



Subject :
**Principles of
Taxation Law**

Paper : 6.3

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SUBJECT TOPICS

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DEFINITION, FEATURES, USES & CLASSIFICATION OF TAX

History of Taxation

- In ancient times.
 - Manu Smriti and
 - Arthashastra
- Tax was levied on various classes of people like—
 - actors, dancers, singers and even dancing girls.
- Taxes were paid—

shape of gold-coins, cattle, grains, raw-materials and also by personal service

Manu

- The ancient sage and law-giver stated that the king could levy taxes, according to Sastras.
- The wise sage advised that taxes should be related to the income and expenditure.
- Cautioned the king against excessive taxation.
- Traders and artisans should pay 1/5th of their profits in silver and gold, Agriculturists to pay 1/6th, 1/8th and 1/10th. of their produce depending upon their circumstances.

The Establishment of Income Tax in Modern India—

- 24th July 1860 → first Income Tax Act was introduced by James Wilson, (British India's first finance member.
- imposed on the rich royalty and Britishers.
- lapsed in 1865 and was reintroduced in 1867.
- Governor General Lord Dufferin introduced a comprehensive Income Tax Act in 1886. It was combination of Licence Tax and Income Tax.
- Taxes were collected in the same manner as land revenue.
- The most comprehensive Income Tax Law was the Income Tax Act of 1922.

Salient features of 1922. Act—

1. Rates of taxes are to be decided every year by a special Finance Act at the time of the Annual Budget.
2. It provided for ex-parte assessment.
3. T.D.S. (Tax deducted at source) was made compulsory for private employers.
4. Reopening of the assessment was permitted

After Independence, 1947.

1957 → Wealth Tax Act, 1957, the Expenditure Tax Act, 1957 and

1958 → Gift Tax Act, 1958 were introduced.

1957 → IRS (DT) Staff College (NADT, Nagpur).

1959 → along with IAS (NA, Mussorie).

- Direct Taxes Administration Enquiry Committee was setup in 1958.
- Law Commission Report on new Income Tax Act was submitted in 1958.
- 01-04-1962 → Income Tax Act, 1961.

- 1963 → Central Board of Revenue Act—
- CBDT & CBEC. [CNIDC]
- 1966 → Intelligence Wing [DIT].
- 1968 → Summary Assessment.
- 1993 → non-resident—Income Tax liability.
- 1994 → PAN—to link all transactions like tax payment, TDS / TCS credits, Income Tax Returns, High Value Transactions etc. to individual taxpayers.

Modernization and Tax Payer Services.

- 2003 → WEBSITE www.incometaxindia.gov.
- E-PAYMENT –to pay their taxes online, through ATMs, Debit Cards or Cheques.
- A.Y. 2006-07 → E-FILING – In 2006-07 the high impact and high visibility project for electronic using digital signature, without digital signature or through e –Return intermediaries.

Definition—

- Tax is an amount of money that you have to pay to the government so that it can pay for public services.
- A compulsory financial contribution imposed by a government to raise revenue, levied on the income or property of persons or organizations, on the production costs or sales prices of goods and services, etc

Salient Features of Indian Tax System.

- (1) Increasing importance of tax revenue:
- (2) Tax revenue as a percentage of national income:
- (3) Structure of Taxes:
- (4) Shift in Relative Importance of Taxes:
- (5) Progressive Tax Rate Structure:

Uses Of Taxes—

- **Health:-** Govt. should build hospitals and provide different health services to the public.
- **Communication and technology:-** Govt. to established linkages of communication and transportation to the different places throughout the country.
- **Defense-** The government should provide security to the people by providing the armed forces the armaments as well as establishing national defense program.
- **Sanitation:-** The government should established proper sanitation for a clean environment. In the maintenance of the natural resources; it is the responsibilities of the government to utilize ensures and protect the natural environment.
- **Energy:-** The government is responsible for the sustenance of energy supply for the countries use. These are just among of the many functions of the government among others.

Classification of Taxes:

- **Direct Tax.:** Tax burden cannot be shifted to others and Person pays it to the Government. (Income tax, annual wealth tax, capital gains).
- **Indirect taxes :** Tax burden can be shifted to others so that those who pay these taxes to the Government do not bear the whole burden but pass it on wholly or partly to others. For instance, Goods and Services Tax (GST).

