Rs. 140 lakhs

The company set up the video unit on 1-4-2005. The written down value of the block of assets for tax purposes as on 31-3-PY is Rs. 200 lakhs of which Rs. 85 lakhs (including goodwill of business acquired by means of purchase 5 Lakhs and other goodwill of business 3 Lakhs) are attributable to video unit.

- (i) Determine the capital gains which would arise to A Ltd. from slump sale;
- (ii) Suggest modification of the restructuring plan of A Ltd. without changing the amount of consideration so as to make it more tax efficient.

Question 3 (slump sale) (CG ID 66)

X Ltd. has two units — one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for Rs. 350 Lakhs (Fair Value Rs. 385 lakhs) to a new company called S Ltd., in which it holds 74 per cent equity shares.

The balance sheet of X Ltd. as on March 31, being the date on which software unit has been transferred, is given hereunder -

Liabilities	Rs. In lakh	Assets	Rs. In lakh
Paid up share capital	300	Fixed assets (hardware unit)	170
General reserve	150	Fixed assets (software unit)	200
Share premium	50	Debtors (hardware unit)	140
Revaluation reserve	120	Debtors (software unit)	110
Current liabilities (hardware unit)	40	Inventories (hardware unit)	95
Current liabilities (software unit)	90	Inventories (software unit)	35
	0750		75

The following additional information is available —

1. The Software unit is in existence since May 2011. Fixed assets of software unit include land which was purchased at Rs. 40 lakh in the year 2008 and revalued at Rs. 60 lakh as on March 31, 2015.
2. Fixed assets of software unit mirrored at Rs. 140 lakh (Rs. 200 lakh minus land value Rs. 60 lakh) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) is Rs. 90 lakh (including goodwill of business acquired by means of purchase 7 Lakhs and other goodwill of business 5 Lakhs).

Ascertain the tax liability, which would arise from slump sale to S Ltd. What would be your advice as a tax consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration?

Question 2 (slump sale) (CG ID 21) (Revision / Home work)

Axel Ltd. has two industrial undertakings. Unit-I is engaged in the production of television sets and Unit-II is engaged in the production of refrigerators. The company has, as part of its restructuring program, decided to sell Unit-II as a going concern by way of slump sale for Rs. 200 Lakhs (Fair Value Rs. 260 lakhs) to a new company called Gamma Ltd., in which it holds 85% equity shares. The following is the extract of the balance sheet of Axel Ltd. as on 31-3-PY: (Rs. In lacs)

	Unit-1	Unit-II
Fixed Assets	112	158
Debtors	88	67
Inventories	60	23
Liabilities	33	45
Paid-up share capital Rs. 231 lacs		
General Reserve Rs. 160 lacs		
Share Premium Rs. 39 lacs		
Revaluation Reserve Rs. 105 lacs		

The company set up Unit-II on 1-4-2006. The written down value of the block of assets for tax purpose as on 31-3-PY is Rs. 150 lacs of which Rs. 60 lacs are attributable of Unit-II. Determine what would be the capital gains of Axel. Ltd. on account of Slump sale.

Bare Act Provisions

19AA

Explanation 6.— For the purposes of this clause, the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and the resulting company—

(i) is a public sector company on the appointed day indicated in such scheme, as may be approved by the Central Government or any other body authorised under the provisions 18 of 2013. of the **Companies Act, 2013** or any other law for the time being in force governing such public sector companies in this behalf; and

(ii) fulfils such other conditions as may be notified by the Central Government in the Official Gazette in this behalf;

(42C) "slump sale" means the **transfer of one or more undertaking, by any means,** for a **lump sum consideration without values being assigned to the individual assets and liabilities** in such **transfer**.

Explanation 1.—For the purposes of this clause, "undertaking" shall have the meaning assigned to it in *Explanation 1* to clause (19AA).

Explanation 2.—For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities ;

Explanation 3.—For the purposes of this clause, "transfer" shall have the meaning assigned to it in clause (47);

Special provision for computation of capital gains in case of slump sale.

50B. (1) Any profits or gains arising from the **slump sale** effected in the previous year shall be chargeable to income-tax as **capital gains arising from the transfer of long-term capital assets** and shall be deemed to be the income of the previous year in which the transfer took place :

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee **for not more than thirty-six months** immediately preceding the date of its **transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.**

(2) In relation to capital assets being an **undertaking or division** transferred by way of such slump sale,—

(i) the “net worth” of the undertaking or the division, as the case may be, shall be **deemed to be the cost of acquisition and the cost of improvement** for the purposes of sections 48 and 49 and **no regard shall be given to the provisions contained in the second proviso to section 48;**

(ii) **Fair market value of the capital assets** as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form **a report of an accountant as defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB**, indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, “net worth” shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account :

Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

Explanation 2.—For computing the net worth, the aggregate value of total assets shall be,—

- (a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43;
- (aa) **in the case of capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner, nil;**
- (b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, *nil*; and
- (c) in the case of other assets, the book value of such assets.

See rule 6H and Form No. 3CEA. Under proviso to rule 12(2) audit report shall be furnished electronically.

Part AN**Stamp Duty Valuation – 50C****Question 2 (stamp duty) (CG ID 18)**

A piece of land owned by Mr. Mishra located on Jaipur-Delhi highway was acquired by NHAI in the F.Y. 2006-07, but the award ordered in F.Y. 2007-08 was paid in the previous year. This land was purchased by him on 2-4-1977 for Rs. 1,000. The fair market value of the land on 1-4-2001 was Rs. 900. Stamp duty value of this land on 1-4-2001 is 890. Compensation paid was Rs. 5,00,000.

The other piece of land located in Chennai purchased in April 2005 for Rs. 25,00,000 was also sold by him in February-PY for Rs. 70,00,000, but sale deed therefore could not be executed by 31-3-PY. The value for the purpose of stamp duty applied by the stamp valuation authority was Rs. 80,00,000. Compute the income chargeable to tax arising as a result of these transactions.

Question 4 (stamp duty) (CG ID 65)

X transfers his residential house to Y for Rs. 10 lakh on April 1, The value of the said house as per stamp duty regulations is Rs. 16 lakh. Y is a childhood friend of X.

Further, X gifts a plot of land (purchased by him on August 1, 2011) to Y on July 1 PY, The value as per stamp duty regulations is Rs. 8 lakh. Y sells the land on March 1, at Rs. 14 lakh.

Compute the income of Y chargeable under the heads “Capital gains” and “Income from other sources”.

Question 1 (stamp duty) (Revision / Home work) (CG ID 01)

X owns a piece of land situated in Noida (date of acquisition: March 1, 1983, cost of acquisition: Rs. 19,291 value adopted by Stamp duty authority at the time of purchase: Rs. 45,000). On March 30, the piece of land is transferred for Rs. 4 lakh.

1. The value adopted by Stamp duty authority is Rs. 5.5 lakh. X does not dispute it.
2. The value adopted by the Stamp duty authority is Rs. 5.75 lakh. X files an appeal under the Stamp Act and Stamp duty valuation has been reduced to Rs. 4.90 lakh by the Allahabad High Court.
3. The value adopted by the Stamp duty authority is Rs. 5.60 lakh. X does not challenge it under the Stamp Act However, he claims before the Assessing officer that Rs. 5.60 lakh is more than the fair market value of the land. The Assessing Officer referred it to the Valuation Officer who determines Rs. 5.25 lakh as fair market value.
4. In situation (3), suppose the value adopted by the Valuation Officer is Rs. 6.10 lakh.

Question 3 (stamp duty) (Revision / Home work) (CG ID 19)

'X', purchased on 18-6-1982, house property for Rs. 2,25,000 which was sold to A on 18-10-PY for Rs. 8,75,000. The sub-registrar, at the time of registration of sale deed, charged stamp duty on Rs. 13,50,000 which was paid by the buyer. The Assessing Officer while assessing for capital gain referred the matter to the valuation officer who determined the value of property at Rs. 15,00,000 on the date of transfer. X seeks your advice on the following:

- (i) Is the Assessing Officer correct to charge capital gain on the value of Rs. 15,00,000 as determined by valuation officer?
- (ii) The amount of capital gain on which 'X' is required to pay capital gains tax.

Bare Act Provisions

Special provision for full value of consideration in certain cases.

50C. (1) Where the consideration received or accruing as a result of the **transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government** (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be **deemed to be the full value of the consideration received** or accruing as a result of such transfer :

Provided that where the **date of the agreement fixing the amount of consideration** and the date of registration for the transfer of the capital asset are **not the same**, the value adopted or assessed or assessable by the stamp valuation authority **on the date of agreement may be taken** for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case **where the amount of consideration, or a part thereof, has been received** by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a **bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer.**]

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does **not exceed one hundred and ten per cent of the consideration received** or accruing as a result of the transfer, the **consideration so received** or accruing as a result of the transfer shall, for the purposes of section 48, be **deemed to be the full value of the consideration.**

(2) Without prejudice to the provisions of sub-section (1), where—

- (a) the **assessee claims before any Assessing Officer** that the **value adopted** or assessed or assessable by the stamp valuation authority under sub-section (1) **exceeds the fair market** value of the property as on the date of transfer;
- (b) the **value so adopted** or assessed or assessable by the stamp valuation authority under sub-section (1) has **not been disputed** in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the **Assessing Officer may refer the valuation of the capital asset to a Valuation Officer** and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications,

apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

39. Ins. by the Finance Act, 2016 (w.e.f. 1-4-2017).

Special provision for full value of consideration for transfer of share other than quoted share.

50CA. Where the **consideration received or accruing** as a result of the transfer by an assessee of a capital asset, **being share of a company other than a quoted share, is less than the fair market value of such share** determined in such manner as may be prescribed, the **value so determined** shall, for the purposes of section 48, be **deemed to be the full value of consideration** received or accruing as a result of such transfer.

Provided that the provisions of this section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

Explanation.—*For the purposes of this section, "quoted share" means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.]*

Fair market value deemed to be full value of consideration in certain cases.

50D. Where the **consideration received** or accruing as a result of the transfer of a capital asset by an assessee is **not ascertainable or cannot be determined**, then, for the purpose of computing income chargeable to tax as capital gains, the **fair market value of the said asset on the date of transfer** shall be **deemed to be the full value of the consideration received** or accruing as a result of such transfer.

Part AO

Advance Money Forfeited - 51

Question 2 (specific computations, advance money) (CG ID 15)

R received a house in may, 2010 by way of Gift from Mr. G who had purchased the same in April, 1979 for Rs. 7,00,000. The cost of improvements incurred by G were Rs. 2,55,000 in March, 2000 and Rs. 3,40,000 in November, 2008. The fair market value of the house as on 1-4-2001 was Rs. 9,50,000. Stamp duty value of the house as on 1-4-2001 9,14,000. Before this house was gifted to R, G had received an advance of Rs. 3,00,000 in March, 2006 towards sale of this house from S but the sale did not materialize and the advance was forfeited by G. the house was sold and registered by R on 12th March PY for Rs. 38,00,000 when the stamp duty value is 48,00,000. However advance money of 125,000 for the house was taken in cash on 1st December PY when the stamp duty value was 44,00,000. Assessee claimed before the officer that stamp duty value was excessive and unreasonable and matter was referred to valuation officer by officer, who value the house at 49,00,000. Ascertain the capital gains chargeable to tax.

Answer / Notes :-

Question 1 (specific computations, advance money) (Revision / Home work) (CG ID 14)

R entered into an agreement with G for the sale of his property and received earnest money of Rs. 1,00,000 on 1-4-PY. The balance of Rs. 4,00,000 was to be paid within 3 months, failing to which R was entitled to a compensation of Rs. 50,000. The earnest money was also liable to be forfeited. G defaulted in the payment of the business within the time specified and, therefore, the earnest money was forfeited. A suit was also filed for breach of contract and Rs. 50,000 was awarded, which was received on 24-3-PY. Discuss the nature of the two receipts from the point of view of liability to tax.

Question 3 (specific computations, advance money) (Revision / Home work) (CG ID 89)

Mr. Ramesh purchased a plot of land in Chennai in June 2005 for 50 lakhs. He decided to sell the property to Mr. Mahesh for 80 lakhs and received an advance of 2 lakhs in May, 2009. Mr. Mahesh was unable to complete the agreement and hence, the entire advance was forfeited by Mr. Ramesh.

Again Mr. Ramesh entered into an agreement to sell the property to Mr. Rakesh for 95 lakhs and received advance money of 2.50 lakhs in August, 2014. But again the transfer did not materialise due to which the advance money was again forfeited.

On 4th January, 2015, the property was finally sold to Mr. Mukesh for 105 lakhs and the stamp duty value on that date was 125 lakhs.

He acquired a new residential property for 130 lakhs by investing entire sale consideration and his business income.

Bare Act Provisions

Advance money received.

51. Where any capital asset was on any **previous occasion** the **subject of negotiations** for its transfer, any **advance or other money received** and retained by the assessee in respect of such negotiations **shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value**, as the case may be, in computing the cost of acquisition :

Provided that where any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset, **has been included in the total income** of the assessee for any previous year in accordance with the provisions of clause (ix) of sub-section (2) of section 56, then, **such sum shall not be deducted from the cost** for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

Part BA**Exemptions from capital gains 54, 54F****Question 1 (exemptions) (CG ID 60)**

Mr. Adhishesha sells his house property, acquired in 1975 for Rs. 2.5 lacs, for a consideration of Rs. 85 lacs in September PY. Cost of improvement incurred for this property in June 2000 was Rs. 9 lacs and in July 2006 Rs. 2.8 lacs. Expenses incurred for effecting sale is Rs. 1 lac. He acquired a new house property during January PY for a consideration of Rs. 9.2 lacs at Mumbai and for 12 lakhs at Kanpur. Compute the taxable capital gains by assuming that the fair market value as on 1.4.2001 at Rs. 10 lakhs.

Question 2 (exemptions) (CG ID 61)

Compute the net taxable capital gains of Smt. Megha on the basis of the following information:

A house was purchased on 1.05.1999 for Rs. 4,50,000 and was used as residence by the owner. The owner had contracted to sell this property in June, 2009 for Rs. 10 lacs and had received an advance of Rs. 70,000 towards sale. The intending purchaser did not proceed with the transaction and the advance was forfeited by the owner. The property was sold in April, for Rs. 15,00,000. The owner, out of the sale proceeds, invested Rs. 4 lacs in a new residential at Mumbai and Rs. 6 Lakhs in a residential house at Delhi in 9 months of sale.

Question 3 (exemptions) (CG ID 23)

R owns one residential house at Bangalore which is self-occupied and also a house plot at pune. He sells the house on 31-1-PY and the house plot on 15-2-PY for Rs. 20,00,000 and Rs. 9,00,000 respectively. The house was purchased for Rs. 4,00,000 (indexed cost 9,00,000) and the plot for Rs. 2,00,000 (indexed cost 3,00,000) few years back. R has purchased one new residential house on 25-4-PY for Rs. 15,00,000.

- a) Compute the income chargeable under the head 'Capital gains'.
- b) Compute the income chargeable under the head 'Capital gains' if the investment of 15,00,000 is made in two residential houses instead of one and amount 7,50,000 each.
- c) Compute the income chargeable under the head 'Capital gains' if the investment of 15,00,000 is made in two residential houses instead of one and amount 7,50,000 each on 15-03-PY.

Question 4 (exemptions) (CG ID 26)

R was the owner of two residential houses. On 2-4-PY he disposed one of the house and utilized the entire sale proceeds to construct first floor on his second house which he completed by 15-3-PY. He seeks your advice as to the taxability of transaction to capital gains under the provisions of Income-tax Act, 1961. Discuss.

Question 5 (exemptions) (CG ID 27)

X has acquired a residential house property in Delhi on April 1, 2000 for Rs. 10,00,000 and decided to sell the same on May 3, 2003 to Ms. P and an advance of Rs. 25,000 was taken from her. The balance money was not paid by Ms. P and X has forfeited the entire advance sum. On June 3, PY, he has sold this house to Y for Rs. 50,00,000. In the meantime on April 4, PY, he had purchased a residential house in Delhi for Rs. 8,00,000 where he was staying with his family on rent for the last 5 years and paid the full amount as per the purchase agreement. However, X does not possess any legal title till March 31, as such transfer was not registered with the registration authority.

X has purchased another old house in Chennai on October 14, PY from Z, an Indian resident by paying Rs. 5,00,000 and purchase was registered with the appropriate authority.

Determine the taxable capital gain arising from above transactions in the hands of X.

Question 8 (exemptions) (CG ID 69)

X enters into a partnership with three other persons on July 1, to start a manufacturing business.

The following capital assets are contributed by X as his capital contribution:

	Land	Gold	Preferences Shares
For market value on the date of transfer X to the firm (i.e., July 1,)	19,00,000	9,00,000	4,00,000
Amount recorded in books of the firm	17,00,000	6,90,000	4,50,000
Holding period	368 months	18 months	13 months
Cost of acquisition	1,500	4,40,000	4,70,000
Fair market value on January 1, 2001	90,000		

On July 31 of assessment year i.e. on last date of filing return of income, he deposits Rs. 13,00,000 in a bank account for purpose of availing exemption under section 54F (he owns one residential house). Construction of a residential house at Bombay is completed on June next year of deposit, Rs. 8,60,000, being the amount of investment, is financed by withdrawing from the deposit account.

Question 6 (exemptions) (Revision / Home work) (CG ID 38)

Mr. X sold a house on 15-6-PY. He deposited the amount of capital gains in “Capital Gains Account Scheme” on 30-6-PY. He booked a flat from the said amount on 30-9-PY. The flats cost was equal to the capital gains. Hence he claimed exemption under section 54. Thereafter, Mr. X paid the whole amount towards cost of flat before end of year. But the builder was not able to finish the construction of the building and hence the builder was unable to give possession of the flat in 5 years time from sale of old house. Discuss the liability of capital gains tax.

Question 7 (exemptions) (Revision / Home work) (CG ID 39)

Mr. A owns a residential house at C.G. Road. His two married sons are also staying with him. To meet the need for larger area, he sells C.G. Road Flat and purchases three adjoining flat at Vastrapur in a new building. Whether he can claim exemption under section 54 for all the flats ?

Whether it will make any difference if, the aforesaid three flats are located on different floors ? or are located in different localities ?

Question 9 (exemptions) (Revision / Home work) (CG ID 70)

X acquired a plot of land on June 30, 2001 for Rs. 1,10,000. The funds invested were borrowed at the rate of 9 per cent per annum (the amount was repaid by X on March 31, 1985). X sells the plot of land on June 30, for Rs. 15,00,000. What will be the amount of capital gains? Can X claim deduction of ground rent paid by him ?

Question 10 (exemptions) (Revision / Home work) (CG ID 77)

Residential house property situated at Kolkata	Rs.
Date of transfer	December 30, PY
Date of purchase	June 30, 1992
Sale consideration	30,00,000
Stamp duty value	35,00,000
Cost of acquisition	2,00,000
Expenses on transfer	40,000
Amount deposited in capital gains deposit account scheme on July 20, AY	21,00,000

To get the exemption under section 54, the following residential house property is purchased At Chennai by X by withdrawing from the deposit account -

Date of purchase (after deposit)	June 20,
Cost of acquisition	15,00,000

Find out the following-

1. Capital gain chargeable to tax for different assessment years;
2. X does not want to purchase or construct another property, what is the earliest date when he can withdraw the Unutilized amount from the deposit account; and
3. Is it possible to take back the exemption given under section 54 in a subsequent year.

Question 11 (exemptions) (Revision / Home work) (CG ID 82)

X sells shares in private limited company on July 10, for Rs. 8,05,000 (cost of acquisition on June 15, 1984 : Rs. 60,000, expenses on sale : Rs.5,000). On July 10, PY, he owns one residential house property. To get the benefit of exemption under section 54F, X deposits on July 30, AY Rs. 6,00,000 in Capital Gains Deposit Account Scheme. By withdrawing from the Deposit Account, he purchases a residential house property at Delhi on July 6 , for Rs. 4,80,000.

Ascertain-

1. The amount of capital gain chargeable to tax;
2. Tax treatment of the unutilized amount;
3. When can he withdraw the unutilized amount; and
4. What X has to do to ensure that exemption under section 54F is never taken back.

Bare Act Provisions

Profit on sale of property used for residence.

54. (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an **individual or a Hindu undivided family**, the capital gain arises from the **transfer of a long-term capital asset**, being **buildings or lands appurtenant thereto, and being a residential house**, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the **assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India**, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the **capital gain is greater than the cost of the residential house so purchased** or constructed (hereafter in this section referred to as the new asset), the **difference between the amount of the capital gain and the cost of the new asset shall be charged** under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its **transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil**; or
- (ii) if the amount of the **capital gain is equal to or less than the cost of the new asset**, the **capital gain shall not be charged** under section 45; and for the purpose of computing in respect of the new asset any **capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain**.

Following provisos shall be inserted after clause (ii) of sub-section (1) of section 54 by the Finance Act, 2019, w.e.f. 1-4-2020 :

*Provided that where the amount of the capital gain does not exceed two crore rupees, the assessee may, **at his option**, purchase or construct **two residential houses in India**, and where such option has been exercised,—*

- (a) *the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "**two residential houses in India**" had been substituted;*
- (b) *any reference in this sub-section and sub-section (2) to "new asset" shall be construed as a reference to the **two residential houses in India**;*

*Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, **he shall not be subsequently entitled to exercise the option** for the same or any other assessment year.*

(2) The amount of the capital gain which is **not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place**, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be **deposited by him before furnishing such return** [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] **in an account** in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be **accompanied by proof of such deposit**; and, for the purposes of sub-section (1), the amount, if any, **already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset** :

Provided that if the amount **deposited under this sub-section is not utilised wholly or partly** for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

- (i) the **amount not so utilised shall be charged under section 45** as the income of the **previous year in which the period of three years from the date of the transfer of the original asset expires**; and
- (ii) the assessee shall be entitled to **withdraw such amount in accordance with the scheme aforesaid**.

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]

Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

54F. (1) Subject to the provisions of sub-section (4), where, in the case of an **assessee being an individual or a Hindu undivided family**, the capital gain arises from the transfer of **any long-term capital asset, not being a residential house** (hereafter in this section referred to as the original asset), and the assessee has, **within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India** (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the **cost of the new asset is not less than the net consideration** in respect of the original asset, the whole of such **capital gain shall not be charged** under section 45 ;
- (b) if the **cost of the new asset is less than the net consideration** in respect of the original asset, so much of the **capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration**, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where—

- (a) the assessee,—
 - (i) **owns more than one residential house, other than the new asset**, on the date of transfer of the original asset; or
 - (ii) **purchases any residential house, other than the new asset**, within a period of one year after the date of transfer of the original asset; or
 - (iii) **constructs any residential house, other than the new asset**, within a period of three years after the date of transfer of the original asset; and
- (b) the **income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property"**.

Explanation.—For the purposes of this section,—

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, **within the period of two years** after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", **other than the new asset**, the amount of **capital gain arising from the transfer of the original asset not charged** under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be **deemed to be income chargeable** under the head "Capital gains" relating to long-term capital assets of the **previous year in which such residential house is purchased or constructed**.

(3) Where the **new asset is transferred within a period of three years** from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) **shall be deemed to be income chargeable under the head "Capital gains"** relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the **net consideration which is not appropriated by the assessee towards the purchase of the new asset** made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall **be deposited by him before furnishing such return** [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is **not utilised wholly or partly** for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount by which—

(a) the amount of **capital gain arising from the transfer of the original asset not charged** under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds

(b) the **amount that would not have been so charged had the amount actually utilised** by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be **entitled to withdraw the unutilised amount in accordance with the scheme** aforesaid.

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]

Part BB**Exemption from Agricultural Land - 54B****Question 1 (exemptions) (CG ID 68)**

During the previous year ending on March 31, X sells the following :

	Date Sale (PY)	sale proceeds	Cost of acquisition	Year of purchase	Fair market Value on April 1, 2001
Preference shares	April 10,	4,90,000	1,00,000	2003-04	1,80,000
Agriculture land 1 (situated in 1 km limit of Mumbai and population is 5,000)	May 25,	30,00,000	2,30,000	1973-74	3,40,000
Agriculture land 2 (situated in 1 km limit of Mumbai and population is 8,00,000)	June 10,	49,00,000	6,17,250	2006-07	2,00,000
Debentures (listed)	April 10,	3,17,900	2,30,615	1993-94	1,80,000
Personal car	July 1,	1,25,000	70,000	1986-87	NA

On July 31, (being the due date of furnishing return of income), X deposits Rs. 1,00,000 under section 54B for claiming exemption in future by purchasing agriculture land 3 situated in jurisdiction of municipality having population of 5000 persons by withdrawing from the deposit account, Rs. 70,000 till January 9 of assessment year. Agricultural land 3 is sold for 75,000 in just 2 months after its acquisition.

Question 2 (exemptions) (CG ID 75) (Revision / Home work)

X owned 5 acres of agriculture land within the city limits of Madras which he had purchased on October 1, 1982 for Rs. 5,00,000. On October 1, he sold the agriculture land for Rs. 70,00,000. On January 1, he purchased a coffee estate for Rs. 20,00,000. The coffee estate was in a remote village and the nearest town was about 20 kilometers away from the estate. On February 28 of next year, he sold the coffee estate for Rs.35,00,000. You are required to compute the income chargeable under the head “Capital gains”. what would be your answer if the coffee estate was situate within the city limits of Ooty?

Question 2 (exemptions) (CG ID 78) (Revision / Home work)

X sells agriculture land in Calcutta for Rs. 70,73,960 on July 1, which was purchased by him in 1982-83 for Rs. 6,80,000 (FMV as on 01-04-2001 is 600,000). On July 13, he purchases agriculture land of Rs. 40,000 in Delhi. On July 30, AY, he deposits Rs.3,90,000 in the Deposit Account. Determine the amount of exemption under section 54B.

Bare Act Provisions

Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.

54B. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the **two years immediately preceding the date** on which the transfer took place, was being used by the **assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes** (hereinafter referred to as the original asset), and the assessee has, within a period of **two years** after that date, **purchased any other land for being used for agricultural purposes**, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the **capital gain is greater than the cost of the land so purchased** (hereinafter referred to as the new asset), the **difference between the amount of the capital gain and the cost of the new asset shall be charged** under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be *nil*; or
- (ii) if the amount of the **capital gain is equal to or less than the cost of the new asset**, the **capital gain shall not be charged under section 45**; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.

(2) The amount of the **capital gain which is not utilised by the assessee** for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such **deposit being made in any case not later than the due date** applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

- (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]

Part BC**Exemption Industrial Units / Undertakings - 54D / 54G / 54GA****Question 1 (exemptions) (CG ID 24)**

X Ltd. located within the corporation limits decided in December-PY to shift its industrial undertaking to non-urban area. The company sold some of the assets and acquired new assets in the process of shifting. The relevant details are as follows:

Particulars	(Rs. In lakhs)			
	Land	Bldg.	P/M	Fur.
(i) Sale proceeds (Sale effected in March,-PY)	8	18	16	3
(ii) Indexed cost acquisition	4	10	12	2
(iii) Cost of acquisition in terms of section 50	1	4	5	2
(iv) Cost of new assets purchased in specified time limit for the purpose of business in the new place	4	7	17	2

During the process of shifting X Ltd has incurred transportation, uninstallation and re-installation expense on shifting of some of its old plant and machinery to new location, amount 50,000 Rs.

Compute the capital gains of R Ltd.

Question 2 (exemptions) (CG ID 79)

X Ltd., a manufacturing company, purchases a factory building (constructed on a leasehold land) on May 6, 1998 for Rs.20 lakh (prior to this the company used the same building as a tenant for about 5 years). The building is compulsory acquired by the Government on April 20, for which a sum of Rs. 60 lakh is paid as compensation on March 14,. Compute the amount of capital gain chargeable to tax taking into consideration the following information-

1. On April 1, the company owns two buildings (rate of depreciation : 10 per cent) one of which is acquired by the Government. The depreciated value of the block on April 1, is Rs. 21.35 lakh.
2. The company purchases the factory building (constructed on a leasehold land) on April 6, AY for Rs. 15 lakh. Does it make difference if the factory building is purchased on March 31,?

Residential House to Corporate Plant and Machinery – 54GB**Question 1 (exemptions) (CG ID 64)**

X purchased a residential house in June 2001 for Rs. 22 lakh. He transfers the house on December 1, PY for Rs 100 lakh. He pays brokerage a 2 percent on sale price. He invests Rs. 80 lakh in April of AY in equity shares of X (Pvt.) Ltd, a newly formed company which qualifies to be technology driven start-up so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the Official Gazette. X is a shareholder in the company and holds 30 per cent of share capital.

The company utilises the sum of Rs. 80 lakh in the following manner:

1. Purchase of new computer and software 12-April AY: Rs. 60 lakh
2. Purchase of cars Rs. 10 lakh on 20-April AY
3. Deposit in specified bank on September 25, AY : Rs. 10 lakh.

The due date for filing return of income for X for assessment year September 30,. Assume that he files the return on September 28, on time. Compute the taxable capital gain. X (Pvt.) Ltd has transferred the software after 4 years of its use.

Question 2 (exemptions) (CG ID 83)

X, an individual, has income from salary and house property. Besides, he owns a business whose annual turnover is not more than Rs. 25 lakh. On May 14, he transfers a residential house property (or a residential plot of land) for Rs. 1,05,00,000 (expenses on transfer incurred by X : Rs. 3,00,000, indexed cost of acquisition : Rs. 14,60,000, year of acquisition : 1992-93, indexed cost of improvement : Rs. 8,15,000). Stamp duty value is Rs. 1,24,00,000 on which the purchaser pays stamp duty.

X Ltd. is incorporated on December 1, for manufacture or production of chemicals in Andhra Pradesh. There are 10 shareholders in X Ltd. X is one of the shareholders. He holds 31 per cent shares (date of subscription of shares in X Ltd: December 10, total investment by X in shares of X Ltd. : Rs.85,00,000). Out of Rs.85,00,000, the company makes the following investments-

Date	Investment	Amount
March 1,	New plant and machinery	40,00,000
July 1, AY	New plant and machinery	6,00,000
July 10, AY	Old plant and machinery	10,00,000
July 31, AY	Amount deposited in capital gain deposit account (CGDA 1)	25,00,000
August 1, AY	Amount deposited in capital gain deposit account (CGDA 2)	4,00,000
December 8, AY	New plant and machinery (purchased by withdrawing from CGDA 1)	22,50,000
December 12, AY	New plant and machinery (purchased by withdrawing from CGDA2)	2,50,000

Find out the amount of exemption under section 54GB.

Bare Act Provisions

Capital gain on compulsory acquisition of lands and buildings not to be charged in certain cases.

54D. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of **compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking belonging to the assessee** which, in the **two years immediately** preceding the date on which the transfer took place, was being **used by the assessee for the purposes of the business** of the said undertaking (hereafter in this section referred to as the original asset), and the assessee has **within a period of three years after** that date **purchased** any other land or building or any right in any other land or building or constructed any other building for the purposes of shifting or re-establishing the said undertaking or setting up another industrial undertaking, then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the **capital gain is greater than the cost of the land, building or right so purchased** or the building so constructed (such land, building or right being hereafter in this section referred to as the new asset), the **difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45** as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be *nil*; or
- (ii) if the amount of the **capital gain is equal to or less than the cost of the new asset**, the **capital gain shall not be charged under section 45**; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such **deposit being made in any case not later than the due date** applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

- (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]

Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area.

54G. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the **transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area**, effected in the course of, or in consequence of, the **shifting of such industrial undertaking** (hereafter in this section referred to as the original asset) **to any area (other than an urban area)** and the assessee has within a **period of one year before or three years after** the date on which the transfer took place,—

- (a) purchased new machinery or plant for the purposes of business of the industrial undertaking in the area to which the said undertaking is shifted ;
- (b) acquired building or land or constructed building for the purposes of his business in the said area ;
- (c) shifted the original asset and transferred the establishment of such undertaking to such area; and
- (d) incurred expenses on such other purpose as may be specified in a scheme framed by the Central Government for the purposes of this section,

then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the **capital gain is greater than the cost and expenses incurred in relation to all or any** of the purposes mentioned in clauses (a) to (d) (such cost and expenses being hereafter in this section referred to as the new asset), the **difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45** as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be *nil* ; or
- (ii) if the amount of the **capital gain is equal to, or less than, the cost of the new asset**, the **capital gain shall not be charged under section 45** ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation.—In this sub-section, "urban area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order, declare to be an urban area for the purposes of this sub-section.

(2) The amount of **capital gain which is not appropriated by the assessee** towards the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) of sub-section (1) within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for all or any of the purposes **aforsaid before the date of furnishing the return of income** under section 139, shall be **deposited by him** before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any **such bank or institution as may be specified** in,

and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for all or any of the purposes aforesaid together with the amount, so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for all or any of the purposes mentioned in clauses (a) to (d) of sub-section (1) within the period specified in that sub-section, then,—

- (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]

Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area to any Special Economic Zone.

54GA. (1) Notwithstanding anything contained in section 54G, where the capital gain arises from the **transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area**, effected in the course of, or in consequence of the **shifting of such industrial undertaking to any Special Economic Zone**, whether developed in any urban area or any other area and the assessee has within a period of one year before or three years after the date on which the transfer took place,—

- (a) purchased machinery or plant for the purposes of business of the industrial undertaking in the Special Economic Zone to which the said undertaking is shifted;
- (b) acquired building or land or constructed building for the purposes of his business in the Special Economic Zone;
- (c) shifted the original asset and transferred the establishment of such undertaking to the Special Economic Zone; and
- (d) incurred expenses on such other purposes as may be specified in a scheme framed by the Central Government for the purposes of this section,

then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall, subject to the provisions of sub-section (2), be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the **capital gain is greater than the cost and expenses** incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) (such cost and expenses being hereafter in this section referred to as the new asset), the **difference between the amount of the capital gain and the cost of the new asset shall be charged** under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be *Nil*; or
- (ii) if the amount of the **capital gain is equal to, or less than, the cost of the new asset**, the **capital gain shall not be charged under section 45**, and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation.—In this sub-section,—

- (a) "Special Economic Zone" shall have the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;
 - (b) "urban area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order, declare to be an urban area for the purposes of this sub-section.
- (2) The amount of **capital gain which is not appropriated by the assessee** towards the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) of sub-section (1)

within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for all or any of the purposes aforesaid **before the date of furnishing the return of income** under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account **in any such bank or institution as may be specified** in, and utilised in accordance with, any scheme which the Central Government may, by notification, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for all or any of the aforesaid purposes together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for all or any of the purposes mentioned in clauses (a) to (d) of sub-section (1) within the period specified in that sub-section, then,—

- (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Capital gain on transfer of residential property not to be charged in certain cases

54GB. (1) Where,—

- (i) the capital gain arises from the transfer of a **long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee (herein referred to as the assessee);** and
- (ii) the assessee, **before the due date of furnishing of return** of income under sub-section (1) of section 139, **utilises the net consideration for subscription in the equity shares of an eligible company** (herein referred to as the company); and
- (iii) the **company has, within one year from the date of subscription** in equity shares by the assessee, **utilised this amount for purchase of new asset,**

then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer takes place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the amount of the **net consideration is greater than the cost of the new asset,** then, so much of the **capital gain as it bears to the whole of the capital gain the same proportion** as the cost of the new asset bears to the net consideration, shall not be charged under section 45 as the income of the previous year; or
 - (b) if the **amount of the net consideration is equal to or less than the cost of the new asset,** the **capital gain shall not be charged under** section 45 as the income of the previous year.
- (2) The amount of the net consideration, which has been received by the company for issue of shares to the assessee, **to the extent it is not utilised by the company for the purchase of the new asset** before the due date of furnishing of the return of income by the assessee under section 139, **shall be deposited by the company, before the said due date in an account in any such bank or institution** as may be specified and shall be utilised in accordance with any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and the return furnished by the assessee shall be accompanied by proof of such deposit having been made.
- (3) For the purposes of sub-section (1), the amount, if any, **already utilised by the company** for the purchase of the new asset together with the amount deposited under sub-section (2) shall be **deemed to be the cost of the new asset:**

Provided that if the amount **so deposited is not utilised,** wholly or partly, for the purchase of the new asset within the period specified in sub-section (1), then,—

- (i) the amount by which—
 - (a) the **amount of capital gain arising from the transfer of the residential property not charged** under section 45 on the basis of the cost of the new asset as provided in sub-section (1), **exceeds—**
 - (b) the **amount that would not have been so charged** had the amount actually utilised for the purchase of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the assessee for the previous year in which the period of one year from the date of the subscription in equity shares by the assessee expires; and

(ii) the company shall be entitled to withdraw such amount in accordance with the scheme.

(4) If the **equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition**, the amount of capital gain arising from the transfer of the residential property not charged under section 45 as provided in sub-section (1) shall be **deemed to be the income of the assessee** chargeable under the head "Capital gains" of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be.

Provided that in case of a new asset, being computer or computer software, acquired by an eligible start-up referred to in the proviso to clause (d) of sub-section (6), the provisions of this sub-section shall have effect as if for the words "five years", the words "three years" had been substituted.

(5) The provisions of this section shall not apply to any transfer of residential property made after the 31st day of March, 2017 :

Provided that in case of an investment in eligible start-up, the provisions of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2017", the figures, letters and words "31st day of March, 2022" had been substituted.

- (6) For the purposes of this section,—
- (a) "eligible assessee" means an individual or a Hindu undivided family;
- (b) "eligible company" means a company which fulfils the following conditions, namely:—
- (i) it is a company incorporated in India during the period from the 1st day of April of the previous year relevant to the assessment year in which the capital gain arises to the due date of furnishing of return of income under sub-section (1) of section 139 by the assessee;
 - (ii) it is engaged in the business of manufacture of an article or a thing or in an eligible business;
 - (iii) it is a company in which the assessee has more than **twenty-five** per cent share capital or more than **twenty-five** per cent voting rights after the subscription in shares by the assessee; and
 - (iv) it is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006 (27 of 2006) or is an eligible start-up;
- (ba) "eligible start-up" and "eligible business" shall have the meanings respectively assigned to them in *Explanation* below sub-section (4) of section 80-IAC;
- (c) "net consideration" shall have the meaning assigned to it in the *Explanation* to section 54F;
- (d) "new asset" means new plant and machinery but does not include—
- (i) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
 - (ii) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house;
 - (iii) any office appliances including computers or computer software;
 - (iv) any vehicle; or
 - (v) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year:

Provided that in the case of an eligible start-up, being a technology driven start-up so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the Official Gazette, the new asset shall include computers or computer software.

Extension of time for acquiring new asset or depositing or investing amount of capital gain.

54H. Notwithstanding anything contained in sections 54, 54B, 54D, 54EC and 54F, where the transfer of the original asset is by **way of compulsory acquisition** under any law and the amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period for acquiring the new asset by the assessee referred to in those sections or, as the case may be, the period available to the assessee under those sections for depositing or investing the amount of capital gain in relation to such **compensation as is not received** on the date of the transfer, shall be **reckoned from the date of receipt of such compensation** :

Provided that where the compensation in respect of transfer of the original asset by way of compulsory acquisition under any law is received before the 1st day of April, 1991, the aforesaid period or periods, if expired, shall extend up to the 31st day of December, 1991.

Part BD**Exemption for Investment in Bonds – 54EC****Question 1 (exemptions) (CG ID 28)**

Mrs. X, resident woman, transfers a house property (received without consideration from her husband in 1991) on January 16,. On the said transaction she earns a long-term capital gain of Rs. 1,01,50,000. She invests a sum of Rs. 50,00,000 in capital gains bonds specified in section 54EC on January 5 out of the advance monies received on account of transfer,. She further invests a sum of Rs. 50,00,000 in the same bonds after 3 months of the first investment in bonds. She has raised Funds of 40,00,000 on the security of above bonds of Value 50,00,000 in the month of March of next year. Her other income for year is Rs. 46,000. Discuss the tax consequence of the above transactions.

Question 2 (exemptions) (CG ID 63)

Ms. X purchased a land at a cost of Rs. 10 lakh in the financial year 2002-03 and held the same as her capital asset till March 31, 2012. Ms. X started her real estate business on April 1, 2012 and converted the said land into stock-in-trade of her business on the said date, when the fair market value of the land was Rs. 150 lakh. She constructed 20 flats of equal size, quality and dimension. Cost of construction of each flat is Rs. 8 lakh. Construction was completed in December PY. She sold 15 flats at Rs. 20 lakh per flat between January and March PY. Remaining 5 flats were held in stock.

She invested Rs. 50 lakh in bonds issued by Rural Electrification Corporation Ltd. on March 31 PY.

Compute the amount of chargeable capital gain and business income in the hands of Ms. X arising from above transactions.

Question 3 (exemptions) (CG ID 29)

XY & CO., a partnership firm, transfers a piece of land situated in Thane district on August 17, for Rs. 80 lakh. The land purchased on March 6, 2000 for Rs. 1 lakh got registered on April 3, 2003 on payment of stamp duty of Rs. 20,000. Expenses on land development and construction of boundary wall incurred in August 2003 were of Rs. 1,50,000. The charges for the transfer of land paid to the broker were 2.5% of the sale consideration. Fair market value of the land as on April 1, 2001 was Rs. 1,50,000. The firm invested Rs. 20 lakh on December 1, in the bonds issued by National Highways Authority of India redeemable after a period of 84 months. Compute the amount of capital gain chargeable to tax. Also give in brief the reasons and the provisions of the Act for each of the items dealt with.

Question 4 (exemptions) (CG ID 76) (Revision / Home work)

X Ltd., an Indian company, had been the owner of a plot of vacant land since 1973 when it had been acquired at a cost of Rs. 10,000. The government compulsorily acquired the plot under the Land Acquisition Act and after the Collector had given his award of compensation on January 2, 2004, took possession thereof immediately. The amount of the award was Rs. 5,00,000 and the fair market value of the plot on April 1, 1981 was Rs.40,000. The amount was duly received by X Ltd. on June 6, 2005, but considering the amount of the compensation awarded as too meager, it filed an appeal to Court. In the appeal decided on June 30, 2014 the High Court increased the amount of the award by Rs.10,00,000 and also ordered payment of interest @ 6 per cent per annum on the increased amount with effect from January 2,2004, the date of the award by the Collector. Such interest up to the date of High Court's order amounted to Rs. 4,50,000. The levy of interest was automatic in accordance with the provisions of section 34 of the Land Acquisition Act. The government appealed to the Supreme Court against the High Court decree, but as directed by the High Court paid both the additional compensation and the interest to X Ltd. in September 2014 after taking a bond from the company promising to refund whatever sum might be held to have been received in excess on the basis of the Supreme Court's decision. X Ltd. approaches you for advise on the following issues:

1. Was there any chargeable surplus as a result of the compulsory acquisition? What is the nature of such surplus?
2. On what date did the surplus arise and in which year did it become assessable?
3. What was the amount of the chargeable surplus?
4. What was the effect of the High Court decree in regard to the assessment already completed? Could the additional compensation be charged to tax in any particular assessment year (to be indicated by you if the answer is in the affirmative?)
5. How is the interest to be treated for taxation purposes? When is it assessable?
6. Can it can be claimed that there being an appeal filed before the Supreme Court, the enhanced compensation or the interest, though actually received cannot be taxed because of the possibility of the Supreme Court reversing or modifying the High Court decree?
7. Is there any legal provision enabling X Ltd. to reduce its liability to tax on the additional compensation or interest?

Give your advice on all the issues stating your reasons.

Question 4 (exemptions) (CG ID 80) (Revision / Home work)

X Ltd. sells the following assets-

	Agriculture land	Bonus shares	House property (let out)
Date of sale	November 30,	January 1,	March 25,
Date of acquisition	May 9, 1993	April 4, 1983	June 6, 1982
Sale consideration	9,00,000	3,50,000	10,00,000
Purchase consideration	70,000	Nil	1,00,000

The agriculture land is situated in urban area and used for agriculture purpose since 1994.

X Ltd. invests in the following assets during April AY-

1. Bonds of the National Highway Authority of India (redeemable 39 months) : Rs. 4,00,000.
2. Bonds (redeemable 60 months) of the Rural Electrification Corporation : Rs.5,00,000.

Find out the capital gains chargeable to tax.

Question 4 (exemptions) (CG ID 81) (Revision / Home work)

X sells the following long-term capital assets on January 11, 2015 -

	Residential house property	Gold	Silver	Diamonds
Sale consideration	3,90,000	8,10,000	2,96,000	6,40,200
Indexed cost of acquisition	70,000	1,15,000	1,78,000	4,30,000
Expenses on transfer	10,000	81,000	6,000	32,000

The due date of filing return of income is July 31,. For claiming exemption under section 54 and 54EC, X purchases the following asset-

Assets	Date of acquisition	Amount Rs.
Land (for constructing a residential house)	March 31,	1,00,000
Bank deposit (for constructing house)	August 5,AY	50,000
Rural Electrification Corporation (redeemable after 33 months)	July 5, AY	7,50,000
Bonds of National Highways Authority of India (redeemable after 54 months)	July 10, AY	3,05,000

Bare Act Provisions

Capital gain not to be charged on investment in certain bonds.

54EC. (1) Where the capital gain arises from the **transfer of a long-term capital asset, being land or building or both**, (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a **period of six months after the date of such transfer**, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the **cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged** under section 45;
- (b) if the **cost of the long-term specified asset is less than the capital gain** arising from the transfer of the original asset, so much of the **capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain**, shall not be charged under section 45 :

Provided that the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees :

Provided further that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, **during the financial year** in which the original asset or assets are transferred **and in the subsequent financial year does not exceed fifty lakh rupees**.

(2) Where the **long-term specified asset is transferred or converted** (otherwise than by transfer) into money at any time within a period of **three years from the date of its acquisition**, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long-term specified asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1) **shall be deemed to be the income chargeable under the head "Capital gains"** relating to long-term capital asset of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money.

Following proviso shall be inserted in sub-section (2) of section 54EC by the Finance Act, 2018, w.e.f. 1-4-2019 :

Provided that in case of long-term specified asset referred to in sub-clause (ii) of clause (ba) of the Explanation occurring after sub-section (3), this sub-section shall have effect as if for the words "three years", the words "five years" had been substituted.

Explanation.—In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have converted (otherwise than by transfer) such specified asset into money on the date on which such loan or advance is taken.

(3) Where the cost of the long-term specified asset has been taken into account for the purposes of clause (a) or clause (b) of sub-section (1),—

- (a) a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88 for any assessment year ending before the 1st day of April, 2006;
- (b) a deduction from the income with reference to such cost shall not be allowed under section 80C for any assessment year beginning on or after the 1st day of April, 2006.

Explanation.—For the purposes of this section,—

- (a) "cost", in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;
- (b) "long-term specified asset" for making any investment under this section during the period commencing from the 1st day of April, 2006 and ending with the 31st day of March, 2007, means any bond, redeemable after three years and issued on or after the 1st day of April, 2006, but on or before the 31st day of March, 2007,—
 - (i) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988); or
 - (ii) by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956),

and notified by the Central Government in the Official Gazette for the purposes of this section with such conditions (including the condition for providing a limit on the amount of investment by an assessee in such bond) as it thinks fit:

Provided that where any bond has been notified before the 1st day of April, 2007, subject to the conditions specified in the notification, by the Central Government in the Official Gazette under the provisions of clause (b) as they stood immediately before their amendment by the Finance Act, 2007, such bond shall be deemed to be a bond notified under this clause;

- (ba) "long-term specified asset" for making any investment under this section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988) or by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956) ⁷⁸[; or any other bond notified by the Central Government in this behalf].

Following clause (ba) shall be substituted for the existing clause (ba) of Explanation to section 54EC by the Finance Act, 2018, w.e.f. 1-4-2019 :

(ba) *"long-term specified asset" for making any investment under this section,—*

- (i) *on or after the 1st day of April, 2007 but before the 1st day of April, 2018, means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 but before the 1st day of April, 2018;*
- (ii) *on or after the 1st day of April, 2018, means any bond, redeemable after five years and issued on or after the 1st day of April, 2018,*

by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988) or by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956) or any other bond notified in the Official Gazette by the Central Government in this behalf.

Capital gain not to be charged on investment in units of a specified fund.

54EE. (1) Where the capital gain arises from the **transfer of a long-term capital asset** (herein in this section referred to as the original asset) and the assessee has, at any time **within a period of six months** after the date of such transfer, **invested the whole or any part of capital gains in the long-term specified asset**, the capital gain shall be dealt with in accordance with the following provisions of this section, namely:—

- (a) if the **cost of the long-term specified asset is not less than the capital gain** arising from the transfer of the original asset, the **whole of such capital gain shall not be charged** under section 45;
- (b) if the **cost of the long-term specified asset is less than the capital gain** arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the **cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged** under section 45:

Provided that the investment made on or after the 1st day of April, 2016, in the long-term specified asset by an assessee **during any financial year does not exceed fifty lakh rupees**:

Provided further that the investment made by an assessee in the long-term specified asset, from capital gains arising from the **transfer of one or more original assets, during the financial year** in which the original asset or assets are transferred **and** in the **subsequent financial year does not exceed fifty lakh rupees**.

(2) Where the **long-term specified asset is transferred by the assessee at any time within a period of three years** from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long-term specified asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1) shall be **deemed to be the income chargeable under the head "Capital gains"** relating to long-term capital asset of the previous year in which the long-term specified asset is transferred.

Explanation 1.—In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee **takes any loan or advance on the security** of such specified asset, he shall be **deemed to have transferred such specified asset** on the date on which such loan or advance is taken.

Explanation 2.—For the purposes of this section,—

- (a) "cost", in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;
- (b) "long-term specified asset" **means a unit or units, issued before the 1st day of April, 2019, of such fund as may be notified by the Central Government in this behalf.**

Part BE
Capital Gains - Others

Question 1 (Others) (CG ID 30)

X had taken a loan of 15 Lakhs under registered mortgage deed dated July 16, 2008 against the house which was purchased by him on March 26, 1982 for Rs. 5 lakh. The said property is inherited by his son A during July of PY. Under Will for obtaining a clear title thereof has paid the outstanding amount of loan on February 12, PY of Rs. 15 lakh to the bank. The said house property is sold by A on March 16, PY for Rs. 50 lakh. State with reasons the amount chargeable to capital gains.

MCQ-1	Your Options are
A	15 lakhs will be cost of improvement
B	15 lakhs will be cost of acquisition
C	15 lakhs will be expenditure on account of transfer
D	15 lakhs will be capital repayment and not part of computation of capital gains in any way.

MCQ-2	Your Options are
A	Capital Gains will be Long term in nature
B	Capital Gains will be Short term in nature
C	A or B above at option of assessee
D	A or B above at option of officer

Question 2 (Others) (CG ID 67)

Mrs. X has submitted the following details of transactions. You are required to discuss the tax treatment of the same.

1. Mrs. X invested in a Plot of land at Noida in 1982-83 for cost of Rs. 5,05,000. This plot of land fetches Lease rent of 21,000 per month generally. During the year she has entered in to agreement to lease the plot of land at 20,000 per month and at the time of entering in to agreement she has collected a lump sum payment of Rs. 350,000 on account of lease premium.
2. Mrs. X has received Rs. 250,000 cash and House worth 15 Lakhs as alimony from her husband in consideration to live apart.
3. She has sold during the year, ancestral silver utensils for 260,000 (FMV as on 01-04-01 Rs. 23,000), her personal car (Maruti swift) 125,000 (Purchased for Rs. 525,000), her old designer garments and sandals Rs. 35,000.
4. When her father died 6 years back, he had some of pet horses. These horses had delivered pony, which is sold for 250,000.
5. She is operating a dairy farm as her business activity. In dairy farm there was 3rd generation of cows and calves. Some of the calves has been sold for Rs. 160,000.
6. Her father had left behind one bungalow in Chennai. She has sold bungalow for 10 lakhs. Land for the bungalow was purchased by her father in 1971 for Rs. 25,000 (FMV as on 01-04-2001 Rs. 200,000) and Construction on that was done 1 years back at cost of Rs. 52,000.
7. She has plan to sell her kidney to one rich women for 11 crore lumpsum.
8. She is staying in house which is originally acquired by her father, but by will transferred to her brother. She is occupying this house since last many years. Now brother has decided to sell the house and paid her 3 lakhs lumpsum to vacate the house so that vacant possession can be given to the buyer of the house.
9. Her fathers HUF was being parted by meats and bonds, she has received her share in the HUF property Rs. 375,000.

Indexation to be ignored.

MCQ-1	In relation to (1) Your Options are
A	Lease Rent 21000 pm will be House Property Income
B	Lease Rent 21000 pm will be IFOS
C	Lease Rent 20000 pm will be House Property Income
D	Lease Rent 20000 pm will be IFOS

MCQ-2	In relation to (1) Your Options are
A	Rs. 3,50,000 will be taxed under capital gains head and cost will be Nil
B	Rs. 3,50,000 will be taxed under capital gains head and cost will be Reasonable cost
C	Rs. 3,50,000 will be taxed as IFOS and no expense will be allowed as deduction.
D	Rs. 3,50,000 will be taxed as Business Income and no expense will be allowed as deduction.

MCQ-3	In relation to (2) Your Options are
A	Rs. 2,50,000 is Not taxable However 15,00,000 will be taxable as IFOS
B	Rs. 2,50,000 is taxable as Capital Gains However 15,00,000 will be taxable as IFOS
C	Rs. 2,50,000 is Not taxable However 15,00,000 will be taxable as Capital Gains
D	Nothing will be taxable

MCQ-4	In relation to (3) Your Options are
A	Silver Utensils, Personal Car, garments and sandals will not be taxable under any head of income
B	Silver Utensils, Personal Car, garments and sandals will be taxable under IFOS since amount is credited to her profit and loss account credit side.
C	Sale price of Personal car will be adjusted from block of assets, other asses will be taxable under capital gains.
D	None of above

MCQ-5	In relation to (4) Your Options are
A	Sale price of pony will be taxed under capital gains and cost will be Nil as self generated assets.
B	Sale price of pony will not be taxed under capital gains but taxed as IFOS
C	Sale price of pony will not be taxed under capital gains but taxed under PGBP
D	None of above

MCQ-6	In relation to (5) Your Options are
A	Calf is a capital asset and thus taxable under head capital gains
B	Calf is not a capital asset and thus not taxable under head capital gains
C	Calf is a capital asset however not taxable under head capital gains.
D	Calf is a business asset and taxable under PGBP

MCQ-7	In relation to (6) Your Options are
A	Sale Bunglow (land with building) is one asset sold and it is long term.
B	Sale Bunglow (land with building) is one asset sold however land will be long term and building will be short term.
C	Sale Bunglow (land with building) is one asset sold and it is short term.
D	Sale Bunglow (land with building) are separate assets sold however land will be long term and building will be short term.

MCQ-8	In relation to (7) Your Options are
A	Sale of Kidney will be exempt u/s 10
B	Sale of Kidney will not be taxable as capital gains
C	Sale of Kidney will be taxable as IFOS
D	Sale of Kidney will be taxable as business income.

MCQ-9	In relation to (8) Your Options are
A	3,00,000 will be taxed under the head capital gains
B	3,00,000 will be taxed under the head IFOS
C	3,00,000 will be taxed under the head PGBP
D	3,00,000 will not be taxed

MCQ-10	In relation to (9) Your Options are
A	3,75,000 will not be taxable
B	3,75,000 will be taxable as IFOS
C	3,75,000 will be taxable as PGBP
D	3,75,000 will be taxable as Capital Gains

Part BF**(Questions are discussed in chapter of HUF Chapter ID-F13)****HUF, Family Settlement and Others****Question 1 (exemptions) (CG ID 22)**

V, an individual, owned three residential houses which were let out. Besides, he and his four brothers co-owned a residential house in equal shares. He sold one residential house owned by him during the previous year. Within a month from the date of such sale, the four brothers executed a release deed in respect to their shares in the co-owned residential house in favour of V for a monetary consideration. V utilized the entire long-term capital gain arising out of the sale of the residential house for payment of the said consideration to his four brothers. V is not using the house, in respect of which his brothers executed a release deed, for his own residential purposes, but has let it out to another person, who is using it for his residential purposes. Is V eligible for exemption under section 54 of the Income-tax Act, 1961 in respect of the long-term capital gain arising from the sale of his residential house, which he utilized for acquiring the shares of his brothers in the co-owned residential house? Will the ownership of two more houses by him or the date of sale of the residential house and non-use of the new house for his own residential purposes disentitle him to exemption?

Question 2 (exemptions) (CG ID 25)

R is a member of a Hindu undivided family which owned a house for the purpose of residence. There was a partial partition of the family and instead of selling property to an outsider, the property was allotted to R for a consideration of Rs. 5 lakhs. Release deeds were accordingly executed in favour of R by the other members of the family. R had also his individual property which he sold during the same previous year, thereby making a capital gain of Rs. 5 lakhs, which he wants to set off against the consideration fixed for the family property. Discuss the impact of these arrangements on the assessments of the family and R.

Question 3 (exemptions) (CG ID 62)

Mr. A who transfers land and building on 02.01.PY, furnishes the following information:

Net consideration received Rs. 100 lakhs. Value adopted by stamp valuation authority, which was not contested by Mr. A Rs. 120 lakhs. Value ascertained by Valuation officer on reference by the Assessing officer Rs. 130 lakhs.

This land was distributed to Mr. A on the partial partition of his HUF on 1.4.2001 Fair market value of the land as on 1.4.2001 was Rs. 1,10,000. A residential building was constructed on the above land by Mr. A at a cost of Rs. 3,20,000 (construction completed on 01.12.2007).

Short-term capital loss incurred on sale of shares during 2 years preceding the PY Rs. 2,05,000.

Mr. A seeks your advice as to the amount to be invested in NHAI bonds so as to be exempt from clutches of capital gain tax.

Question 14 (exemptions) (CG ID 37)

In the year, Mr. X has sold immovable property and has earned a long term capital gain amounting to Rs. 5 lacs, which he has already invested in the investments specified under section 54EC for claiming exemption from long term capital gains tax on such transaction. On the other hand he has also sold another property in which he has incurred a long term capital loss of Rs. 5 lacs. Mr. X proposes to claim exemption under section 54EC and carry forward the capital loss for the set off in the subsequent years. Is the contention of the Mr. X correct ?

Extra Questions**Part BG****Question (CG ID 101) (Home work)**

X Ltd. is a company in which the whole of its share capital was held by Y Ltd. Both X Ltd. and Y Ltd. are Indian companies. X Ltd. had made investment in shares of ABC Ltd. in 1979 for Rs. 3,00,000 which it sold to Y Ltd. on April 1, 2009 for a consideration of Rs. 30,00,000.

The fair market value of these shares of ABC Ltd., as on April 1, 2001 is Rs.20,00,000. Y Ltd. disinvested 5% of the shares held by it in X Ltd., in January 2018 by sale to public. It sold the shares in ABC Ltd. in March 2018 acquired by it from X Ltd. for a sum of Rs. 70,00,000.

Discuss the issue with relevant provisions and tax effects of these transactions in the hands of X Ltd. and Y Ltd. in the relevant assessment years.

The cost inflation index Value for the Financial Year 2017-18 is 272. (7 marks)

Question (CG ID 102) (Home work)

Answer the following case. Your answer should cover (1) Issues involved; (2) Provisions applicable; (3) Analysis; and (4) Conclusion:

Shri Chandok is running a factory in Nagpur for the past 10 years. He sold the factory building for Rs. 80 lakhs and the consideration was appropriated as Rs. 20 lakhs for the building and Rs. 50 lakhs for the land underneath the building. The factory building is the only asset of the block on which depreciation was claimed and whose WDV was Rs. 1,80,000. The indexed cost of acquisition of land amounts to Rs. 22 lakhs. He deposited Rs. 48 lakhs in capital gain bonds of NHAI within 2 months after the sale of the factory building. The Assessing Officer disallowed the claim of exemption on the reasoning that capital gain on transfer of depreciable asset being short-term is not eligible for exemption under section 54EC. Is the action of the Assessing Officer valid in law?

List of Important Question to be glanced for Revision before exam.

Ch-ID	Q-ID	Type of Question	Status
F54 - A	06	De-mat	
F54 - A	09	Financial Assets	V.Imp
F54 - A	55	Financial Assets	V.Imp
F54 - A	10	Financial Assets	V.Imp
F54 - A	54	Financial Assets	V.Imp
F54 - A	58	Financial Assets	V.Imp
F54 - A	87	Company in liquidation	V.Imp
F54 - A	20	Slump sale	
F54 - A	66	Slump sale	V.Imp
F54 - A	18	Stamp duty	V.Imp
F54 - A	15	Advance monies	V.Imp
F54 - A	23	54	V.Imp
F54 - A	27	54	
F54 - A	68	54B	
F54 - A	24	54G	V.Imp
F54 - A	83	54GB	V.Imp
F54 - A	28	54EC	
F54 - A	62	Family concept	

Wishing You all the best for exams.

I F O S

REFER THIS TOPIC FROM BOOK-A
ALIAS CHAPTER ID – A08

List of Important Question to be glanced for Revision before exam.

Ch-ID	Q-ID	Type of Question	Status
A08	D03	Dividend of 2(22)(e)	
A08	D04	Dividend of 2(22)(e)	
A08	G01	Gift and then sell	V.Imp
A08	G03	Gift	V.Imp
A08	L01	Property Transaction	V.Imp
A08	V01	Valuation	V.Imp

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INTEREST AND PENALTIES

	Sub-Topics	Sections
A	Advance Tax and Interest	207 to 219 234A, to D 237 to 245
B	Penalties	269SS, T 270 to 275

ADVANCE TAX AND INTEREST

**REFER THIS TOPIC FROM BOOK-A
ALIAS CHAPTER ID – A14**

Question 01 (Reasonable Cause)

The assessee a subsidiary company of another purchase certain goods from the holding company. It could not repay the price. The amount payable was converted into a loan of rupees 25,000 & the remaining odd amount was paid by cheque. The A.O. wants to create this as contravention of the provisions of section 269SS & accordingly the joint commissioner wants to levy a penalty u/s 271 D.

	Your Options are
A	No penalty, since amount of loan do not involve any cash transaction.
B	Penalty will be imposed 25000 since the transaction is without account payee cheque.
C	Penalty will be imposed 5000 since it exceeds the limit of 20,000
D	None of above

Question 02 (Reasonable Cause) (Revision / Home work)

A dentist took loan of 100,000 from friends & relatives in cash for repayment of installments of his flat & for purchasing instruments for his Clinic A penalty was levied u/s 271 D. Is it justified?

	Your Options are
A	Penalty will be 80,000
B	Penalty will be 100,000
C	Penalty will be 100,000 but assessee can claim relief u/s 273B
D	None of the above

Question 03 (Reasonable Cause)

The assessee firm repaid deposits in cash Rs. 25,000. The assessee explained that it had three sister concerns & their partners were closely related to each other. Funds were often transferred among them according to the requirement so, they were not deposits. Hence, the penalty u/s. 271 E is not justified. Do you agree?

	Your Options are
A	Penalty of 5000 not justified since it is marginally higher then 20,000.
B	Penalty of 25000 not justified on premise that assessee is firm and amount is paid to sister concern.
C	Penalty of 25000 not justified on the premise that it is not loan / deposit transaction.
D	Penalty of 25000 not justified on the premise of 273B.

Question 04 (Reasonable Cause) (Revision / Home work)

A person has repaid the deposit in cash Rs. 30,000. He did not have any business activity or profession so there were no books of accounts. A penalty has been imposed u/s 271 E. The person repaying the deposit argues that the deposits when accepted were treated as genuine. for Income Tax assessment. Hence, at the time of repayment also they should be considered as genuine and no penalty should be levied. Is the argument acceptable?

	Your Options are
A	Penalty is imposable 60000 (30000 for acceptance and 30000 for repayment)
B	Penalty is imposable 30000 for repayment
C	Penalty not imposable at all.
D	None of the above

Question 05 (Reasonable Cause)

Assessee company received from one 'S' cash amounts of Rs. 7,000 on 12-10 and Rs. 34,000 on 20-2 Latter amount was received admittedly towards share application money but as no shares could be allotted to 'S', it was subsequently transferred to loan account of 'S'. Penalty for violating section 269SS was imposed on assessee in respect of total amount of Rs. 41,000.

1. Whether both receipts had to be taken into account for purpose of application of penalty in as much as first receipt remained unpaid at time of receipt of second receipt.
2. Whether it would be incorrect to construe share application money as loan or deposit in as much as enlargement of meaning of loan or deposit.
3. Whether, therefore, assessee's case fell out of purview of section 269SS and penalty imposed on it under section 271D.

	Your Options are i.r.t. (1)
A	Both the receipt together is not to be considered for the application of penalty
B	Both the receipt together is to be considered for the penalty if any
C	Both the receipt together is to be considered but the penalty will not be the total of both the receipt
D	None of above

	Your Options are i.r.t. (1)
A	Penalty will be 41,000 u/s 269SS
B	Penalty will be 34,000 u/s 269SS
C	Penalty will be 21,000 u/s 269SS
D	Penalty u/s 269SS will not be applicable

Your Options are i.r.t. (2)	
A	Share application money is a liability in the books and thus loan.
B	Share application money is not a loan transaction, thus not covered by 269SS
C	Share application money is genuine transaction and 269SS do not apply
D	Loan or deposit will include any liability in the balance sheet.

Your Options are i.r.t. (3)	
A	Assessee case is out side perview of 269SS
B	269SS will be applicable since ultimately share application money is converted to loan
C	269SS will be applicable since it was a cash transaction
D	All of the above is acceptable

Question 06 (Reasonable Cause) (Revision / Home work)

The Assessing Officer had levied penalty on the assessee on the ground that it had received an amount of Rs. 6,49,344 from D otherwise than by account payee cheque or account payee bank draft. The Tribunal deleted the penalty of 269SS because it found that the amount was an advance for purchase of a truck and the amount was adjusted against the value of the truck. This fact had also not been denied by the Department. The truck had been transferred by the assessee to D as per the oral agreement between the parties. You are required to offer your comments.

Your Options are	
A	No penalty u/s 269SS rw 271D
B	No penalty u/s 269SS rw 271E
C	No penalty u/s 269T rw 271D
D	No penalty u/s 269T rw 271E

Your Options are	
A	269ST will be applicable
B	Depreciation on this asset will not be applicable
C	A and B both is acceptable
D	A is acceptable but B is not acceptable

Question 07 (Reasonable Cause) (Revision / Home work)

The assessee had received foreign inward remittances from the USA amounting to Rs. 16.61 lakhs from BSRK's account, the CEO and main shareholder of the company into the company's current account with the Global Trust Bank. According to the assessee, since it was in liquidity crunch and incurring cash losses, to save considerable time and expenses, it received the amount through foreign inward remittance instead of account payee cheque/demand draft. According to the Department, such transfer of money did not tantamount to account payee cheque and account payee draft, it was only otherwise than such mode. Penalty under section 271D of the Income-tax Act, 1961, was imposed against the assessee on the ground that it violated the provisions of section 269SS. Whether the imposition of penalty will be justified

	Your Options are
A	Penalty not to be imposed for the reason that there is no Cash Transaction
B	Penalty not to be imposed for the reason that there is transaction through banking channel however there is no account payee cheque drawn
C	Penalty not to be imposed for the reason that intention of law is put check on cash transaction by means of 269 SS / T as the case may be.
D	All of the above are acceptable

Question 08 (Reasonable Cause) (Revision / Home work)

Whether payment of amount made by a partner to a firm Rs. 300,000 cash payment to self and does not partake character of loan or deposit in general law and, therefore, provisions of section 269SS are not applicable and no penalty is imposed under section 271D. whether you agree with this.

	Your Options are
A	Partner and firm is the same thus there can never be any penalty for inter se transactions.
B	Partner and firm is not the same under the income tax act since they are separately assessable thus always penalty to be imposed.
C	Partner and firm transactions to be studied / analysed properly and it may or may not involve penalty based on case laws.
D	None of above

Question 09 (Reasonable Cause) (Revision / Home work)

Where assessee-company purchased goods from its holding company and while it paid part purchase price by account-payee cheque, for rest of purchase price it made adjustment in its books of account by transferring equivalent amount from 'goods purchase account' to 'Saraf account' standing in holding company's name. You are required to answer whether such adjustment attract penalty within meaning of section 269SS.

	Your Options are
A	"Saraf Account" is not loan account and thus there is no penalty.
B	Goods purchase accountDb To Saraf AccountCr This is just a journal entry which does not amount to any cash transaction and thus no penalty.
C	Holding subsidiary is related party and "saraf account" can also be treated as "current account" which is not loan account any was and thus no penalty.
D	All of above are acceptable

Question 10 (Reasonable Cause)

Fearless General Finance & Investment Limited, a residuary non-banking company, accepts public deposits, issues deposit certificate and repays the same after some period of time along with interest, under different schemes run by it. Following transactions were noted from their books of account:

- (i) Mr. A, an individual, has deposited 15,000 on 1 May, for 48 months by bearer cheque and another 15,000 on 31 June, in cash to purchase a new certificate of 48 months tenure.
- (ii) Mr. A has applied for premature withdrawal against both the certificates and the company has paid him 16,500, by a bearer cheque, against principal and interest on 23rd March, due against his first certificate and 15,500 in cash on 25 March, against the second certificate.

Discuss the violation of income tax provision, if any, and consequential penalty for each transaction. Will it make any difference if the certificates were held by Mr. A with his wife Mrs. A, jointly, while repaying back in cash or bearer cheque ?

Your Options are i.r.t. (i)	
A	269SS will apply to fearless Limited and Penalty 269SS will be 10,000
B	269SS will apply to fearless Limited and Penalty 269SS will be 15,000
C	269SS will apply to fearless Limited and Penalty 269SS will be 30,000
D	269SS will apply to Mr. A and Penalty will be 15,000

Your Options are i.r.t. (ii)	
A	269T will apply to Fearless Limited and Penalty will be 16,500
B	269T will apply to Fearless Limited and Penalty will be 32,000
C	269T will apply to Fearless Limited and Penalty will be 12,000
D	269T will apply to Mr. A and Penalty will be 32,000

Your Options are i.r.t.	
A	Total Penalty on Fearless Limited will be 15000 for acceptance and 16,500 for repayment
B	Total Penalty on Fearless Limited will be 15000 for acceptance and Nil for repayment
C	Total Penalty on Fearless Limited will be Nil for acceptance and 16,500 for repayment
D	Total Penalty on Mr. A will be 15000 for acceptance and 16,500 for repayment

Question 11 (Reasonable Cause)

An assessee had credited a sum of 50,000 in cash in the account of Madan, said to represent a loan obtained from him. The Assessing Officer, having gone into the genuineness of the transaction, disbelieved the story of loan and treated the sum of 50,000 as the income of the assessee from undisclosed sources. He also started proceedings under section 271D and levied a penalty of 50,000 on the assessee for having accepted the loan in contravention of section 269SS. Examine the correctness of the levy.

	Your Options are
A	Assessee income will be 50,000 and same will also be subject matter of penalty.
B	Deemed income and penalty provisions can be applied to same transaction based on literal interpretation of law
C	Same transaction can not be treated as loan and income as the case may be.
D	None of above

Question 12 (Reasonable Cause) (home work)

Mr. B proposes to purchase for his business, certain raw materials from Mr. S. In view of the scarcity of the products, S insists on cash payments for the purchases, to which B agrees. On 27-03-2018, the purchases are effected through a cash invoice for Rs. 3,20,000.

In respect of the above transactions, will there be any detrimental effect in the hands of B and S under the provisions of the Income-Tax Act, 1961? Explain briefly.

Will your answer be different, if the cash purchases are effected by the buyer B on two different dates for different raw materials for Rs. 1,80,000 and Rs. 1,40,000 respectively?

Penalties for cash transactions

Mode of taking or accepting certain loans, deposits and specified sum.

269SS. No person shall **take or accept from any other person** (herein referred to as the depositor), any **loan or deposit** or any specified sum, **otherwise than by an account payee cheque or account payee bank draft** or use of electronic clearing system through a **bank account or through such other electronic mode as may be prescribed**, if,—

- (a) the **amount of such loan or deposit** or specified sum or the aggregate amount of such loan, deposit and specified sum; or
- (b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the **amount or the aggregate amount remaining unpaid**; or
- (c) the amount or the **aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b)**,

is **twenty thousand rupees or more**:

Provided that the provisions of this section **shall not apply to any loan or deposit or specified sum taken** or accepted from, or any loan or deposit or specified sum taken or accepted by,—

- (a) the Government;
- (b) any banking company, post office savings bank or co-operative bank;
- (c) any corporation established by a Central, State or Provincial Act;
- (d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
- (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this **section shall not apply** to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, **are both having agricultural income and neither of them has any income chargeable to tax under this Act**.

Explanation.—For the purposes of this section,—

- (i) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;
- (ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;
- (iii) "loan or deposit" means loan or deposit of money;
- (iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

Mode of undertaking transactions.

269ST. **No person shall receive an amount of two lakh rupees or more—**

- (a) in aggregate from a person in a day; or
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a **bank account or through such other electronic mode as may be prescribed:**

Provided that the provisions of this **section shall not apply** to—

- (i) any receipt by—
 - (a) Government;
 - (b) any banking company, post office savings bank or co-operative bank;
- (ii) transactions of the nature referred to in section 269SS;
- (iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

Explanation.—For the purposes of this section,—

- (a) "banking company" shall have the same meaning as assigned to it in clause (i) of the *Explanation* to section 269SS;
- (b) "co-operative bank" shall have the same meaning as assigned to it in clause (ii) of the *Explanation* to section 269SS.]

269SU. Acceptance of payment through prescribed electronic modes.—

Every person, **carrying on business**, shall provide **facility for accepting payment through prescribed electronic modes**, in addition to the facility for other electronic modes, of payment, if any, being provided by such person, if his **total sales, turnover or gross receipts**, as the case may be, in business exceeds **fifty crore rupees** during the immediately preceding previous year.

Mode of repayment of certain loans or deposits.

269T. **No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit** made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a **bank account or through such other electronic mode as may be prescribed** if—

- (a) the **amount of the loan or deposit or specified advance together with the interest, if any, payable thereon**, or
- (b) the **aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank** or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or
- (c) the **aggregate amount of the specified advances received by such person either in his own name or jointly** with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid :

Provided further that **nothing contained in this section shall apply to repayment of any loan** or deposit or specified advance taken or accepted from—

- (i) Government;
- (ii) any banking company, post office savings bank or co-operative bank;
- (iii) any corporation established by a Central, State or Provincial Act;
- (iv) any Government company²⁸ as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Explanation.—For the purposes of this section,—

- (i) "banking company" shall have the meaning assigned to it in clause (i) of the *Explanation* to section 269SS;
- (ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);
- (iii) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature;
- (iv) "specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

Penalty for failure to comply with the provisions of section 269SS.

271D. (1) If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of **penalty, a sum equal to the amount of the loan or deposit** or specified sum so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Penalty for failure to comply with provisions of section 269ST.

271DA. (1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of **penalty, a sum equal to the amount of such receipt:**

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.]

271DB. Penalty for failure to comply with provisions of section 269SU.—

(1) If a person who is required to provide facility for accepting payment through the prescribed electronic modes of payment referred to in section 269SU, fails to provide such facility, he shall be liable to pay, by way of penalty, a sum of **five thousand rupees, for every day** during which such failure continues :

Provided that no such penalty shall be imposable if such person proves that there were good and sufficient reasons for such failure.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner of Income-tax.

Penalty for failure to comply with the provisions of section 269T.

271E. (1) If a person repays any loan or deposit or specified advance referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, **by way of penalty, a sum equal to the amount of the loan or deposit or specified advance so repaid.**

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA section 271B, section 271BA, section 271BB, section 271C, section 271CA, **section 271D, section 271E**, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, ⁶¹[section 271GB,] section 271H, section 271-I, ⁶²[section 271J,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, **no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.**

A - Scope of Penalty

Question 1 (Scope of Penalty) (ID - 03)

Mr. X submitted following details, you are required to discuss penalty provisions for the same.

Return of loss submitted.		(-) 2,00,000
Additions made by Assessing Officer.		
(1) on account of question of law	1,20,000	
(2) on account of question of facts	11,80,000	
(3) intangible additions	60,000	13,60,000
Assessed income		11,60,000

Compute the under reported income and penalty imposable u/s 270A.

Will your answer be different if instead of Mr. X it is Company X.

Answer / Notes :-

Question 2 (Scope of Penalty) (ID - 04) (Revision / Home work)

Anurag Traders, a partnership firm, for the year, filed its return of income on an income of Rs. 40,000. The assessment was completed on an income of Rs. 1,20,000 in the month of June, 1999. The additions included (a) profit on suppressed sales of Rs. 40,000, (b) disallowances in expenses Rs. 40,000. The assessment became final as no appeal was preferred. Penalty proceedings were initiated on the charge of concealment of income of suppressed profits. After considering the explanation to the notice to the penalty, penalty was levied on the charge that inaccurate particulars were furnished. M/s.Anurag Traders contents that the Order of penalty is bad in law. Is the contention justified.

	Your Options are
A	The penalty is correctly imposed
B	The penalty is correctly imposed for the reason that income was suppressed
C	The penalty order is bad in law
D	None of the above

Question 3 (Scope of Penalty) (ID - 08) (Revision / Home work)

A notice to levy penalty was issued. The assessee in response thereto filed a written submission requesting to decide the matter. The Assessing Officer before whom this reply was filed retired and the officer, who succeeded him passed the penalty order without providing any further opportunity, but by taking into cognizance the reply filed by the assessee. Whether the order by the Assessing Officer is valid ?

	Your Options are
A	The penalty is bad in law since succeeded officer has not given and re-hearing.
B	The penalty is bad in law since assessee did not ask for any re-hearing to succeeding officer.
C	The penalty order is good in law
D	None of the above

Question 4 (Scope of Penalty) (ID - 10) (Revision / Home work)

A trust, set up wholly for charitable purposes, furnishes its return of income in respect of year; declaring an income of Rs. 1,40,000. The Assessing Officer on scrutiny of the return finds that the income of the trust is exempt from tax. Are there any penal consequences for the trust's failure of furnish the return of income within the prescribed time ?

	Your Options are
A	No Penalty
B	Penalty 100 per day of default
C	Penalty 200 per day of default
D	None of above

Question 5 (Scope of Penalty) (ID - 09) (Revision / Home work)

State the conditions, if any, to be satisfied by an assessee in order to get relief under section 273A of the Income-tax Act, 1961 regarding the waiver of penalty. Can the Commissioner of Income-tax refuse to grant relief when the conditions laid down in the section are complied with by the assessee ?

Question 6 (Scope of Penalty) (ID - 13) (Revision / Home work)

Specify with reason, whether the following acts can be considered as

(I) Tax planning; or (ii) Tax management; or (iii) Tax evasion.

- (i) An individual tax payer making tax saver deposit of 100,000 in a nationalised bank.
- (ii) A partnership firm obtaining declaration from lenders/depositors in Form No. 15G/15H and forwarding the same to income-tax authorities.
- (iii) A company installed an air-conditioner costing 75,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.
- (iv) RR Ltd. issued a credit note for 80,000 as brokerage payable to Mr. Ramana who is the son of the managing director of the company. The purpose is to increase the total income of Mr. Ramana from 4,00,000 to 4,80,000 and reduce the income of RR Ltd. correspondingly.
- (v) A company remitted provident fund contribution of both its own contribution and employees' contribution on monthly basis before due date.

Question 7 (Scope of Penalty) (ID - 14) (Revision / Home work)

Mango Ltd. has inadvertently claimed deduction in respect of provision made for payment of gratuity in its return of income. However, this was shown as disallowance in the tax audit report filed U/s. 44AB. The Assessing Officer initiated proceedings for levy of penalty. The company pleads that the claim was inadvertent as the return was computer filed by its administrative staff. Decide the correctness of action proposed by the Assessing Officer.

	Your Options are
A	No Penalty, since it indicates that disclosure was made in books
B	No Penalty, since assessee accepted that it was his mistake
C	Penalty will be levied, for the reason that tax liability was under reported.
D	None of the above

B - Penalty of 270A**Question 1 (Penalty) (ID - 01)**

Mr. X submitted following details, you are required to determine under reported income and amount of penalty.

Return of loss furnished	(-) 7,00,000
Concealed income under section 143(3)	3,00,000
Assessed loss	(-) 4,00,000

Will your answer be different if instead of Mr. X it is Company X.

Question 2 (Penalty) (ID - 02)

Mr. X submitted following details, you are required to determine under reported income and amount of penalty.

Return of loss submitted by X Ltd.	(-) 1,50,000
Additions made on account of estimate of household expense / Fair Estimates	50,000
Additions made on account of expenditure claim not substantiated by evidence u/s 143(3)	7,00,000
Total income assessed	6,00,000

Will your answer be different if instead of Mr. X it is Company X.

Question 4 (Penalty) (ID - 05) (Revision / Home work)

KP Madhusudan & Co., a partnership firm, had taken certain bank drafts for payments to suppliers of rice and it had made entries in the accounts a few days later, but not on the dates on which the bank drafts were obtained. The explanation of the assessee was that since sufficient cash balance was not available on those dates, it had obtained hand loans from friends and, as it had expected to repay such loans within a short time, no entries were made in its books of account in respect thereof. Due to inability to furnish evidence for such loans, the assessee offered the amount of Rs.93,000 as additional income towards unexplained investment. Penalty proceedings were initiated by Assessing Officer of Income-tax Act and levied a penalty. Is the levy of penalty justifiable ?

	Your Options are
A	Penalty is to be levied since cash transaction in violation of law was already carried out
B	Penalty is to be levied because assessee admitted it as un-explained investment due to inability to furnish evidence
C	Penalty is to be levied because tax liability before income addition is less then after addition.
D	All of the above

Question 5 (Penalty) (ID - 07) (Revision / Home work)

Can penalty of the Income-tax Act for concealment of income or particulars thereof be imposed on “intangible” additions to income made by the Assessing Officer. Can these additions be utilised by the assessee to explain investments made in the subsequent years ?

Is there any time limit for initiation of penalty proceedings in such cases ? Discuss.

	Your Options are
A	As per 270A(4) intangible additions can be used to explain the source of income.
B	As per 270A(12) intangible additions can be used to explain the source of income.
C	As per 270A(12) intangible additions can not be used to explain the source of income.
D	None of the above

Question 6 (Penalty) (ID - 21)

M/s. XYZ is a firm. The following are the particulars furnished by the firm:

- (1) As per the return of income furnished 139(1) - 50,00,000
- (2) Determined under section 143(1)(a) - 60,00,000
- (3) Assessed under section 143(3) - 75,00,000 (includes additions of Rs. 1,00,000 based on estimates)
- (4) Reassessed under section 147 – 95,00,000 (includes further additions of Rs. 2,00,000 based on estimates)

Can penalty be levied under section 270A.

Question 7 (Penalty) (ID - 22)

Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income. However, the total income assessed in respect of such year under section 143(3) is 12 lakh. Is penalty under section 270A attracted in this case, and if so, what is the quantum of penalty leviable?

Will your answer be different if income assessed was 2 Lakhs instead of 12 Lakhs.

C - Penalty for past incomes**Question 3 (Penalty) (ID - 11)**

The assessee has purchased on June 3, gold of Rs. 2 lakh. On his daughter's marriage, the assessee spends Rs. 12 lakh on May 15. The return for the year is submitted by the assessee declaring income of 26,00,000 excluding above income. Officer has taken the case for scrutiny assessment. Assessee argue and explain in the proceedings that the aforesaid investment/expenditure have been made out of following additions made by the Department in earlier 5 years on account of un-reasonable business expenses.

Assessment years	Additions made	Whether penalty was levied
B5	2,50,000	Yes only on Rs. 1,20,000
B4	3,00,000	Yes only on Rs. 80,000
B3	Nil	NA
B2	7,00,000	No
B1	50,000	No

B1 is before year of assessment year (earlier year)

You are required to

1. Compute the total income, tax liability and penalty to be imposed if any.
2. Will your answer be different if assessee offers no explanation for the purchase of gold and marriage expense.

D - Flat / Specific Penalties**Question 2 (Flat Penalty) (ID - 12) (Revision / Home work)**

X, an individual whose total sales in the business of food grains for the year was 600 lacs, did not maintain books of account. The Assessing Officer levied penalty of 25,000 under section 271A for non-maintenance of books of account and penalty of 150,000 under section 271B for not getting the books audited as required by section 44AB. Is the Assessing Officer justified in levying penalty under section 271B?

	Your Options are
A	Penalty will be 271A – 25,000 and 271B – 1,50,000
B	Penalty will be 271A – 50,000 and 271B – 3,00,000
C	Penalty will be 271A – 25,000
D	None of the above

Question 3 (Flat Penalty) (ID – 12-A) (Revision / Home work)

Mr. Rajesh has sold house property for 25 Lakhs. However he has accounted it as receipt from his debtor under a false invoice dated 25-September. There by he did not disclose the capital gains arising from transfer of property. Tax on under reported capital gains is 3 lakhs.

Select out of following options

1. Penalty u/s 270A will be 150,000
2. Penalty u/s 270A will be 600,000
3. Penalty u/s 271DA will be 25,00,000
4. Penalty u/s 271AAD will be 25,00,000

Your Options are	
A	Only 2
B	Only 4
C	2 & 3 & 4
D	2 & 4
E	2 or 4

Your Options are, i.r.t penalty u/s 270A	
A	270A Penalty cannot be reduced or waived any time.
B	270A Penalty cannot be reduced or waived before the assessment.
C	270A Penalty cannot be reduced or waived after the assessment.
D	270A Penalty is Mandatory and no adjustment to penalty can be carried out.

Your Options are, i.r.t penalty u/s 270A	
A	270A Penalty can be reduced or waived by CIT
B	270A Penalty can be reduced or waived by CCIT
C	270A Penalty can be reduced or waived by CBDT
D	270A Penalty can be reduced or waived by Ministry of Finance

E - Home work Questions**Question (ID - 51) (Revision / Home work)**

Pramod, a resident individual of age of 52 years, has not furnished his return of income for the year. However, his total income for such year as assessed u/s 143(3) is Rs. 14 lakhs.

Whether penalty U/S 270A attracted? If yes, what will be the quantum of penalty leviable?

[Note : Assume that this is not a case of misreporting]. (3 marks)

Question (ID - 52) (Revision / Home work)

MCM is a firm liable to tax at the rate of 30% and has filed its return of income. The following information are provided to you :

- (1) Returned total income – Rs. 1,00,00,00
- (2) Total income determined U/s 143 (1) (a) – Rs. 1,20,00,000
- (3) Total income assessed U/s 143 (3) –Rs. 1,60,00,000
- (4) Total income reassessed U/s 147 – Rs. 1,90,00,000

Considering that none of the additions or disallowances made in the assessment or reassessment as above qualifies under section 270A(6), compute the amount of penalty to be levied U/s 270A of the Income-tax Act,1961 at the time of assessment U/s 143(3) and at the time of reassessment U/s 147 (Assume under-reporting of income is not on account of misreporting). (6 marks)

Question (ID - 53) (Revision / Home work)

Discuss the following in the context of the provisions of Income-tax Act 1961:

Penalty to be imposed on an assessee is to be based upon the law as it stood at the time that default was committed or upon the law as it stands in the financial year in which the assessment was made. Suppose an assessee files return of income in response to a notice of reassessment, and any concealment was detected, and at the time the laws relating to imposition of penalty was different from the provisions at the time when the original return was filed, which law should be applicable in this case? (4 marks)

List of Important Question to be glanced for Revision before exam.

Ch-ID	Q-ID	Type of Question	Status
F18	01	Return of loss have been submitted	
F18	21	Full computation	V.Imp
F18	11	Past additions	V.Imp

Wishing You all the best for exams.

Penalties for under reporting and others

Penalty for under-reporting and misreporting of income.

270A. (1) The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who **has under-reported his income shall be liable to pay a penalty in addition to tax**, if any, on the under-reported income.

(2) A person shall be considered to have **under-reported** his income, if—

- (a) the income **assessed is greater than the income determined** in the return processed under clause (a) of sub-section (1) of section 143;
- (b) the income **assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;**
- (c) the income **reassessed is greater than the income assessed or reassessed immediately before** such reassessment;
- (d) the amount of **deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income** determined in the return processed under clause (a) of sub-section (1) of section 143;
- (e) the amount of **deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax**, where **no return of income has been furnished or where return has been furnished for the first time under section 148;**
- (f) the amount of **deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income** assessed or reassessed immediately before such reassessment;
- (g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

(3) The amount of **under-reported income** shall be,—

- (i) in a case where income has been assessed for the first time,—
 - (a) **if return has been furnished, the difference between the amount of income assessed and the amount of income determined** under clause (a) of sub-section (1) of section 143;
 - (b) in a case where **no return of income has been furnished or where return has been furnished for the first time under section 148,**—
 - (A) the **amount of income assessed**, in the case of a company, firm or local authority;
 - and

- (B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);
- (ii) in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:

Provided that where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula—

$$(A - B) + (C - D)$$

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:

Provided further that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item *D*.

Explanation.—For the purposes of this section,—

- (a) "preceding order" means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;
- (b) in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

(4) Subject to the provisions of sub-section (6), where the **source of any receipt, deposit or investment** in any assessment year is **claimed to be an amount added to income or deducted while computing loss**, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and **no penalty was levied for such preceding year**, then, the **under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.**

(5) The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order—

- (a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
- (b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

(6) The under-reported income, for the purposes of this section, **shall not include the following**, namely:—

- (a) the amount of income in respect of which the assessee **offers an explanation and the Assessing Officer** or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is **satisfied that the explanation is bona fide and the assessee has disclosed all the material** facts to substantiate the explanation offered;
- (b) the amount of **under-reported income determined on the basis of an estimate**, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, **but the method employed is such that the income cannot properly be deduced therefrom**;
- (c) the amount of **under-reported income determined on the basis of an estimate**, if the assessee has, **on his own, estimated a lower amount of addition or disallowance on the same issue**, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;
- (d) the amount of **under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer**, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and
- (e) the **amount of undisclosed income referred to in section 271AAB.**

(7) The penalty referred to in sub-section (1) shall be a sum equal to **fifty per cent of the amount of tax payable** on under-reported income.

(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any **misreporting thereof by any person**, the penalty referred to in sub-section (1) shall be equal to **two hundred per cent** of the amount of tax payable on under-reported income.

(9) The cases of **misreporting of income** referred to in sub-section (8) shall be the following, namely:—

- (a) misrepresentation or suppression of facts;
- (b) failure to record investments in the books of account;
- (c) claim of expenditure not substantiated by any evidence;
- (d) recording of any false entry in the books of account;
- (e) failure to record any receipt in books of account having a bearing on total income; and
- (f) **failure to report any international transaction** or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

(10) The **tax payable in respect of the under-reported** income shall be—

- (a) where **no return of income has been furnished** and the income has been assessed for the first time, the **amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as** if it were the total income;
- (b) where the **total income determined** under clause (a) of sub-section (1) of section 143 or assessed, reassessed or recomputed in a preceding order **is a loss**, the amount of **tax calculated on the under-reported income as if it were the total income**;
- (c) in any other case, determined in accordance with the formula—

$$\frac{(X-Y)}{100}$$

where,

X = the amount of tax calculated on the under-reported income as increased by the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and
Y = the amount of tax calculated on the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order.

(11) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

(12) The penalty referred to in sub-section (1) shall be imposed, by an **order in writing**, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.

Immunity from imposition of penalty, etc.

270AA. (1) An assessee **may make an application** to the Assessing Officer to **grant immunity from imposition of penalty under section 270A** and initiation of proceedings under section 276C or section 276CC, if he fulfils the following conditions, namely:—

- (a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 147, as the case may be, has been paid within the period specified in such notice of demand; and**
- (b) no appeal against the order referred to in clause (a) has been filed.**

(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in clause (a) of sub-section (1) has been received and shall be made in such form and verified in such manner as may be prescribed.

(3) The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.

(4) The Assessing Officer shall, within a period of one month from the end of the month in which the application under sub-section (1) is received, pass an order accepting or rejecting such application:

Provided that no order rejecting the application shall be passed unless the assessee has been given an opportunity of being heard.

(5) The order made under sub-section (4) shall be final.

(6) No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment, referred to in clause (a) of sub-section (1), in a case where an order under sub-section (4) has been made accepting the application.

Penalty in respect of certain income.

271AAC. (1) The Assessing Officer or the Commissioner (Appeals) may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the **income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D** for any previous year, the assessee shall pay by way of penalty, **in addition to tax payable under section 115BBE**, a sum computed at the rate of **ten per cent of the tax payable** under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Penalty for false entry, etc., in books of account.

271AAD. (1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is **found that in the books of account maintained by any person** there is—

- (i) a **false entry**; or
- (ii) an **omission of any entry which is relevant for computation of total income of such person**, to evade tax liability,

the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay by way of penalty a **sum equal to the aggregate amount of such false or omitted entry**.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer or the Commissioner (Appeals) may direct that **any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry** or omits or causes to omit any entry referred to in that sub-section, shall pay by way of **penalty a sum equal to the aggregate amount of such false or omitted entry**.

Explanation.—For the purposes of this section, “false entry” includes use or intention to use—

- (a) **forged or falsified documents** such as a false invoice or, in general, a false piece of documentary evidence; or
- (b) **invoice in respect of supply or receipt** of goods or services or both issued by the person or any other person **without actual supply or receipt** of such goods or services or both; or
- (c) invoice in respect of supply or receipt of goods or services or both to or from a **person who does not exist**.

Failure to keep, maintain or retain books of account, documents, etc.

271A. Without prejudice to the provisions of ³⁹[section 270A or] section 271, if any **person fails to keep and maintain any such books of account and other documents as required by section 44AA** or the rules made thereunder, in respect of any previous year or to retain such books of account and other documents for the period specified in the said rules, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum of **twenty-five thousand rupees**.

Failure to get accounts audited.

271B. If any person **fails to get his accounts audited** in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to **one-half per cent of the total sales, turnover or gross receipts**, as the case may be, in business, **or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less**.

Power to reduce or waive penalty, etc., in certain cases.

273A. (1) Notwithstanding anything contained in this Act, the Principal Commissioner or Commissioner may, in his discretion, whether on his own motion or otherwise,—

(i) [***]

(ii) **reduce or waive the amount of penalty imposed or imposable on a person under section 270A or clause (iii) of sub-section (1) of section 271; or**

(iii) [***]

if he is satisfied that such person—

(a) [***]

(b) **in the case referred to in clause (ii), has, prior to the detection by the Assessing Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars,**

(c) [***]

and also has, in the case referred to in clause (b), **co-operated in any enquiry** relating to the assessment of his income and has either paid or made **satisfactory arrangements for the payment of any tax or interest payable** in consequence of an order passed under this Act in respect of the relevant assessment year.

Explanation.—For the purposes of this sub-section, a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of section 270A or clause (c) of sub-section (1) of section 271.

(2) Notwithstanding anything contained in sub-section (1),—

(a) [***]

(b) if in a case falling under section 270A or clause (c) of sub-section (1) of section 271, the amount of income in respect of which the penalty is imposed or imposable for the relevant assessment year, or, where such disclosure relates to more than one assessment year, the **aggregate amount of such income** for those years, **exceeds a sum of five hundred thousand rupees**, no order reducing or waiving the penalty under sub-section (1) shall be made by the Principal Commissioner or Commissioner except with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be.

(3) Where an order has been made under sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he **shall not be entitled to any relief under this section** in relation to any other assessment year at any time after the making of such order :

Provided that where an order has been made in favour of any person under sub-section (1) on or before the 24th day of July, 1991, such person shall be entitled to further relief only once in relation to other assessment year or years if he makes an application to the income-tax authority referred to in sub-section (4) at any time before the 1st day of April, 1992.

(4) Without prejudice to the powers conferred on him by any other provision of this Act, the Principal Commissioner or Commissioner may, on an application made in this behalf by an assessee, and after recording his reasons for so doing, reduce or waive the amount of any penalty payable by the assessee under this Act or stay or compound any proceeding for the recovery of any such amount, if he is satisfied that—

- (i) to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case; and
- (ii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him:

Provided that where the amount of any penalty payable under this Act or, where such application relates to more than one penalty, the aggregate amount of such penalties exceeds one hundred thousand rupees, no order reducing or waiving the amount or compounding any proceeding for its recovery under this sub-section shall be made by the Principal Commissioner or Commissioner except with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be.

(4A) The order under sub-section (4), either accepting or rejecting the application in full or in part, shall be passed within a period of twelve months from the end of the month in which the application under the said sub-section is received by the Principal Commissioner or the Commissioner:

Provided that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard:

Provided further that where any application is pending as on the 1st day of June, 2016, the order shall be passed on or before the 31st day of May, 2017.

(5) Every order made under this section shall be final and shall not be called into question by any court or any other authority.

(6) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

(7) Notwithstanding anything contained in sub-section (6), the provisions of sub-section (1), sub-section (2), or, as the case may be, sub-section (4) as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989 (3 of 1989), shall apply in the case of reduction or waiver of penalty or interest in relation to any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year, with the modifications that the power under the said sub-section (1) shall be exercisable only by the Principal Commissioner or Commissioner and instead of the previous approval of the Board, the Principal Commissioner or Commissioner shall obtain the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be, while dealing with such case.

TAX RECOVERY MEASURE

	Sub-Topics	Sections
A	Certain Transfers to be void and Provisional Attachment	281, 281B
B	Tax recovery procedure	220 to 232
C	Settlement of Cases	245A to 245M

281 – TRANSACTIONS TO BE VOID

281B - PROVISIONAL ATTACHMENT

Part A of Recovery Procedure

Question (Certain transfer to be void and provisional attachment) (ID 01) (Revision / Home work)

Recovery proceedings were initiated against the assessee and her husband. Since the arrears could not be realised the assessee's property was attached u/s 281B in February. The assessee got divorced by pronouncing TALAQ on 15th March. The assessee filed an objection petition stating that the properties were gifted in the past by oral gift to her by her ex-husband and she had been separated by the pronouncement of "Talaq" (divorce) and was in no way responsible for the personal liability of her ex-husband.

	Your Options are
A	281B is Justified since recovery proceeding relates prior to divorce
B	281B is Justified since property was not her self earned, thus she was not the real owner of the property.
C	281B is Justified since it appear that evidence of oral gift was not clearly available.
D	All of the above together acceptable

Question (Certain transfer to be void and provisional attachment) (ID 02) (Revision / Home work)

One M/s. Simplex Enterprises had booked and was allotted shop at Pune 10 years back. The Mr. Kalpesh Sanghavi (defaulter) paid the earnest money for procuring the said allotment on January, 2015. In June, 2016, the Mr. Kalpesh Sanghavi paid the balance money to the builder and obtained the possession of the said shop. In July, 2017, the Mr. Jayanti purchased rights, title and interest of the Mr. Kalpesh Sanghavi in the said shop. Joint Sale deed was executed. The Tax Recovery Officer at Pune under the certificate from Tax Recovery Officer, attached the said shop and declare the sale as void.

	Your Options are
A	281 is Justified for the transfer of property made by Mr. Kalpesh since NOC is not obtained from department for the said transfer
B	281 is Justified for the transfer of property made by Mr. Kalpesh since value of the property is more then 100,000
C	281 is not justified for the transfer made by Mr. Kalpesh to Jayanti
D	None of the above

	Your Options are
A	281 is declaratory provision and does not have any procedure of recovery in itself.
B	281 is capable of doing recovery in itself
C	281 is capable of issuing notice to Mr. Kalpesh regarding transaction being void
D	281 is handicapped provisions

Question (Certain transfer to be void and provisional attachment) (ID 03) (Revision / Home work)

N was liable to pay certain sums on account of income tax, penalty, interest and fine. Notices under section 226(3), were issued and served upon the tenants of N asking the tenants to pay the rent to the Department. The son of N and N's wife filed a writ petition challenging the notices since they were co-owners of property. It was claimed in the writ petition that N had executed a deed of trust, concerning his shares in the premises in question and appointed the petitioners the trustees thereof. The Revenue filed an affidavit-in-opposition and declare the transaction as void under section 281 contending that the deed of trust was created fraudulently.

	Your Options are
A	Revenue's action to declare transfer as void is justified
B	Revenue has exceeded its authority, however considering the intention of law action is justified.
C	Revenue's action to declare transfer as void 281 is not justified.
D	None of the above

	Your Options are
A	Issue of notice on tenants to pay rent to department is not justified.
B	Department is having enough powers to do garnishee procedure.
C	The tenants have option to deposit rent with department.
D	The tenants may or may not deposit the rent to department.

Question (Certain transfer to be void and provisional attachment) (ID 04) (Revision / Home work)

Mr. X a stock broker is insolvent. His tax dues are Rs. 30 crore. He has his personal house worth 25 crore, stock membership card (rights) worth 12 crore, motor cars 2 crores and bank balance 10 crores. Motor cars are gifted to his friend just 30 days before his insolvency. Stock membership card is forfeited by stock exchange. You are required to answer whether all the assets can be attached u/s 281 read with 281B. what are the priority of the attachment.

	Your Options are
A	Membership card can not be attached
B	Membership card can be attached
C	Membership card is valuable thing thus can be attached
D	None of the above

	Your Options are
A	<ol style="list-style-type: none"> 1. Personal house - 25 2. Bank balance – 10 3. Motor cars – 2
B	<ol style="list-style-type: none"> 1. Bank balance – 10 2. Personal house - 25 3. Motor cars – 2
C	<ol style="list-style-type: none"> 1. Motor cars – 2 2. Bank balance – 10 3. Personal house - 25
D	Any order at the option of the officer

Question (Certain transfer to be void and provisional attachment) (ID 05) (Revision / Home work)

The regular assessment of Ms. Swati completed u/s 143(3) on 16-07-2017. On 18-01-2019, she received a notice issued u/s 148 for income escaping assessment. Further, on 25-03-2019, during the pendency of such proceeding for income escaping assessment, the A.O. attaches the house property of Ms. Swati.

Now, aggrieved Swati seeks your opinion (being a Chartered Accountant) as to :

- (1) The circumstances under which the A.O. can make provisional attachment of property of the assessee.
- (2) The period of time for which such attachment can take place.
- (3) Can such attachment be revoked by the A.O. and if yes, how?

Discuss the relevant provisions of law to satisfy the aggrieved assessee, Ms. Swati. (5 marks)

Your Options are i.r.t (1)	
A	Officer can attach property any time during the course of the assessment
B	With the intention to protect the interest of revenue officer can attach the property.
C	Officer can attach the property since assessee is travelling abroad and not likely to return
D	Officer can attach the property if the property value is more than 250000 at any time during the previous year

Your Options are i.r.t (2)	
A	Attachment can take place for 3 months
B	Attachment can take place for 6 months
C	Attachment can take place for 9 months
D	Any time till the officer passes the order

Your Options are i.r.t (3)	
A	Attachment can be revoked by officer at his own discretion
B	Attachment can be revoked any time after passing the order of attachment
C	Attachment can be revoked when assessee provides the appropriate amount of bank guarantee
D	Attachment can be revoked only by the higher authority above the assessing officer.

Question (Certain transfer to be void and provisional attachment) (ID 06) (Revision / Home work)

Mr. Gunjan Shah (The assessee) is owner of one flat at Mumbai Value 5 Cr. Notice of 143(2) was issued on him dated 25-09-AY. AO found some bogus purchases 2.5 Cr by recording fake invoices in books maintained by assessee. During the hearing AO attached his flat at Mumbai u/s 281B on 01-12-AY anticipating additional tax of 1.5 cr. The assessee paid tax of 1.7 cr on 15-12-AY and officer vacated the orders of 281B. Assessment order of 143(3) was passed on 15-03-AY.

On 18-03-AY penalty notice was issued. AO again attached the flat at Mumbai u/s 281B by passing order dated 29-03-AY. Penalty orders are yet not passed and assessee is aggrieved by the order of 281B. Assessee seeks your opinion on the issue.

MCQ 1

	Your Options are
A	281B order dated 01-12-AY are not valid since tax payments u/s 143(3) is less then 2 cr.
B	281B order dated 01-12-AY are not valid since Fake Invoice is less then 5 cr.
C	281B order dated 01-12-AY are not valid since notice is issued u/s 143(2) and not 142(1)
D	281B order dated 01-12-AY are valid.

MCQ 2

Will your answer be different if instead of Fake Purchase Invoice it was a matter of dis-allowance on grounds of 43B.

	Your Options are
A	281B order dated 01-12-AY are not valid since tax payments u/s 143(3) is less then 2 cr.
B	281B order dated 01-12-AY are not valid since Fake Invoice is less then 5 cr.
C	281B order dated 01-12-AY are not valid since notice is issued u/s 143(2) and not 142(1)
D	281B order dated 01-12-AY are valid.

MCQ 3

	Your Options are
A	281B order dated 29-03-AY are not valid since it is penalty procedure.
B	281B order dated 29-03-AY are not valid since order of penalty is not passed.
C	281B order dated 29-03-AY are not valid since demand notice for penalty is not issued.
D	281B order dated 29-03-AY are valid.

MCQ 4

Will your answer be different if instead of Fake Purchase Invoice it was a matter of dis-allowance on grounds of 43B.

	Your Options are
A	281B order dated 29-03-AY are not valid since it is penalty procedure.
B	281B order dated 29-03-AY are not valid since order of penalty is not passed.
C	281B order dated 29-03-AY are not valid since demand notice for penalty is not issued.
D	281B order dated 29-03-AY are valid.

MCQ 5

Will your answer be different if instead of Fake Purchase Invoice it was a matter of dis-allowance on grounds of 43B. Penalty orders are passed on 30-04-N1 and 281B attachment orders are passed for recovery of penalty on 30-06-N1.

	Your Options are
A	281B order dated 30-06-N1 are not valid since it is penalty procedure.
B	281B order dated 30-06-N1 are not valid since order of penalty is passed.
C	281B order dated 30-06-N1 are not valid since demand notice for penalty is not issued.
D	281B order dated 30-06-N1 are valid.

Transfer as Void and Provisional Attachment

Certain transfers to be void.

281. (1) Where, **during the pendency of any proceeding** under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, **any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax** or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise :

Provided that such charge or transfer **shall not be void** if it is made—

- (i) for **adequate consideration and without notice of the pendency of such proceeding** or, as the case may be, without notice of such tax or other sum payable by the assessee ; **or**
- (ii) with the **previous permission of the Assessing Officer**.

(2) This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value.

Explanation.—In this section, **"assets"** means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid **does not form part of the stock-in-trade** of the business of the assessee.

Provisional attachment to protect revenue in certain cases.

281B. (1) Where, **during the pendency of any proceeding** for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment or for imposition of penalty under section **271AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds two crore rupees**, the **Assessing Officer is of the opinion** that for the purpose of **protecting the interests of the revenue** it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, **by order in writing, attach provisionally any property belonging to the assessee** in the manner provided in the Second Schedule.

Explanation.—⁶⁷[***]

(2) Every such provisional attachment shall cease to have effect after the expiry of a **period of six months** from the date of the order made under sub-section (1) :

Provided that the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total **period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.**

(3) Where the assessee **furnishes a guarantee from a scheduled bank** for an amount not less than the fair market value of the property provisionally attached under sub-section (1), the Assessing Officer shall, by an **order in writing, revoke such attachment:**

Provided that where the Assessing Officer is satisfied that a **guarantee from a scheduled bank** for an amount **lower than the fair market value of the property** is sufficient to **protect the interests of the revenue**, he may **accept such guarantee and revoke the attachment.**

(4) The Assessing Officer may, for the purposes of determining the value of the property provisionally attached under sub-section (1), make a **reference to the Valuation Officer** referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of thirty days from the date of receipt of such reference.

- (5) An **order revoking the provisional attachment** under sub-section (3) shall be made—
- (i) within **forty-five days from the date of receipt of the guarantee**, where a reference to the Valuation Officer has been made under sub-section (4); or
 - (ii) within **fifteen days from the date of receipt of guarantee** in any other case.
- (6) Where a notice of demand specifying a sum payable is served upon the assessee and the **assessee fails to pay** that sum within the time specified in the notice of demand, the Assessing Officer may **invoke the guarantee furnished** under sub-section (3), wholly or in part, to recover the amount.
- (7) The Assessing Officer shall, in the interests of the revenue, **invoke the bank guarantee**, if the assessee **fails to renew the guarantee** referred to in sub-section (3), or fails to furnish a new guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of the guarantee referred to in sub-section (3).
- (8) The **amount realised by invoking the guarantee** referred to in sub-section (3) shall be adjusted against the **existing demand which is payable by the assessee** and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sub-section (1) of section 45 of the Reserve Bank of India Act, 1934 (2 of 1934) at the place where the office of the Principal Commissioner or Commissioner is situate.
- (9) Where the **Assessing Officer is satisfied that the guarantee referred to in sub-section (3) is not required** any more to protect the interests of the revenue, he **shall release that guarantee forthwith**.

Explanation.—For the purposes of this section, the expression "scheduled bank" shall mean a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).]

TRO / TAX RECOVERY

Part B of Recovery Procedure

Question 01 (TRO procedure) (Revision / Home work)

The assessing officer served a notice of demand on the assessee for the tax payable Rs. 2,000. The notice was served on 1st July, giving him time up to 31st July. The assessee paid it on 30th September. What are the consequences? Can the assessee have any relief?

	Your Options are
A	Interest will be charged
B	Penalty will be levied
C	Interest and Penalty both will be levied
D	Since amount is small no other consequence under the law

Question 02 (TRO procedure) (Revision / Home work)

If an assessee has filed an Appeal U/s. 246, can the A.O. treat the assessee as assessee In default for non-payment of tax as communicated by notice of demand ?

Can it be equaled with power of appellate authority to grant stay of recovery ?

	Your Options are
A	Pending the appeal assessee is not in default
B	When tax is not paid assessee is always in default
C	Pending the appeal assessee will be never have to pay taxes
D	None of the above

	Your Options are
A	TRO has power to grant time to assessee to pay taxes and stay the matter
B	TRO can not stay the matter
C	TRO's power to grant time is different then Appellate authority's power to stay the matter
D	None of above

Question 03 (TRO procedure) (Revision / Home work)

A recovery certificate U/s. 222 is to be issued. But the assessee Mr. Lal has died. Son of Mr. Lal is Mr. Thorat who is at the age of 47. Advice the A.O. regarding to course of action.

	Your Options are
A	Certificate is to be issued in name of Mr. Thorat
B	Certificate is to be issued in name of Mr. Lal
C	Certificate is to be issued in name of Mr. Thorat and Mr. Lal Jointly
D	Certificate can not be issued since Mr. Lal has died.

Question 04 (TRO procedure) (Revision / Home work)

A recovery certificate U/s. 222 is prepared by an A.O in Mumbai. The assessee is having property a part of which is in Madhya Pradesh. What is the remedy available to this A.O.? Can he correct any clerical or arithmetical error in such certificate which is discovered subsequently ?

OR

Mr. Sukesh Is an assessee deemed to be in default U/s. 220. The recovery is to be made from him, but he is not having any property in India. However, it is understood that he has a lot of property in foreign countries. What is the course to action available to the revenue in such a case ?

	Your Options are
A	AO from Mumbai should travel in Train Second Class to Madhya Pradesh for recovery
B	AO from Mumbai contact AO of Madhya Pradesh on telephone and request for recovery
C	AO from Mumbai forward the certificate to AO of Madhya Pradesh
D	None of above

	Your Options are
A	AO can not alter / amend the certificate of recovery already issued.
B	AO is permitted to correct the arithmetical errors but not the clerical error
C	AO should pass appropriate orders for the correction in certificate
D	AO is permitted to correct the arithmetical errors and the clerical error

	Your Options are (in relation to Mr. Sukesh)
A	Recovery officer should travel to every country to find out the property location and recovery.
B	Recovery officer in India should contact the government of every country where property is situated.
C	Recovery officer in India must forward certificate to Recovery officer in respective countries for the recovery of tax dues
D	Recovery officer in India should apply the provision of black money act

Question 05 (TRO procedure) (Revision / Home work)

When can the T.R.O. stay the proceedings for recovery of tax? What is the ultimate result of such stay?

	Your Options are
A	TRO can not stay the recovery procedure
B	TRO can grant only time to make the payment of taxes
C	TRO can grant time and instalment facility to make the payment of taxes
D	TRO must apply court for the stay procedure

Question 06 (TRO procedure) (Revision / Home work)

What is meant by 'Garnishee Proceedings'? When can TRO Initiate such proceedings?

	Your Options are
A	Garnishee Proceeding means Fast recovery of taxes
B	Garnishee Proceeding means assessee will have to pay tax in top priority to government
C	Garnishee Proceeding means recovery of taxes from debtors of assessee
D	Garnishee Proceeding means Garnish the procedure

	Your Options are
A	TRO can not do Garnishee Proceeding
B	TRO should apply to court to do Garnishee Proceeding
C	TRO and Garnishee is one and the same thing
D	TRO can do Garnishee Proceeding

Question 07 (TRO procedure) (Revision / Home work)

A notice of demand has been served on the assessee and he failed to pay the dues. Can the government file a suit for recovery instead of using the modes of recovery under chapter XVII of Income Tax Act, 1961?

	Your Options are
A	Government may apply Recovery procedure and also opt to file suit of recovery.
B	Government can only do either of one procedure namely, recovery procedure and filing suit for recovery.
C	A and B both are not correct
D	None of above

Bare Act Provisions

When tax payable and when assessee deemed in default.

220. (1) Any amount, otherwise than by way of advance tax, specified as payable in a **notice of demand** under section 156 shall be paid **within thirty days of the service of the notice** at the place and to the person mentioned in the notice :

Provided that, where the **Assessing Officer has any reason to believe** that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a **period less than the period of thirty days aforesaid**, as may be specified by him in the notice of demand.

(1A) Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be **deemed to be valid till the disposal of the appeal** by the last appellate authority or disposal of the proceedings, as the case may be, and any such notice of demand shall have the effect as specified in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (11 of 1964).

(2) If the amount specified in any notice of demand under section 156 is **not paid within the period limited** under sub-section (1), the assessee shall be liable to pay simple **interest at one per cent for every month** or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid :

Provided that, where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded :

Provided further that where as a result of an order under sections specified in the first proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under this section is increased, the assessee shall be liable to pay interest under sub-section (2) from the day immediately following the end of the period mentioned in the first notice of demand, referred to in sub-section (1) and ending with the day on which the amount is paid:

Provided also that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent for every month or part of a month.

(2A) Notwithstanding anything contained in sub-section (2), the Principal Chief Commissioner or Chief Commissioner or Principal **Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if he is satisfied** that—

- (i) payment of such amount has caused or would cause **genuine hardship to the assessee** ;
- (ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was **due to circumstances beyond the control of the assessee** ; and
- (iii) the assessee has **co-operated in any inquiry relating to the assessment** or any proceeding for the recovery of any amount due from him:

Provided that the **order accepting or rejecting the application of the assessee**, either in full or in part, shall be passed within a period of **twelve months from the end of the month** in which the application is received:

Provided further that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been **given an opportunity of being heard**:

Provided also that where any application is pending as on the 1st day of June, 2016, the order shall be passed on or before the 31st day of May, 2017.]

(2B) Notwithstanding anything contained in sub-section (2), where interest is charged under sub-section (1A) of section 201 on the amount of tax specified in the intimation issued under sub-section (1) of section 200A for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.

(2C) Notwithstanding anything contained in sub-section (2), where interest is charged under sub-section (7) of section 206C on the amount of tax specified in the intimation issued under sub-section (1) of section 206CB for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.

(3) Without prejudice to the provisions contained in sub-section (2), on **an application made by the assessee** before the expiry of the due date under sub-section (1), the Assessing Officer may extend the time for payment or allow **payment by instalments**, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is **not paid within the time limited** under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice **the assessee shall be deemed to be in default**.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits **defaults in paying any one of the instalments** within the time fixed under that sub-section, the assessee shall be **deemed to be in default as to the whole of the amount then outstanding**, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has **presented an appeal** under section 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, **treat the assessee as not being in default** in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in **respect of income arising outside India** in a country the laws of which prohibit or **restrict the remittance of money to India**, the **Assessing Officer shall not treat the assessee as in default in respect of that part of the tax** which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.

Penalty payable when tax in default.

221. (1) When an **assessee is in default or is deemed to be in default** in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub-section (2) of section 220, be liable, **by way of penalty, to pay such amount as the Assessing Officer may direct**, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears :

Provided that before levying any such penalty, the assessee shall be **given a reasonable opportunity** of being heard :

Provided further that where the assessee proves to the satisfaction of the **Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section.**

Explanation.—For the removal of doubt, it is hereby declared that an assessee shall not cease to be liable to any penalty under this sub-section merely by reason of the fact that before the levy of such penalty he has paid the tax.

(2) Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

Certificate to Tax Recovery Officer.

222. (1) When an **assessee is in default** or is deemed to be in default in making a payment of tax, the **Tax Recovery Officer may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee** (such statement being hereafter in this Chapter and in the Second Schedule referred to as "certificate") and shall **proceed to recover** from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—

- (a) attachment and sale of the assessee's movable property;
- (b) attachment and sale of the assessee's immovable property;
- (c) arrest of the assessee and his detention in prison;
- (d) appointing a receiver for the management of the assessee's movable and immovable properties.

Explanation.—For the purposes of this sub-section, the **assessee's movable or immovable property shall include** any property which has been **transferred, directly or indirectly** on or after the 1st day of June, 1973, by the **assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration**, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable or immovable property for recovering any arrears due from the assessee in respect of any period prior to such date.

(2) The Tax Recovery Officer may take action under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

Tax Recovery Officer by whom recovery is to be effected.

223. (1) The **Tax Recovery Officer** competent to take action under section 222 shall be—

- (a) the Tax Recovery Officer **within whose jurisdiction the assessee carries on his business or profession** or within whose jurisdiction the principal place of his business or profession is situate, or
- (b) the **Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate,**

the jurisdiction for this purpose being the **jurisdiction assigned to the Tax Recovery Officer** under the orders or directions issued by the Board, or by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who is authorised in this behalf by the Board in pursuance of section 120.

(2) Where an assessee has **property within the jurisdiction of more than one Tax Recovery Officer** and the Tax Recovery Officer by whom the certificate is drawn up—

- (a) is **not able to recover the entire amount** by sale of the property, movable or immovable, within his jurisdiction, or
- (b) is of the **opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Chapter, it is necessary so to do,**

he may **send the certificate** or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner⁵⁷ and **specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property** and, thereupon, that Tax Recovery Officer shall also proceed to recover the amount under this Chapter as if the certificate or copy thereof had been drawn up by him.

Validity of certificate and cancellation or amendment thereof.

224. It shall **not be open to the assessee to dispute** the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it **shall be lawful for the Tax Recovery Officer** to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or **arithmetical mistake** therein.

Stay of proceedings in pursuance of certificate and amendment or cancellation thereof.

225. (1) It shall be **lawful for the Tax Recovery Officer to grant time for the payment of any tax** and when he does so, he shall **stay the proceedings for the recovery** of such tax until the expiry of the time so granted.

(2) Where the **order giving rise to a demand of tax for which a certificate** has been drawn up **is modified in appeal** or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax **Recovery Officer shall stay the recovery of such part of the amount specified** in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(3) Where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Tax Recovery Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be.

Other modes of recovery.

226. (1) Where no certificate has been drawn up under section 222, the Assessing Officer may recover the tax by any **one or more of the modes** provided in this section.

(1A) Where a certificate has been drawn up under section 222, the Tax Recovery Officer may, without prejudice to the modes of recovery specified in that section, recover the tax by any one or more of the modes provided in this section.

(2) If any assessee is in **receipt of any income chargeable under the head "Salaries"**, the Assessing Officer or Tax Recovery Officer may **require any person paying the same to deduct from any payment** subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs :

Provided that any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from any requisition made under this sub-section.

(3) (i) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, **by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Assessing Officer or Tax Recovery Officer** either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be **issued to any person who holds or may subsequently hold** any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A **copy of the notice shall be forwarded to the assessee at his last address known to the Assessing Officer** or Tax Recovery Officer, and in the case of a joint account to all the joint holders at their last addresses known to the Assessing Officer or Tax Recovery Officer.

(iv) Save as otherwise provided in this sub-section, **every person to whom a notice is issued** under this sub-section shall be **bound to comply with such notice**, and, in particular, where any such notice is issued to a **post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.**

(v) Any **claim respecting any property** in relation to which a notice under this sub-section has been issued arising after the date of the **notice shall be void as against any demand contained in the notice.**

(vi) Where a **person to whom a notice under this sub-section is sent objects to it by a statement on oath** that the sum demanded or any part thereof is not due to the assessee or that **he does not hold** any money for or on account of the assessee, then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, **but if it is discovered that such statement was false in any material particular**, such person shall be **personally liable** to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(vii) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, **amend or revoke any notice issued** under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Assessing Officer or Tax Recovery Officer shall **grant a receipt for any amount paid in compliance with a notice** issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the **extent of the amount so paid**.

(ix) Any **person discharging any liability to the assessee after receipt of a notice** under this sub-section shall be **personally liable to the Assessing Officer** or Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent **fails to make payment** in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and **further proceedings may be taken against him** for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222.

(4) The Assessing Officer or Tax Recovery Officer may **apply to the court in whose custody there is money belonging to the assessee for payment to him** of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

(5) The Assessing Officer or Tax Recovery Officer may, if so authorised by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner by **general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property** in the manner laid down in the Third Schedule.

Recovery through State Government.

227. If the recovery of **tax in any area has been entrusted to a State Government** under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof; that tax shall be **recovered therein with, and as an addition to, any municipal tax or local rate**, by the same person and in the same manner as the municipal tax or local rate is recovered.

Recovery of tax in pursuance of agreements with foreign countries.

228A. (1) Where an **agreement is entered into by the Central Government with the Government** of any **country outside India for recovery of income-tax** under this Act and the corresponding law **from a resident, or** in force in that country and the Government of that country or any authority under that Government which is specified in this behalf in such agreement **sends to the Board** a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the **Board may forward such certificate to any Tax Recovery Officer having jurisdiction over the resident, or within whose jurisdiction such property is situated** and thereupon such Tax Recovery Officer shall—

- (a) **proceed to recover the amount** specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222; and
- (b) **remit any sum so recovered by him to the Board** after deducting his expenses in connection with the recovery proceedings.

(2) Where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the **assessee is a resident of a country** (being a country with which the Central Government has entered into an agreement for the recovery of income-tax under this Act and the corresponding law in force in that country), **or has any property in that country, forward to the Board a certificate drawn up** by him under section 222 and the **Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.**

Recovery of penalties, fine, interest and other sums.

229. Any sum imposed by way of interest, fine, penalty, or any other sum payable under the provisions of this Act, shall be **recoverable in the manner provided** in this Chapter for the **recovery of arrears of tax.**

Recovery by suit or under other law not affected.

232. The several modes of recovery specified in this Chapter shall not affect in any way—

(a) any other law for the time being in force relating to the recovery of debts due to Government; or

(b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee;

and it shall be lawful for the Assessing Officer or the Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

Tax Clearance Certificate

Part C of Recovery Procedure

Question: (ID 01) (ITCC)

Mr. D a foreign citizen came to India on Special assignment for rendering technical services to an Indian company Tata motors limited. His remuneration is paid \$10,000 outside India. He is leaving from India on 16th September in Etihad airways Flight No. 6E-955.

	Your Options are
A	Mr. D should ensure that his tax is deducted at source in India before his departure.
B	Mr. D should ensure that his return is filed in India before his departure.
C	Mr. D should ensure that he is possessing appropriate certificate from Tata Motors before his departure.
D	Mr. D should inform his assessing officer the fact that he is leaving the country before his departure.

	Your Options are
A	Etihad airways will be personally liable to income tax department for tax dues of Mr. D if it allows to travel Mr. D without NOC from appropriate tax authorities.
B	Etihad airways will not be personally liable to income tax department for tax dues of Mr. D if it allows to travel Mr. D without NOC from appropriate tax authorities.
C	Etihad airways will be personally liable to income tax department for tax dues of Mr. D.
D	Etihad airways will be personally liable to income tax department for tax dues of Mr. D because Mr. D has not filed return of income in India before the departure.

Bare Act Provisions

Tax clearance certificate.

230. (1) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, **no person**,—

- (a) who is **not domiciled in India**;
- (b) who has **come to India in connection with business, profession** or employment; and
- (c) who has **income derived from any source in India**,

shall leave the territory of India by land, sea or air unless he furnishes to such authority as may be prescribed—

- (i) an **undertaking in the prescribed form from his employer**; or
- (ii) **through whom such person is in receipt of the income**,

to the **effect that tax payable by such person who is not domiciled in India shall be paid by the employer** referred to in clause (i) or the person referred to in clause (ii), and the prescribed authority shall, on receipt of the undertaking, immediately give to such person a no objection certificate, for leaving India:

Provided that nothing contained in sub-section (1) shall apply to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

(1A) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, **every person, who is domiciled in India** at the time of his departure from India, shall furnish, in the prescribed form to the income-tax authority or such other authority as may be prescribed—

(a) the **permanent account number** allotted to him under section 139A:

Provided that in case no such permanent account number has been allotted to him, or his total income is not chargeable to income-tax or he is not required to obtain a permanent account number under this Act, such person shall furnish a certificate in the prescribed form;

(b) the **purpose of his visit outside India**;

(c) the **estimated period of his stay outside India**:

Provided that **no person**—

(i) who is **domiciled in India at the time of his departure**; and

(ii) in **respect of whom circumstances exist** which, in the opinion of an income-tax authority render it **necessary for such person to obtain a certificate under this section**,

shall **leave the territory** of India by land, sea or air unless he **obtains a certificate from the income-tax authority** stating that he has no liabilities under this Act, or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Expenditure-tax Act, 1987 (35 of 1987), or that **satisfactory arrangements** have been made **for the payment of all or any of such taxes** which are or may become payable by that person :

Provided* that no income-tax authority shall make it necessary for any person who is domiciled in India to obtain a certificate under this section **unless he records the reasons** therefor and obtains **the prior approval of the Principal Chief Commissioner or Chief Commissioner of Income-tax**.

(2) If the **owner or charterer of any ship or aircraft** carrying persons from any place in the territory of India to any place outside India **allows any person** to whom **sub-section (1) or the first proviso to sub-section (1A)** applies to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be **personally liable to pay** the whole or any part of the amount of tax, if any, payable by such person as the Assessing Officer may, having regard to the circumstances of the case, determine.

(3) In respect of any **sum payable by the owner or charterer of any ship or aircraft** under sub-section (2), the owner or charterer, as the case may be, **shall be deemed to be an assessee in default** for such sum, and such sum shall be recoverable from him in the manner provided in this Chapter as if it were an arrear of tax.

(4) The Board may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

Explanation.—For the purposes of this section, the expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

Settlement Commission

This chapter has been discontinued by law by finance act 2021.

Instead of this chapter finance act 2021 has brought in dispute resolution mechanism in form of CHAPTER XIX-AA section 245MA.

LIABILITY IN SPECIAL CASES

	Sub-Topics	Sections
A	Liability in special Cases	159 to 181
B		
C		

LIABILITY IN SPECIAL CASES

Part A

Accelerated assessment

Question (Accelerated assessment) (ID – 01) (Revision / Home work)

An assessee has applied for tax clearance certificate. Can the AO. make an assessment U/s. 174?

	Your Options are
A	Application of Tax clearance certificate is routine procedure and thus 174 should not be applied.
B	Application of Tax clearance certificate is reasons enough for officer to invoke 174.
C	Assessing officer must always invoke 174
D	None of above

Question (Accelerated assessment) (ID – 02) (Revision / Home work)

In pursuance of an agreement entered into with a non-resident firm by the company X, the firm supplied drawings and designs, etc. One Mr. Davis, one of the partners of the firm, also visited India to supervise the erection of the plant and the firm was paid some remuneration as per the agreement. The presence of the partner of the non-resident firm in India was brought to the notice of the Income-tax Officer, who recorded his statement also. Company X also requested the officer to make a note of 174 and make the assessment on Mr Davis before he leaves India. The Income-tax Officer, however, issued a notice to the company to show cause why it should not be treated as agent of the non-resident firm. Officer also treated the company as agent of non-resident. Whether action of the officer is justified ?

	Your Options are
A	AO is not Justified since Section 174 and Section 160 are mutually exclusive
B	AO is not Justified since Section 174 and Section 160 are not mutually exclusive
C	AO is not Justified since Section 174 and Section 160 can operate simultaneously
D	AO is Justified

Question (Accelerated assessment) (ID – 11)

Assessee company X is selling its factory building plant and machinery to Company Y on 1-6-2011. Net income of the company as on the date is 30 crore. Assessing officer is invoking the provisions of section 175 and making the assessment of the company immediately by issuing a notice. Assessing officer has worked out the tax liability as 30 crore * tax rate % + SC and CESS (tax rate for AY 2012-13). However CIT is of the view that tax liability should be worked as 30 crore * tax rate % + SC and CESS (tax rate for AY 2011-12) since the previous year is same as assessment year. You are required to offer your comments on the issue.

	Your Options are
A	Tax rate of AY 12-13 will apply
B	Tax rate of AY 12-13 will apply if the finance act is already passed appropriately
C	Tax rate of AY 11-12 will always apply
D	None of above

Bare Act Provisions

Assessment of persons leaving India.

174. (1) Notwithstanding anything contained in section 4, **when it appears to the Assessing Officer** that any **individual may leave India** during the current assessment year or shortly after its expiry and that **he has no present intention of returning to India**, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be **chargeable to tax in that assessment year**.

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and **separate assessments shall be made** in respect of each such completed previous year or part of any previous year.

(3) The **Assessing Officer may estimate the income** of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(4) For the purpose of making an assessment under sub-section (1), the **Assessing Officer may serve a notice** upon such individual requiring him to furnish within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income for each completed previous year comprised in the period referred to in sub-section (1) and his estimated total income for any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued under clause (i) of sub-section (1) of section 142.

(5) The **tax chargeable under this section shall be in addition to the tax**, if any, chargeable under any other provision of this Act.

(6) Where the provisions of sub-section (1) are applicable, any **notice issued by the Assessing Officer** under clause (i) of sub-section (1) of section 142 or section 148 in respect of any tax chargeable under any other provision of this Act may, notwithstanding anything contained in clause (i) of sub-section (1) of section 142 or section 148, as the case may be, **require the furnishing of the return by such individual within such period, not being less than seven days, as the Assessing Officer may think proper**.

Assessment of association of persons or body of individuals or artificial juridical person formed for a particular event or purpose.

174A. Notwithstanding anything contained in section 4, **where it appears to the Assessing Officer** that any **association of persons or a body of individuals or an artificial juridical person, formed or established or incorporated for a particular event or purpose is likely to be dissolved in the assessment year in which such association of persons or a body of individuals or an artificial juridical person was formed** or established or incorporated or immediately after such assessment year, the total income of such association or body or juridical person for the period from the expiry of the previous year for that assessment year up to the date of its dissolution shall be chargeable to tax in that assessment year, and the provisions of sub-sections (2) to (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

Assessment of persons likely to transfer property to avoid tax.

175. Notwithstanding anything contained in section 4, **if it appears to the Assessing Officer** during any current assessment year that any person is **likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability** under the provisions of this Act, the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the Assessing Officer commences proceedings under this section shall be chargeable to tax in that assessment year, and the provisions of sub-sections (2), (3), (4), (5) and (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

Part B**legal heirs and executors****Question (legal heirs and executors) (ID – 02) (Revision / Home work)**

A notice of demand has been sent to the Mr. Majmudar a deceased assessee during his lifetime. The assessing officer wants to recover the dues from his son Mr. Hari. Is there any necessity of sending further notice?

	Your Options are
A	Demand notice should be again send to Mr. Hari
B	Demand notice should be again send to Mr. Hari (in joint name of Mr. Majmudar and Mr. Hari)
C	Demand notice should be again send to Mr. Hari in 30 days after death of Mr. Majmudar
D	Demand notice need not be send again.

Question (legal heirs and executors) (ID – 03) (Revision / Home work)

The assessee died leaving behind 3 sons as legal representative. The assessing officer served notice U/s 148 on one of them. How far the proceedings are valid?

	Your Options are
A	Re-assessment notice should be send to all the 3 sons
B	Re-assessment notice should be send to eldest son
C	Re-assessment notice should be send to any one of the sons
D	No need to serve notice on sons, rather it should be send to deceased assessee as per the data available.

Question (legal heirs and executors) (ID – 04) (Revision / Home work)

While making an assessment on executor, as AOP U/s 168(1) (b) the assessing officer noticed that there were some brought forward losses. Can these be allowed to be set off ?

	Your Options are
A	Losses of deceased is not allowed to be set off in hands of executors since executor is not the assessee.
B	Losses of deceased is not allowed to be set off in hands of executors since executor is acting in fiduciary capacity.
C	Both A and B are acceptable
D	Losses of deceased will be allowed to be set off in the hands of executor

Question (legal heirs and executors) (ID – 05) (Revision / Home work)

One Mr. B having extensive business interests did not file returns. He died leaving behind ten legal representatives of which one is J. J filed return pursuant to notice and personally signed it. However, assessment orders were made mentioning the names of all ten legal representatives. On appeal, J contended for the first time that inasmuch as all the legal representatives of Mr. B were not given notice of the assessment proceedings, the assessments made were illegal and void. Whether the notice to J was in order ?

	Your Options are
A	Notice to J and order pursuant to that is not Justified since there were 10 legal representatives known to the revenue.
B	Notice to J and order pursuant to that is not Justified anyways.
C	Notice to J is not valid but order is valid.
D	Notice to J and order pursuant to that is Justified.

Question (legal heirs and executors) (ID – 06)

On the death of Mr Kalpesh Sanghavi who had not left any Will, the properties were managed by his mother. The widow of the deceased did not receive any share from the estate till year end. Her mother-in- law filed a consolidated return showing income of 6 lakhs and the ITO made assessment on the widow for her 50 % share in income and assets. Is the action of the officer justified ?

You are also requested to advise assessing officer on making the assessment of the said income in correct manner.

	Your Options are
A	Action of the officer is Justified since tax dues have to be recovered
B	Action of the officer is Justified since it is correct assessment procedure
C	Action of the officer is Justified since widow is wife of deceased
D	Action of the officer is not Justified

Bare Act Provisions

Legal representatives.

159. (1) Where a **person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.**

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

- (a) any **proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative** and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;
- (b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and
- (c) all the provisions of this Act shall apply accordingly.

(3) The **legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.**

(4) Every legal representative **shall be personally liable for any tax payable** by him in his capacity as legal representative if, while his **liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased,** which are in, or may come into, his possession, but **such liability shall be limited to the value of the asset so charged,** disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be **limited to the extent to which the estate is capable of meeting the liability.**

Executors.

168. (1) Subject as hereinafter provided, the **income of the estate of a deceased** person shall be chargeable to **tax in the hands of the executor**,—

(a) if there is only one executor, then, as if the executor were an individual; or

(b) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the **executor shall be deemed to be resident or non-resident according as the deceased person** was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an **executor under this section shall be made separately from any assessment** that **may be made on him in respect of his own income**.

(3) **Separate assessments shall be made** under this section on the total income of each completed previous year or part thereof as is included in the **period from the date of the death to the date of complete distribution to the beneficiaries of the estate** according to their several interests.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year **distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee**.

Explanation.—In this section, "executor" includes an administrator or other person administering the estate of a deceased person.

Part C**Succession and discontinuation of Business****Question (Succession of Business) (ID – 07) (Revision / Home work)**

In the following cases, mention whether there is a 'succession' for the purpose of section 170 of Income Tax Act.

- B & Co. owned rolling mills and other manufacturing units. It transferred the rolling milts to a newly formed company M.
- A HUF carried on a money lending business. It was partitioned and the erstwhile co-parceners carried on the same business in partnership.
- A five member HUF carried on a money lending business. The HUF was partitioned. One of the members was assigned a one fifth share of the assets of the business and separated. The other four carried on the business at old premises in the manner in which it was carried on before partition.

	Your Options are i.r.t.
A	A and B are succession
B	A and B and C are succession
C	A and C are succession
D	C and B are succession

In relation to Company M, it will be responsible for

- Assessment or re-assessment of B & Co.
- Penalty procedure of B & Co.

c)	Your Options are i.r.t.
A	a and b
B	Only a
C	Only b
D	Neither a nor b

Question (Discontinuation of business) (ID – 08) (Revision / Home work)

A business of firm was discontinued during the previous year. Assessing officer wants to make cumulative assessment i.e. assessment of the earlier previous year in which business existed for the whole year and the part of the next previous year during which business was discontinued is such cumulative assessment valid?

	Your Options are
A	Cumulative Assessment is valid since it is squarely covered by 176
B	Cumulative Assessment is valid since it is squarely covered by 176 rw 189
C	Cumulative Assessment is valid for assessee being Firm
D	Cumulative assessment is not valid

Question (Discontinuation of business) (ID – 09) (Revision / Home work)

An HUF was carrying on a business. It was partitioned & the business was split. Two of the erstwhile members continued the business activities as their own, taking over the premises of the business. Does section 176 apply?

	Your Options are
A	176 do not apply since business was partitioned
B	176 do not apply since business was partitioned and split
C	176 do not apply since business was carried on by HUF and partition of HUF is not regarded as transfer
D	176 applies

Bare act provisions

Succession to business otherwise than on death.

170. (1) Where a person **carrying on any business or profession** (such person hereinafter in this section being referred to as the predecessor) **has been succeeded** therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—

- (a) the **predecessor shall be assessed** in respect of the income of the previous year in which the succession took place up to the date of succession;
- (b) the **successor shall be assessed** in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the **predecessor cannot be found**, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year **shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor**, and all the provisions of this Act shall, so far as may be, apply accordingly.

(2A) Notwithstanding anything contained in sub-sections (1) and (2), where there is succession, the **assessment or reassessment or any other proceedings**, made or initiated on the predecessor during the course of pendency of such succession, shall be **deemed to have been made or initiated on the successor** and all the provisions of this Act shall, so far as may be, apply accordingly.

Explanation.—For the purposes of this sub-section, the term "pendency" means the period commencing from the date of filing of application for such succession of business before the High Court or tribunal or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and ending with the date on which the order of such High Court or tribunal or such Adjudicating Authority, as the case may be, is received by the Principal Commissioner or the Commissioner.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, **cannot be recovered from him**, the Assessing Officer shall record a finding to that effect and the **sum payable by the predecessor shall thereafter be payable by and recoverable from the successor**, and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession.

Effect of order of tribunal or court in respect of business reorganisation.

170A. Notwithstanding anything to the contrary contained in section 139, in a case of business reorganisation, where prior to the date of order of a High Court or tribunal or an Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be, any return of income has been furnished by the successor under the provisions of section 139 for any assessment year relevant to the previous year to which such order applies, **such successor shall furnish, within a period of six months from the end of the month in which the said order was issued. a modified return** in such form and manner, as may be prescribed, in accordance with and limited to the said order.

Explanation.—In this section, the expressions —

- (i) "business reorganisation" means the reorganisation of business involving the amalgamation or demerger or merger of business of one or more persons;
- (ii) "successor" means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

Discontinued business.

176. (1) Notwithstanding anything contained in section 4, where any **business or profession is discontinued** in any assessment year, the income of the period from the **expiry of the previous year for that assessment year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.**

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and **separate assessments shall be made** in respect of each such completed previous year or part of any previous year.

(3) Any **person discontinuing any business or profession shall give to the Assessing Officer notice** of such discontinuance **within fifteen days** thereof.

(3A) Where any business 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 had such sum been received before such discontinuance.**

(4) Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, 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 aforesaid person had it been received before such discontinuance.

(5) Where an assessment is to be made under the provisions of this section, the **Assessing Officer may serve** on the person whose income is to be assessed or, in the case of a firm, on any person who was a partner of such firm at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a **notice containing all or any of the requirements** which may be included in a notice under clause (i) of sub-section (1) of section 142 and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under clause (i) of sub-section (1) of section 142.

(6) The **tax chargeable under this section shall be in addition to the tax**, if any, chargeable under any other provision of this Act.

(7) Where the provisions of sub-section (1) are applicable, any notice issued by the Assessing Officer under clause (i) of sub-section (1) of section 142 or section 148 in respect of any tax chargeable under any other provisions of this Act may, notwithstanding anything contained in clause (i) of sub-section (1) of section 142 or section 148, as the case may be, require the furnishing of the return by the person to whom the aforesaid notices are issued within such period, not being less than seven days, as the Assessing Officer may think proper.

Part D**Companies in liquidation / Companies****Question (Companies in liquidation) (ID – 10)**

Imperial Chit Funds (P) Ltd. was under liquidation. On completion of assessment the official liquidator informed the I.T.O. that tax dues determined constituted debt provable in the winding up proceedings as 10 lakhs. I.T.O. however, issued a certificate to the T.R.O. and demanded the tax dues immediately and issued a demand notice of 13 lakhs including 3 lakhs likely to become due thereafter. Can the income tax department be treated as a secured creditor' and the amount set aside by official liquidator U/s 178(3)(b) fall outside the area of winding up proceedings? Can the A.O. be entitled to payment of tax demand otherwise than as winding up procedure of Companies Act ?

	Your Options are
A	Department will be secured creditor for 3 lakhs
B	Department will be secured creditor for 13 lakhs
C	Department will be secured creditor for 23 lakhs
D	None of above

Question (Directors Private Limited Companies) (ID – 11)

Kalpesh Sanghavi was a director in a private company floated by, his brother. He resigned from directorship of the company with effect from 31-3-PY. For the year, tax and interest were found due against the company. As the departmental authorities could not recover the outstanding dues from the company, proceedings were initiated against Kalpesh Sanghavi under section 179(1). His salary from his employer, Punjab Roadways was attached in month of August. Subsequently, the company filed a revision petition for the stay against recovery proceedings. Can the recovery proceedings against Kalpesh Sanghavi be stayed ?

OR

In respect of the taxes due from a private limited company, which could not be recovered from it, the Tax Recovery Officer attached the properties of an erstwhile director for recovery thereof. It was contended by the director that notice under section 156 had not been served on him and, therefore, the proceedings for recovery were not valid. What is the correct legal position ?

OR

'A' was a director of a Private Company floated by his brother. He resigned on 31st March. Tax and interest was due from the Company. Proceedings were initiated against 'A'. His salary was attached. Company filed a revision petition for stay of recovery against the company. Can recovery against 'A' be stayed ?

	Your Options are
A	The mere pendency of the revision petition cannot be made a ground for issue of a direction to stop making recovery of the tax as the filing of the revision petition by the company does not operate a stay against the recovery proceedings against Mr. Kalpesh Sanghavi
B	Since revision petition is filed by the company the recovery proceeding cannot be initiated by against Mr. Kalpesh Sanghavi
C	A or B above
D	A and B above

	Your Options are
A	Recovery against Mr. A is valid
B	Recovery against Mr. A is not valid
C	Recovery against Mr. A is not valid since section 179 do not apply
D	Recovery against Mr. A is not valid since section 179 apply

Bare Act Provisions

Company in liquidation.

178. (1) Every person—

- (a) who is the **liquidator of any company** which is being wound up, whether under the orders of a court or otherwise; or
- (b) who has been appointed the receiver of any assets of a company,

(hereinafter referred to as the liquidator) shall, **within thirty days after he has become such liquidator, give notice of his appointment** as such to the Assessing Officer who is entitled to assess the income of the company.

(2) The **Assessing Officer shall, after making such inquiries or calling for such information** as he may deem fit, **notify to the liquidator within three months** from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Assessing Officer, would be sufficient to provide for any **tax which is then, or is likely thereafter to become, payable by the company.**

(3) The liquidator—

- (a) shall not, without the leave of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer under sub-section (2) ; and
- (b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner reasonable.

(4) **If the liquidator fails to give the notice** in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, **he shall be personally liable** for the payment of the tax which the company would be liable to pay :

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are **more liquidators than one**, the obligations and liabilities attached to the liquidator under this section shall attach to all the **liquidators jointly and severally.**

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force ²⁹[except the provisions of the Insolvency and Bankruptcy Code, 2016].

Liability of directors of private company.

179. (1) Notwithstanding anything contained in the Companies Act, 1956³⁰ (1 of 1956), where any **tax due from a private company** in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company cannot be recovered, then, **every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty** on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.

Explanation.—For the purposes of this section, the expression "tax due" includes penalty, interest, fees or any other sum payable under the Act.

AGRICULTURAL INCOME

Question 1 (ID 01)

X Ltd. grows sugarcane to manufacture sugar. Data is as follows

	Rs.
Cost of cultivation of sugarcane	6
Market value of sugarcane when sugarcane is transferred to factory	9
Other manufacturing cost	6
Sales turnover of sugar	22
Salary of managing director who looks after agriculture as well as non-agricultural operations of the company	2

You are required to find out the agricultural income of the company.

Question 2 (ID 02)

For the year, net agricultural income of an assessee is Rs. 86,000 and non-agricultural income is Rs. 12,65,000.

The taxpayer contributes Rs. 40,000 towards public provident fund. Find out the tax if the taxpayer is:

- (a) Mrs. X, an individual (22 years).
- (b) A Ltd. an Indian company.

Bare Act Provisions

Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(1) agricultural income ;

Definitions.

2. In this Act, unless the context otherwise requires,—

(1A) "agricultural income"² means—

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

Provided that—

- (i) the **building is on or in the immediate vicinity of the land**, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and
- (ii) the **land is either assessed to land revenue in India or is subject to a local rate assessed** and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—
 - (A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand; or
 - (B) in any area within the distance, measured aerially,—
 - (1) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

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

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

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

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

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

EXEMPTIONS 10AA

Question 1

R Ltd. furnishes the following particulars for the year.

Total sales of the above undertaking	50,00,000
Export sales	40,00,000
Domestic sales	10,00,000
Money brought to India in convertible foreign exchange upto 30-9-AY	36,00,000
Profit from the above undertaking	5,00,000

Compute the deduction available from the total income under section 10AA.

Question 2

R & Co., a partnership concern, has established in special economic zone in a free trade zone. It furnishes the following particulars of its 2nd year of operations for the previous year:

	Rs.
Total sales of business	1,00,00,000
Export sales	80,00,000
Profit of business	10,00,000

Out of the total export sales, realization of a sale of Rs. 5,00,000 is difficult because of insolvency of buyer. Realisation of rest of the sales has been received in time. The plant and machinery used in the business has been depreciated @ 15% on SLM basis and depreciation of Rs. 3,00,000 is charged in profit & loss account. Compute the taxable income of R & Co.

Question 3

A company is engaged in SEZ. It has started a new undertaking for which approval as a 100% export oriented undertaking has been obtained from the CBDT. It furnishes the following data and requests you to compute the deduction allowable to it under section 10AA.

	(Rs. In lacs)
Total profit of the company for the previous year	50
Total turnover i.e. Export, Sales and Domestic Sales for the previous year	500
Consideration received in respect of export of software received in convertible foreign exchange within 6 months of the end of the previous year	250
Sale proceeds credited to a separate account in a bank outside India with the approval of R.B.I.	50
Telecom and insurance charges attributable to export of software	10
Staff costs and travel expenses incurred in foreign exchange to provide technical assistance outside India to a client	40

Question 4

X Ltd. is a manufacturing and trading company. It owns 3 units. Unit A manufactures goods in a special economic zone for export purposes and qualified for exemption under section 10AA. Unit B is manufacturing unit and goods are sold in domestic market. It is not qualified for any tax holiday. Unit C owns retail outlets in different parts of country. From the information given below find out net income of X Ltd. for the year

	Unit A	Unit B	Unit C
Net profit as per profit and loss account	90	-(40)	10
Turnover	1200	400	150
Out of which how much is export turnover	1180	10	-
Amount remitted in convertible foreign exchange up to September 30, AY	1002	2	-
Freight and insurance (charged over and above sale price from importers and included in amount remitted in convertible foreign exchange as well as turnover given above)	10	-	-

Question 5

X Ltd. has an undertaking (Unit X) in Special Economic Zone (SEZ) and another undertaking (Unit Y) in Free Trade Zone (FTZ) for manufacturing of computer software. It furnishes the following particulars of its 2nd year of operations –

	Rs. (in Lakh)	
	Unit X	Unit Y
Total Sales	180	120
Export sales (inclusive of Rs. 10 lakh onsite development of computer software outside India by Unit X)	120	10
Profit earned (after claim of bad debts under section 36(1)(vii) in Unit X)	63	36

Plant and machinery used in business has been depreciated at 15 percent on straight line method (SLM) basis and depreciation of Rs. 9 lakh was charged to Profit and Loss Account in the proportion of sales during the previous year. Rs. 100 lakh were realized out of export sales in time and balance of Rs. 20 lakh becomes irrecoverable due to bankruptcy of one of the foreign buyers in Unit X.

Compute the deduction under section 10AA and taxable income of X Ltd.

List of Important Question to be glanced for Revision before exam.

Ch-ID	Q-ID	Type of Question	Status
F23	03	Computation	V.Imp
F23	04	Computation (multiple units)	V.Imp
F23	05	Computation (multiple units)	

Wishing You all the best for exams.

Bare Act Provisions

Special provisions in respect of newly established Units in Special Economic Zones.

10AA. (1) Subject to the provisions of this section, in computing the total income of an assessee, being an **entrepreneur as referred to in clause (i) of section 2 of the Special Economic Zones Act, 2005**, from his Unit, who begins to **manufacture or produce articles or things** or **provide any services** during the previous year relevant to any assessment year commencing on or after the 1st day of ⁹⁰[April, 2006, but before the first day of April, 2021, the following deduction shall be allowed]—

- (i) **hundred per cent of profits and gains** derived from the export, of such articles or things or from services for a period of **five consecutive assessment years** beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and fifty per cent of such profits and gains for further five assessment years and thereafter;
- (ii) for the **next five consecutive** assessment years, so much of the amount not exceeding **fifty per cent of the profit as is debited to the profit and loss account** of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section (2).

⁹¹[Explanation.—*For the removal of doubts, it is hereby declared that the amount of deduction under this section shall be allowed from the total income of the assessee computed in accordance with the provisions of this Act, before giving effect to the provisions of this section and the deduction under this section shall not exceed such total income of the assessee.*]

(2) The deduction under clause (ii) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

- (a) the amount credited to the Special Economic Zone Re-investment Reserve Account is to be utilised—
 - (i) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and
 - (ii) until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;
- (b) the particulars, as may be specified by the Central Board of Direct Taxes in this behalf, under clause (b) of sub-section (1B) of section 10A have been furnished by the assessee in respect of machinery or plant along with the return of income⁹² for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(3) Where any amount credited to the Special Economic Zone Re-investment Reserve Account under clause (ii) of sub-section (1),—

(a) has been utilised for any purpose other than those referred to in sub-section (2), the amount so utilised;
or

(b) has not been utilised before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (2), the amount not so utilised,

shall be deemed to be the profits,—

(i) in a case referred to in clause (a), in the year in which the amount was so utilised; or

(ii) in a case referred to in clause (b), in the year immediately following the period of three years specified in sub-clause (i) of clause (a) of sub-section (2),

and shall be charged to tax accordingly :

Provided that where in computing the total income of the Unit for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (7B) of section 10A, the undertaking, being the Unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (ii) of sub-section (1).

Explanation.—For the removal of doubts, it is hereby declared that an undertaking, being the Unit, which had already availed, before the commencement of the Special Economic Zones Act, 2005, the deductions referred to in section 10A for ten consecutive assessment years, such Unit shall not be eligible for deduction from income under this section :

Provided further that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone, the period of ten consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the Unit began to manufacture, or produce or process such articles or things or services in such free trade zone or export processing zone:

Provided also that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone and has completed the period of ten consecutive assessment years referred to above, it shall not be eligible for deduction from income as provided in clause (ii) of sub-section (1) with effect from the 1st day of April, 2006.

(4) This section applies to any undertaking, being the Unit, which fulfils all the following conditions, namely:—

(i) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking, being the Unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.

Explanation.—The provisions of *Explanations 1* and *2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(5) Where any undertaking being the Unit which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another undertaking, being the Unit in a scheme of amalgamation or demerger,—

(a) no deduction shall be admissible under this section to the amalgamating or the demerged Unit, being the company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as they would have applied to the amalgamating or the demerged Unit being the company as if the amalgamation or demerger had not taken place.

(6) Loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.

(7) For the purposes of sub-section (1), the profits derived from the export of articles or things or services (including computer software) shall be the **amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business** carried on by the undertaking :

Provided that the provisions of this sub-section [as amended by section 6 of the Finance (No. 2) Act, 2009 (33 of 2009)] shall have effect for the assessment year beginning on the 1st day of April, 2006 and subsequent assessment years.

(8) The provisions of sub-sections (5)⁹³ and (6) of section 10A shall apply to the articles or things or services referred to in sub-section (1) as if—

(a) for the figures, letters and word "1st April, 2001", the figures, letters and word "1st April, 2006" had been substituted;

(b) for the word "undertaking", the words "undertaking, being the Unit" had been substituted.

(9) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

(10) Where a deduction under this section is claimed and allowed in respect of profits of any of the specified business, referred to in clause (c) of sub-section (8) of section 35AD, for any assessment year, **no deduction**

shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.]

Explanation 1.—For the purposes of this section,—

- (i) "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but **does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;**
- (ii) "export in relation to the Special Economic Zones" means taking goods or providing services out of India from a Special Economic Zone by land, sea, air, or by any other mode, whether physical or otherwise;
- (iii) "manufacture" shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zones Act, 2005;
- (iv) "relevant assessment year" means any assessment year falling within a period of fifteen consecutive assessment years referred to in this section;
- (v) "Special Economic Zone" and "Unit" shall have the same meanings as assigned to them under clauses (za) and (zc) of section 2 of the Special Economic Zones Act, 2005.

Explanation 2.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

DEDUCTIONS

**REFER THIS TOPIC FROM BOOK-A
ALIAS CHAPTER ID – A11**

SET OFF AND CLUBBING

	Sub-Topics	Sections
A	Set off	70 to 80
B	Clubbing	60 to 65

SET OFF AND CARRY FORWARD

REFER THIS TOPIC FROM BOOK-A

ALIAS CHAPTER ID – A09

Part A

Question 7 (Carry forward and set off) (SLID 007) (Revision / Home work)

Mr. Madhukant was carrying on proprietary business in Name of M/s Mahavir of speculation in shares, cotton and other commodities. Mr. Madhukant has carried forward loss of 2 Lakhs of the said business. He died leaving behind his widow, a son and a daughter. Three heirs of Madhukant entered into a partnership and executed a partnership deed wherein they agreed to carry on the said business of speculation. In the said speculation business carried on in the name of the M/s MM a partnership firm, profits were earned by firm 10 Lakhs and the assessee sought to carry forward and set off the losses incurred by the deceased in his proprietary business against the income from the speculation business of the partnership firm.

	Your Options are
A	Total Income of M/s MM will be 10 Lakhs
B	Total Income of M/s MM will be 8 Lakhs
C	Total Income of M/s MM will be 18 Lakhs
D	None of above

OR

Smt. Bhanu succeeded to the business of her husband Sri. Bhavesh who died on 10 September. She carried on the business as proprietary. The business of Bhavesh up to the date of his death resulted in a loss amounting to 1 Lakh. Smt. Bhanu earned profit in business for the year Amount 15 Lakhs.

	Your Options are
A	Total Income of Bhanu will be 14 Lakhs
B	Total Income of Bhanu will be 15 Lakhs
C	Total Income of Bhanu will be 16 Lakhs
D	None of above

Question 9 (Carry forward and set off) (SLID 013) (Revision / Home work)

X provides the following information:

Sales (retail trade in garments) (no books of accounts maintained)	32,00,000
Rent from house property at Chennai (computed)	120,000
Vacant site lease rent	12,000

X purchases 20,000 shares of A.Co. Ltd., declares 1 : 1 bonus on January 1, 2003.

X sells 1,000 bonus shares in September of previous year for Rs.1,20,000.

X gets Rs.50,000 on February 12, being amount due from Y relating to electronic goods supplied by X's father, which was written off as bad debt by his father 4 years back and allowed as deduction. X's father died 2 years back.

X's father has brought business loss relating to discontinued automobile business of 3 years back : Rs.2,00,000; brought forward depreciation relating to the same business : Rs.1,50,000.

Compute gross total income of X.

Question 10 (Carry forward and set off) (SLID 017) (Revision / Home work)

From the following data, you are required to work out the total income chargeable to tax of X Ltd., a domestic company.:

Business loss	50,00,000
Property income	45,00,000
Income from other sources	1,00,000
<u>Capital gains:</u>	
Short-term	3,00,000
Long-term	10,00,000

	Your Options are
A	Total income 900,000 will be taxed @ 20 % + Applicable surcharge + CESS
B	Total income 900,000 will be taxed @ 30 % + Applicable surcharge + CESS
C	Either A or B can be preferred by the Company X
D	None of above

Part B**Special treatment for Firms****Question 1 (special treatment for partnership firms) (SLID 011)**

R, S and G are equal partners of a firm. The firm's c/f loss was determined as Rs. 78,000. S retired from the firm and P joined on 1-4 of previous year as an equal partner. The firm made a profit of Rs. 84,000 for the previous year but it wants to set off the carried forward loss of Rs. 78,000 of the previous year against this profit. Examine the validity of the firm's claim and allocate the shares of R, S and G.

Problem 2 (special treatment for partnership firms) (ID 12)

X, Y and Z (1:1:2) are three partners of a firm. Brought Forward income of the firm is (-) Rs. 1,30,000 (out of which unadjusted depreciation is Rs. 40,000). On April 30, Z retires from the firm and the other partners carry on the same business. The income of the firm for the year before adjusting of the aforesaid loss and depreciation is Rs. 1,08,000. Compute the net income of the firm after adjustment of loss and depreciation. Assume that salary and interest are not paid to partners.

Bare Act Provisions

Carry forward and set off of losses in case of change in constitution of firm or on succession.

78. (1) Where a **change has occurred** in the **constitution of a firm**, nothing in this Chapter **shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits.** if any, in the firm in respect of the previous year.

(2) Where any person carrying on any business or profession has been **succeeded in such capacity** by another person **otherwise than by inheritance**, nothing in this Chapter shall entitle **any person other than the person** incurring the loss to have it carried forward and set off against his income.

Part C
Special treatment for companies

Question 1 (Special treatment for companies) (SLID 010)

X (P.) Ltd. has share capital in the form of equity share capital. Company was incorporated in year 1 and the equity shares were held by four members A, B, C, & D equally i.e. 250,000 shares of Rs. 10 FV by each of them. The company made losses / profits for the years as follows:

Assessment year	Business loss	Unabsorbed depreciation	Total
Year 1	Nil	15,00,000	15,00,000
Year 2	Nil	12,00,000	12,00,000
Year 3	19,00,000	9,00,000	28,00,000
Total	19,00,000	36,00,000	55,00,000

The above figures have been accepted by the tax department.

During the year 4, further 600,000 shares were allotted to Y and during the year 5, further 15,00,000 shares were allotted to Z.

The profits for previous year are as follows:

For the year 4 : Rs.18,00,000 (before charging depreciation Rs.9,00,000)

For the year 5: Rs.75,00,000 (before charging depreciation Rs.7,50,000)

You are required to

1. Compute the taxable income for year 4 and year 5.
2. Would your answer be different if the company was eligible start up covered by 80-IAC.
3. Would your answer be different if the company's change in the shareholding takes place pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) in the year 5.

Workings must form part of your answer.

Question 3 (Business ID 72) (computation of business income) (Special treatment for companies)

X, Y and Z carried on a business of running hotels in partnership firm. In order to increase its scale of operation and meet its fund requirement, the firm decided to carry on its business through corporate route. For that purpose, a company under the name and style XYZ Hospitality (P.) Ltd. Was formed 2 years back and the business of the partnership firm as a whole was succeeded by the company. The company's profit and loss account for the year shows a net profit of Rs. 450 lakh after debit / credit of the following items

1. Interest of Rs. 3 lakh paid to Allahabad Bank on a term loan taken for the purpose of acquiring a land at Bhubaneswar for a new hotel to be set up.
2. Depreciation charged: Rs. 40 lakh.
3. Rs. 2 lakh credited on account of waiver of dues obtained from a supplier of the erstwhile firm against supply of certain materials.
4. Rs. 1.18 lakh being the aggregate of amounts paid in cash to D, a transport contractor, as follows-

Date of payment	Rs. In lakh
June 5,	0.15
July 20,	0.21
September 20,	0.22
November 3,	0.26
November 5,	0.36

Tax was not deducted at source as D submitted a certificate under section 197(1), which he had obtained from TDS circle of the Income-tax Department.

5. Rs. 50,000 being proportionate part of the cost of animals (purchased and kept for entertainment of the guests of hotel), is debited in the profit and loss account as amortization of expenditure as per the accounting policy of the company.
6. Rs. 10,000 is credited on account of sale proceeds of carcass of animal which died during the year.
7. Provision for bad and doubtful debts: Rs. 12 lakh
8. Payment of Rs. 25 lakh to some employees as compensation for voluntary retirement, as per scheme.
9. Foreign exchange fluctuation loss (net) amounting to Rs. 30 lakh arising from restatement of the year end liabilities to foreign suppliers of provisions and beverages as per the requirement of AS-11 of ICAI.

Other information-

1. Depreciation as per the Income-tax Act: Rs. 65 lakh.
2. Cost of animal died as referred to in (6) above was Rs. 2 lakh.
3. Debt of Rs. 4 lakh due from one corporate customer for three months has been written off during the year after giving few reminders by debiting provision for bad and doubtful debts account.
4. The erstwhile firm was allowed exemption of Rs. 50 lakh under section 47(xiii) in respect of long-term capital assets transferred to the company.
5. The company's voting rights till 01-04-PY were held as follows:

X	40 percent
Y	30 percent
Z	15 percent
Others	15 percent

During the year, shares constituting 36 percent voting rights are transferred by X to his son-in-law.

6. Unabsorbed business loss and unabsorbed depreciation of Rs. 10 lakh each have been carried forward from 9 years back.
7. The company has subsidiary company, PQR Ltd. (a closely held company). During the year the company obtains a temporary loan of Rs. 12 lakh from its subsidiary company. Accumulated profit of the subsidiary company is Rs. 30 lakh at the time of payment of the loan. The loan is repaid by the company before the end of the year.

Compute total income of XYZ (P.) Ltd. indicating reason for treatment of each of the items.

Ignore the provisions relating to the minimum alternate tax.

Bare Act Provisions

79. Carry forward and set off of losses in case of certain companies.—

(1) Notwithstanding anything contained in this Chapter, where a **change in shareholding** has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, **unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent. of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent. of the voting power** on the last day of the year or years in which the loss was incurred :

Provided that even if the said condition is not satisfied in case of an eligible start up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year **shall be allowed** to be carried forward and set off against the income of the previous year if all the shareholders of such company who held shares carrying voting power on the **last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year** and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

(2) Nothing contained in sub-section (1) shall apply,—

(a) to a case where a change in the said voting power and shareholding takes place in a previous year consequent upon the **death of a shareholder** or on account of transfer of shares by way of gift to any relative of the shareholder making such gift ;

(b) to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of **amalgamation or demerger of a foreign company** subject to the condition that fifty-one per cent. shareholders of amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company ;

(c) to a company where a change in the shareholding takes place in a previous year pursuant to a **resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016)**, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner ;

(d) to a company, and its subsidiary and the subsidiary of such subsidiary, where,—

(i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 (18 of 2013), has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act ; and

(ii) a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 (18 of 2013) after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(e) to a company to the extent that a change in the shareholding has taken place during the previous year on account of relocation referred to in the Explanation to clauses (viiac) and (viiad) of section 47.

(f) to an erstwhile **public sector company** subject to the condition that the ultimate holding company of such company, immediately **after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least fifty-one per cent of the voting power** of such company in aggregate.

(3) Notwithstanding anything contained in sub-section (2), if the condition specified in clause (f) of the said sub-section is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.

Explanation.—For the purposes of this section,—

- (i) a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company ;
- (ia) "erstwhile public sector company" shall have the same meaning as assigned to it in clause (ii) of the Explanation to clause (d) of sub-section (1) of section 72A;
- (ib) "strategic disinvestment" shall have the same meaning as assigned to it in clause (iii) of the Explanation to clause (d) of sub-section (1) of section 72A;
- (ii) "Tribunal" shall have the meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013 (18 of 2013).

No set off of losses consequent to search, requisition and survey.

79A. Notwithstanding anything contained in this Act, where **consequent to a search under section 132 or a requisition under section 132A or a survey under section 133A other than under sub-section (2A) of that section**, the total income of any previous year of an assessee includes any undisclosed income, **no set off, against such undisclosed income**, of any loss, whether brought forward or otherwise, or unabsorbed depreciation under sub-section (2) of section 32, shall be allowed to the assessee under any provision of this Act in computing his total income for such previous year.

Explanation.—For the purposes of this section, the expression "undisclosed income" means,—

(i) any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section **132 or a requisition under section 132A or a survey under section 133A other than under sub-section (2A) of that section**, which has—

(A) **not been recorded on or before the date of search or requisition or survey**, as the case may be, in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) **not been disclosed to the Principal Chief Commissioner** or Chief Commissioner or Principal Commissioner or Commissioner before the date of search or requisition or survey, as the case may be; or

(ii) any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year which is **found to be false and which would not have been found to be so**, had the search not been initiated or the survey not been conducted or the requisition not been made.

Part D
Dividend Stripping

Question 1 (SLID 018) (Dividend and bonus stripping)

W purchase 1,000 Units of UTI Rs. 12,500 on 1.4. UTI declares dividend on 31.5 (record date) at Rs. 3 per unit. W sells the entire 1,000 units on 30.9 for Rs. 9,000. You are required to compute the capital loss.

Question 2 (SLID 019) (Dividend and bonus stripping)

R, an individual resident in India bought 1,000 equity shares of Rs. 10 each of A Ltd at Rs. 50 per share on 30.05. He sold 700 equity shares at Rs. 35 per share on 30.9 and the remaining 300 shares at Rs. 25 per share on 20.12. A Ltd declared a dividend of 50% the record date being 10.08. R sold on 01.02 a house from which he derived a long term capital gain of Rs. 75,000. Compute the capital gain.

Problem 3 (Dividend and bonus stripping) (ID 21)

X purchases on May 10, 1000 preference shares of Rs. 10 each in A Ltd. @ Rs. 55.55. On October 20, he transfers 800 shares @ Rs. 37 per share and remaining 200 shares are transferred on December 20, @ Rs. 20 per share. A Ltd. Declares 50 per cent dividend (record date : August 3,). During previous year, he has generated long term capital gain of Rs. 76,000 on sale of gold.

	Your Options are
A	Total income will be 62,050
B	Total income will be 58,050
C	Total income will be 76,000
D	None of above

Bare Act Provisions

Avoidance of tax by certain transactions in securities.

94. (1) Where the **owner of any securities** (in this sub-section and in sub-section (2) referred to as "the owner") sells or transfers those securities, and buys back or reacquires the securities, then, if the result of the transaction is that any **interest becoming payable in respect of the securities is receivable otherwise than by the owner**, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section, **be deemed**, for all the purposes of this Act, **to be the income of the owner and not to be the income of any other person**.

Explanation.—The references in this sub-section to buying back or reacquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to income-tax than he would have been under if the original securities had been bought back or reacquired.

(2) Where any person has had at any time during any previous year any beneficial interest in any securities, and the result of any transaction relating to such securities or the income thereof is that, in respect of such securities within such year, either no income is received by him or the income received by him is less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, then the income from such securities for such year shall be deemed to be the income of such person.

(3) The provisions of sub-section (1) or sub-section (2) shall not apply if the owner, or the person who has had a beneficial interest in the securities, as the case may be, proves to the satisfaction of the Assessing Officer—

(a) that there has been no avoidance of income-tax, or

(b) that the avoidance of income-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-section (1) or sub-section (2).

(4) Where any person carrying on a business which consists wholly or partly in dealing in securities, buys or acquires any securities and sells back or retransfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him but is not deemed to be his income by reason of the provisions contained in sub-section (1), no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(5) Sub-section (4) shall have effect, subject to any necessary modifications, as if references to selling back or retransferring the securities included references to selling or transferring similar securities.

(6) The Assessing Officer may, by notice in writing, require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities.

(7) Where—

- (a) any person **buys or acquires any securities or unit within a period of three months prior to the record date;**
- (b) such person **sells or transfers**—
 - (i) such securities within a period of **three months after such date;** or
 - (ii) such unit within a period of **nine months after such date;**
- (c) the **dividend or income** on such securities or unit received or receivable by **such person is exempt,** then, the **loss, if any, arising to him** on account of such purchase and sale of securities or unit, **to the extent such loss does not exceed the amount of dividend or income received** or receivable on such securities or unit, **shall be ignored** for the purposes of computing his income chargeable to tax.

(8) Where—

- (a) any person **buys or acquires any securities or units** within a period of three months prior to the record date;
 - (b) such person is **allotted additional securities or units without any payment** on the basis of holding of such securities or units on such date;
 - (c) such person **sells or transfers** all or any of the securities or units referred to in clause (a) within a **period of nine months** after such date, while continuing to hold all or any of the additional securities or units referred to in clause (b),
- then, the **loss, if any, arising to him** on account of such purchase and sale of all or any of such securities or units shall be ignored for the purposes of computing his income chargeable to tax and notwithstanding anything contained in any other provision of this Act, the **amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional securities or units** referred to in clause (b) as are held by him on the date of such sale or transfer.

Explanation.—For the purposes of this section,—

- (a) "interest" includes a dividend ;
- (aa) "record date" means such date as may be fixed by—
 - (i) a company;
 - (ii) a Mutual Fund or the Administrator of the specified undertaking or the specified company referred to in the Explanation to clause (35) of section 10; or
 - (iii) a business trust defined in clause (13A) of section 2; or

(iv) an Alternative Investment Fund defined in clause (b) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

for the purposes of entitlement of the holder of the securities or units, as the case may be, to receive dividend, income, or additional securities or units without any consideration, as the case may be;

(b) "securities" includes stocks and shares ;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred;

(d) "unit" shall mean,—

(i) a unit of a business trust defined in clause (13A) of section 2;

(ii) a unit defined in clause (b) of the Explanation to section 115AB; or

(iii) beneficial interest of an investor in an Alternative Investment Fund, defined in clause (b) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and shall include shares or partnership interests.

CLUBBING OF INCOME

REFER THIS TOPIC FROM BOOK-A

ALIAS CHAPTER ID – A10

TDS / TCS

REFER THIS TOPIC FROM BOOK-A

ALIAS CHAPTER ID – A13

TAX AVOIDANCE

Question (GAAR and Tax Avoidance) (ID 01)

V Tech Ltd is a company resident of country C1. It enters into an agreement with Z Energy Ltd., an Indian company for setting up a power plant in India. It is a composite contract for an agreed price of US\$ 100 million. The payment has been split in the following parts as per separate agreements

- (i) US\$ 10 million for design of power plant outside India (payment for which is taxable at 10% on gross basis)
- (ii) US\$ 70 million for offshore supplies of equipment etc. (not taxable as no role is played by any PE in India. There are not subject to import duty)
- (iii) US\$ 20 million for local supplies and installation charges (taxable on net income basis)

It is found that the fair market value of offshore design is about USD 30 million; therefore is under invoiced. On the other hand, offshore supplies were over invoiced. The arrangement resulted in significant tax benefit to the taxpayer. Can GAAR be invoked in such a case ?

Question (GAAR and Tax Avoidance) (ID 02)

Under the provisions of a tax treaty between India and country F4. Any capital gains arising from the sale of shares of Indco, an Indian company would be taxable only in F4 if the transferor is a resident of F4 except where the transferor holds more than 10% interest in the capital stack of Indco. A company, A Ltd. being resident in F4, makes an investment in Indco through two wholly owned subsidiaries (K Ltd. and L Ltd.) located in F4. Each subsidiary holds 9.95% shareholding in the Indian Company, the total adding to 19.9% of equity of Indco. The subsidiaries sell the shares of Indco and claim exemption as each is holding less than 10% equity shares in the Indian company. Can GAAR be invoked to deny treaty benefit ?

Question (GAAR and Tax Avoidance) (ID 03)

An Indian company, A Ltd. makes an investment of 1 crore in shares of a listed company on 1 January. After a year, the prices go up and fair market value of shares becomes 11 crore. If A Ltd sells these shares, the long term capital gains of 10 crore would be taxable at concessional rate and would be liable to tax under MAT@ the applicable rate. A Ltd. forms partnership firm with another person with nominal partnership. It transfers its shares in the firm at a cost price. No capital gain arises as per section 45 of the Act. After a year, the firm sells these shares and realises the gains of 10 crore and no MAT is payable. Subsequently, the firm is dissolved and share of A Ltd in the partnership firm is transferred back along with profits, which is exempt from tax under the Act. Can GAAR be invoked in this case ?

Question (GAAR and Tax Avoidance) (ID 04)

Indco incorporates a Subco in a NTJ (Low Tax Jurisdiction) with equity of US \$100. Subco gives a loan of US \$ 100 to another Indian company (X Ltd) at the rate of 10% p.a. X Ltd. claims deduction of interest payable to Subco from the profit of business. There is no other activity in Subco. Can GAAR be invoked in such a case ?

Question (GAAR and Tax Avoidance) (ID 05)

- (i) X Ltd. is a banking institution in LTJ (Low Tax Jurisdiction),
- (ii) There is a closely held company Subco in LTJ which is a wholly owned subsidiary of another closely held Indian company Indco;
- (iii) Subco has reserves and, if it provides a loan to Indco. It may be treated as deemed dividend under section 2(22)(e) of the Act.
- (iv) Subco makes a term deposit with X bank Ltd. and X bank Ltd., on the basis of this security, provides a back to back loan to Indco.

Say, India- LTJ tax treaty provides that interest payment to LTJ banking company is not taxable in India
Can this be examined under GAAR ?

Question (GAAR and Tax Avoidance) (ID 06)

- (i) Y Ltd. is a company incorporated in country C1. It is a non-resident in India.
- (ii) Z Ltd. Is a company resident in India.
- (iii) A Ltd. is a company incorporated in country F1 and it is a 100% subsidiary of Y Ltd.
- (iv) A Ltd. and Z Ltd. form a joint venture company X Ltd. in India after the date of commencement of GAAR provisions. There is no other activity in A Ltd.
- (v) The India-F1 tax treaty provides for non-taxation of capital gains in the source country and country F1 charges no capital gains tax in its domestic law.
- (vi) A Ltd. is also designated as a permitted transferee of Y Ltd. Permitted transferee means that though shares are held by A Ltd. all rights of voting, management. Right to sell etc., are vested in Y Ltd.
- (vii) As per the joint venture agreement, 49% of X Ltd equity is allotted to A Ltd. And 51% is allotted to Z Ltd..
- (viii) Thereafter, the shares of X Ltd. held by A Ltd. are sold to C Ltd., a company connected to the Z Ltd. group.

As per the tax treaty with country F1, capital gains arising to A Ltd. are not taxable in India. Can GAAR be invoked to deny the treaty benefit ?

Question (GAAR and Tax Avoidance) (ID 07)

A Ltd. is incorporated in country F1 as a wholly owned subsidiary of company Y Ltd. which is not a resident of F1 or of India. The India-F1 tax treaty provides for non-taxation of capital gains in India (the source country) and country F1 charges no capital gains tax in its domestic law. Some shares of X Ltd., an Indian company are acquired by A Ltd in the year after date of coming into force of GAAR provisions. The entire funding for investment by A Ltd. in X Ltd. was done by Y Ltd. These shares are subsequently disposed of by A Ltd after 5 years. This results in capital gains which A Ltd. claims as not being taxable in India by virtue of the India-F1 tax treaty. A Ltd. has not made any other transaction during this period. Can GAAR be invoked ?

Question (GAAR and Tax Avoidance) (ID 08)

Specify with reason, whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion

- (i) Mr P deposits 1,00,000 in PPF account so as to reduce his total income from 3,40,000 to 2,40,000.
- (ii) SQL Ltd. maintains register of tax deduction at source effected by it to enable timely compliance.
- (iii) An individual tax payer making tax saver deposit of 1,00,000 in a nationalised bank
- (iv) A partnership firm obtaining declaration from lenders and depositors in Form NO. 15G/15H and forwarding the same to income-tax authorities.
- (v) A company installed an air-conditioner costing 75,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.
- (vi) RR Ltd. issued a credit note for 80,000 as brokerage payable to Mr. Ramana who is the son of the managing director of the company. The purpose is to increase the total income of Mr. Ramana from 4,00,000 to 4,80,000 and reduce the income of RR Ltd. correspondingly.
- (vii) A company remitted provident fund contribution of both its own contribution and employees contribution on monthly basis before due date.

Bare Act Provisions

Applicability of General Anti-Avoidance Rule.

95. (1) Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be **declared to be an impermissible avoidance arrangement** and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.

(2) This Chapter shall apply in respect of any assessment year beginning on or after the 1st day of April, 2018.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of this Chapter may be applied to any step in, or a part of, the arrangement as they are applicable to the arrangement.

Impermissible avoidance arrangement.

96. (1) An impermissible avoidance arrangement means an arrangement, **the main purpose of which is to obtain a tax benefit**, and it—

- (a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
- (b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;
- (c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or
- (d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

(2) An arrangement shall be **presumed, unless it is proved to the contrary by the assessee**, to have been entered into, or carried out, for the **main purpose of obtaining a tax benefit**, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

Arrangement to lack commercial substance.

97. (1) An arrangement shall be **deemed to lack commercial substance**, if—
- (a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or
 - (b) it involves or includes—
 - (i) round trip financing;
 - (ii) an accommodating party;
 - (iii) elements that have effect of offsetting or cancelling each other; or
 - (iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction; or
 - (c) it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party; or
 - (d) it does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained (but for the provisions of this Chapter).
- (2) For the purposes of sub-section (1), **round trip financing includes** any arrangement in which, through a series of transactions—
- (a) funds are transferred among the parties to the arrangement; and
 - (b) such transactions do not have any substantial commercial purpose other than obtaining the tax benefit (but for the provisions of this Chapter),
- without having any regard to—
- (A) whether or not the funds involved in the round trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement;
 - (B) the time, or sequence, in which the funds involved in the round trip financing are transferred or received; or
 - (C) the means by, or manner in, or mode through, which funds involved in the round trip financing are transferred or received.
- (3) For the purposes of this Chapter, a party to an **arrangement shall be an accommodating party**, if the **main purpose of the direct or indirect participation of that party in the arrangement**, in whole or in part, is to obtain, directly or indirectly, a tax benefit (but for the provisions of this Chapter) for the assessee **whether or not the party is a connected person** in relation to any party to the arrangement.
- (4) For the removal of doubts, it is hereby clarified that the following may be relevant but shall not be sufficient for determining whether an **arrangement lacks commercial substance** or not, namely:—
- (i) the period or time for which the arrangement (including operations therein) exists;
 - (ii) the fact of payment of taxes, directly or indirectly, under the arrangement;
 - (iii) the fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

Consequences of impermissible avoidance arrangement.

98. (1) If an arrangement is declared to be an impermissible avoidance arrangement, then, the **consequences in relation to tax, of the arrangement.** including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following, namely:—

- (a) disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;
 - (b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out;
 - (c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;
 - (d) deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;
 - (e) reallocating amongst the parties to the arrangement—
 - (i) any accrual, or receipt, of a capital nature or revenue nature; or
 - (ii) any expenditure, deduction, relief or rebate;
 - (f) treating—
 - (i) the place of residence of any party to the arrangement; or
 - (ii) the situs of an asset or of a transaction,
at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or
 - (g) considering or looking through any arrangement by disregarding any corporate structure.
- (2) For the purposes of sub-section (1),—
- (i) any equity may be treated as debt or *vice versa*;
 - (ii) any accrual, or receipt, of a capital nature may be treated as of revenue nature or *vice versa*; or
 - (iii) any expenditure, deduction, relief or rebate may be recharacterised.

Treatment of connected person and accommodating party.

99. For the purposes of this Chapter, in determining whether a tax benefit exists,—

- (i) the parties who are connected persons in relation to each other may be treated as one and the same person;
- (ii) any accommodating party may be disregarded;
- (iii) the accommodating party and any other party may be treated as one and the same person;
- (iv) the arrangement may be considered or looked through by disregarding any corporate structure.

Application of this Chapter.

100. The provisions of this Chapter shall apply in addition to, or in lieu of, any other basis for determination of tax liability.

Framing of guidelines.

101. The provisions of this Chapter shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed.⁵¹

Definitions.

102. In this Chapter, unless the context otherwise requires,—

- (1) "arrangement" means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding;
- (2) "asset" includes property, or right, of any kind;
- (3) "benefit" includes a payment of any kind whether in tangible or intangible form;
- (4) "connected person" means any person who is connected directly or indirectly to another person and includes,—
 - (a) any relative of the person, if such person is an individual;
 - (b) any director of the company or any relative of such director, if the person is a company;
 - (c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals;
 - (d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;
 - (e) any individual who has a substantial interest in the business of the person or any relative of such individual;
 - (f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;
 - (g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member;
 - (h) any other person who carries on a business, if—
 - (i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or
 - (ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;

- (5) "fund" includes—
- (a) any cash;
 - (b) cash equivalents; and
 - (c) any right, or obligation, to receive or pay, the cash or cash equivalent;
- (6) "party" includes a person or a permanent establishment which participates or takes part in an arrangement;
- (7) "relative" shall have the meaning assigned to it in the *Explanation* to clause (vi) of sub-section (2) of section 56;
- (8) a person shall be deemed to have a substantial interest in the business, if,—
- (a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying twenty per cent or more, of the voting power; or
 - (b) in any other case, such person is, at any time during the financial year, beneficially entitled to twenty per cent or more, of the profits of such business;
- (9) "step" includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement;
- (10) "tax benefit" includes,—
- (a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or
 - (b) an increase in a refund of tax or other amount under this Act; or
 - (c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or
 - (d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or
 - (e) a reduction in total income; or
 - (f) an increase in loss,
- in the relevant previous year or any other previous year;
- (11) "tax treaty" means an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A.

Reference to Principal Commissioner or Commissioner in certain cases.

144BA. (1) If, the Assessing Officer, at any stage of the assessment or re-assessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the Principal Commissioner or Commissioner in this regard.

(2) The Principal Commissioner or Commissioner shall, on receipt of a reference under sub-section (1), if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such opinion, for submitting objections, if any, and providing an opportunity of being heard to the assessee within such period, not exceeding sixty days, as may be specified in the notice.

(3) If the assessee does not furnish any objection to the notice within the time specified in the notice issued under sub-section (2), the Principal Commissioner or Commissioner shall issue such directions as he deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement.

(4) In case the assessee objects to the proposed action, and the Principal Commissioner or Commissioner after hearing the assessee in the matter is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel for the purpose of declaration of the arrangement as an impermissible avoidance arrangement.

(5) If the Principal Commissioner or Commissioner is satisfied, after having heard the assessee that the provisions of Chapter X-A are not to be invoked, he shall by an order in writing, communicate the same to the Assessing Officer with a copy to the assessee.

(6) The Approving Panel, on receipt of a reference from the Principal Commissioner or Commissioner under sub-section (4), shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying of the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.

(7) No direction under sub-section (6) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interests of the revenue, as the case may be.

(8) The Approving Panel may, before issuing any direction under sub-section (6),—

(i) if it is of the opinion that any further inquiry in the matter is necessary, direct the Principal Commissioner or Commissioner to make such inquiry or cause the inquiry to be made by any other income-tax authority and furnish a report containing the result of such inquiry to it; or

(ii) call for and examine such records relating to the matter as it deems fit; or

(iii) require the assessee to furnish such documents and evidence as it may direct.

(9) If the members of the Approving Panel differ in opinion on any point, such point shall be decided according to the opinion of the majority of the members.

(10) The Assessing Officer, on receipt of directions of the Principal Commissioner or Commissioner under sub-section (3) or of the Approving Panel under sub-section (6), shall proceed to complete the proceedings referred to in sub-section (1) in accordance with such directions and the provisions of Chapter X-A.

(11) If any direction issued under sub-section (6) specifies that declaration of the arrangement as impermissible avoidance arrangement is applicable for any previous year other than the previous year to which the proceedings referred to in sub-section (1) pertains, then, the Assessing Officer while completing any assessment or reassessment proceedings of the assessment year relevant to such other previous year shall do so in accordance with such directions and the provisions of Chapter X-A and it shall not be necessary for him to seek fresh direction on the issue for the relevant assessment year.

(12) No order of assessment or reassessment shall be passed by the Assessing Officer without the prior approval of the Principal Commissioner or Commissioner, if any tax consequences have been determined in the order under the provisions of Chapter X-A.

(13) The Approving Panel shall issue directions under sub-section (6) within a period of six months from the end of the month in which the reference under sub-section (4) was received.

(14) The directions issued by the Approving Panel under sub-section (6) shall be binding on—

- (i) the assessee; and
 - (ii) the Principal Commissioner or Commissioner and the income-tax authorities subordinate to him,
- and notwithstanding anything contained in any other provision of the Act, no appeal under the Act shall lie against such directions.

(15) The Central Government shall, for the purposes of this section, constitute one or more Approving Panels as may be necessary and each panel shall consist of three members including a Chairperson.

(16) The Chairperson of the Approving Panel shall be a person who is or has been a judge of a High Court, and—

- (i) one member shall be a member of Indian Revenue Service not below the rank of Principal Chief Commissioner or Chief Commissioner of Income-tax; and
- (ii) one member shall be an academic or scholar having special knowledge of matters, such as direct taxes, business accounts and international trade practices.

(17) The term of the Approving Panel shall ordinarily be for one year and may be extended from time to time up to a period of three years.

(18) The Chairperson and members of the Approving Panel shall meet, as and when required, to consider the references made to the panel and shall be paid such remuneration as may be prescribed.

(19) In addition to the powers conferred on the Approving Panel under this section, it shall have the powers which are vested in the Authority for Advance Rulings under section 245U.

(20) The Board shall provide to the Approving Panel such officials as may be necessary for the efficient exercise of powers and discharge of functions of the Approving Panel under the Act.

(21) The Board may make rules for the purposes of the constitution and efficient functioning of the Approving Panel and expeditious disposal of the references received under sub-section (4).

Explanation.—In computing the period referred to in sub-section (13), the following shall be excluded—

- (i) the period commencing from the date on which the first direction is issued by the Approving Panel to the Principal Commissioner or Commissioner for getting the inquiries conducted through the authority competent under an agreement referred to in section 90 or section 90A and ending with the date on

which the information so requested is last received by the Approving Panel or one year, whichever is less;

- (ii) the period during which the proceeding of the Approving Panel is stayed by an order or injunction of any court:

Provided that where immediately after the exclusion of the aforesaid time or period, the period available to the Approving Panel for issue of directions is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of six months shall be deemed to have been extended accordingly.

Rules to Income tax

DA. Application of General Anti Avoidance Rule

10U. Chapter X-A not to apply in certain cases.—(1) *The provisions of Chapter X-A shall not apply to—*

- (a) *an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of rupees three crore;*
- (b) *a Foreign Institutional Investor,—*
- (i) *who is an assessee under the Act;*
- (ii) *who has not taken benefit of an agreement referred to in section 90 or section 90A as the case may be; and*
- (iii) *who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable, in relation to such investments;*
- (c) *a person, being a non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor;*
- (d) *any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the ^{17a}[1st day of April, 2017] by such person.*

(2) *Without prejudice to the provisions of clause (d) of sub-rule (1), the provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after the ^{17aa}[1st day of April, 2017].*

(3) *For the purposes of this rule,—*

- (i) *"Foreign Institutional Investor" shall have the same meaning as assigned to it in the Explanation to section 115AD;*
- (ii) *"off shore derivative instrument" shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 issued under Securities and Exchange Board of India Act, 1992 (15 of 1992) ;*
- (iii) *"Securities and Exchange Board of India" shall have the same meaning as assigned to it in clause (a) of sub-section (1) of section 2 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);*
- (iv) *"tax benefit" as defined in clause (10) of section 102 and computed in accordance with Chapter X-A shall be with reference to—*
- (a) *sub-clauses (a) to (e) of the said clause, the amount of tax; and*

(b) *sub-clause (f) of the said clause, the tax that would have been chargeable had the increase in loss referred to therein been the total income.]*

Determination of consequences of impermissible avoidance arrangement.

10UA. For the purposes of sub-section (1) of section 98, where a part of an arrangement is declared to be an impermissible avoidance arrangement, the consequences in relation to tax shall be determined with reference to such part only.

Notice, Forms for reference under section 144BA.

10UB. (1) For the purposes of sub-section (1) of section 144BA, the Assessing Officer shall, before making a reference to the Commissioner, issue a notice in writing to the assessee seeking objections, if any, to the applicability of provisions of Chapter X-A in his case.

(2) The notice referred to in sub-rule (1) shall contain the following:—

- (i) details of the arrangement to which the provisions of Chapter X-A are proposed to be applied;
- (ii) the tax benefit arising under the arrangement;
- (iii) the basis and reason for considering that the main purpose of the identified arrangement is to obtain tax benefit;
- (iv) the basis and the reasons why the arrangement satisfies the condition provided in clause (a), (b), (c) or (d) of sub-section (1) of section 96; and
- (v) the list of documents and evidence relied upon in respect of (iii) and (iv) above.

(3) The reference by the Assessing Officer to the Commissioner under sub-section (1) of section 144BA shall be in Form No. 3CEG.

(4) Where the Commissioner is satisfied that the provisions of Chapter X-A are not required to be invoked with reference to an arrangement after considering—

- (i) the reference received from the Assessing Officer under sub-section (1) of section 144BA; or
- (ii) the reply of the assessee in response to the notice issued under sub-section (2) of section 144BA,

he shall issue directions to the Assessing Officer in Form No. 3CEH.

(5) Before a reference is made by the Commissioner to the Approving Panel under sub-section (4) of section 144BA, he shall record his satisfaction regarding the applicability of the provisions of Chapter X-A in Form No. 3CEI and enclose the same with the reference.]

Time limits.

10UC. (1) *For the purposes of section 144BA,—*

- (i) *no directions under sub-section (3) of section 144BA shall be issued by the Commissioner after the expiry of one month from the end of the month in which the date of compliance of the notice issued under sub-section (2) of section 144BA falls;*
- (ii) *no reference shall be made by the Commissioner to the Approving Panel under sub-section (4) of section 144BA after the expiry of two months from the end of the month in which the final submission of the assessee in response to the notice issued under sub-section (2) of section 144BA is received;*
- (iii) *the Commissioner shall issue directions to the Assessing Officer in Form No.3CEH,—*
 - (a) *in the case referred to in clause (i) of sub-rule (4) of rule 10UB, within a period of one month from the end of month in which the reference is received by him; and*
 - (b) *in the case referred to in clause (ii) of sub-rule (4) of rule 10UB, within a period of two months from the end of month in which the final submission of the assessee in response to the notice issued under sub-section (2) of section 144BA is received by him.]*