CONSTITUTION AND TAXATION

Roots of every law lies in the Constitution as it is the foundation and source of all laws.

❖ Article 246(1)—Parliament→

- List I in Seventh Sch. (i.e Union list).

❖ Article 246(3)—State Govt. →

- List II of Seventh Sch.(i.e. State List).

❖ Parliament & State→

- List III: Seventh Sch. (i.e. Concurrent List).

❖ Union Territories → Union Govt. → all three lists.

List III (Criminal law and Procedure, Trust and Trustees, Civil Procedures, economic and social planning, trade unions, charitable institutions, price control factories, etc.)

❖ conflict between State Govt and Central Govt. →

➤ law made by Union Government prevails.

Exception → law made by State, repugnant to earlier law made by Parliament, law made by State Government prevails, if received assent of President. In such cases, Parliament can make fresh law and amend, repeal or vary law made by State.

❖ **Union List:**

Entry No. 82 – Tax on Income (agriculture income).

Entry No. 83 – Duties of customs, export duties.

Entry No. 84 – Duties of excise.

Entry No. 85 – Corporation tax.

Entry No. 92A – sale or purchase of goods;

Entry No. 92B – Taxes on consignment of goods;

Entry No. 92C – Tax on services

Entry No. 97 – Any other matter not included in List II, List III.

❖ **State List:**

Entry No. 46 – Taxes on agricultural income.

Entry No. 51 – Excise duty on alcoholic liquors, opium and narcotics.

Entry No. 52 – Octroi or Entry Tax.

Entry No. 54 – Tax on sale or purchase;

Entry No. 55 – Tax on advertisements;

Entry No. 56 – Tax on goods and passengers carried by road or inland waterways.

Entry No. 59 – Tax on professionals, trades, callings and employment.

❖ **certain restrictions—indirect tax→**

Article 286(1) – State Government cannot impose tax on imports and exports.

Article 286(2) – Parliament is authorized to formulate principles of import or export.

Article 286(3) – Parliament can place restrictions on tax on sale or purchase of goods

Article 301- Trade, commerce and inter -course through out the territory of India shall be free, subject to provisions of Article 302 to 304.

Article 302 – Restriction on trade or commerce can be placed by Parliament in the public interest

Article 303(1), 303(2) – No discrimination can be made between one State and another.

Such discrimination or preference can be made only by Parliament situation arising from scarcity of the goods.

Article 304 – State can impose tax on goods imported from other States or Union territories, but cannot discriminate between goods of State and goods of other States.

Proviso—reasonable restrictions in public interest. (sanction of the President.)

Article 265 – No tax shall be levied or collected except by authority of law.

Article 300A – No person shall be deprived of its property save by authority of law.

Conclusion—

Interpretation of every law, validity of subordinate legislation's and administrative actions must be judged in the background of the provisions of Constitution

❖ **Apart from Art 265— following limitation→**

(i) must not contravene Art 13.

(ii) must not deny equal protection of the laws (Art 14).

(iii) No unreasonable restrictions on business [Art 19(1)(g)].

(iv) No tax for the promotion or maintenance of any particular religion or religious denomination. (Art 27).

- (v) cannot tax the property of Union (Art 285)
- (vi) cannot tax the property and income of a State (Art 289).
- (vii) State to levy tax on sale or purchase of goods is subject to Art 286.
- (viii) State not to tax the consumption or sale of electricity in the case specified in Art 287.
- (ix) tax should not impede the free flow of trade. Commerce and intercourse (Art 301).
- (x) Levy of tax must not offend Art 304 (a).

Bengal Immunity-Co Ltd. V State of Bihar, AIR 1955 SE 661,

Held—no state, including the delivery State, would be competent to impose sales tax on goods in the course of inter-state trade and commerce unless Parliament lifted the ban as provided under Art 286.

Part-XII: Art. 286. Restrictions as to imposition of tax on the ssale or purchase of goods— (1) takes place—

- (a) outside the State; or
- (b) out of the territory of India.

Atiaban Tea Co V State or Assam, AIR 1961 S.C. 232,

the Assam Taxation (on goods carried by road or on Inland Water Ways) Act, 1954, was challenged being violative of Art 301 and Supreme Court has struck down the said Act as being unconstitutional. It has been held that tax laws are not outside the purview of Art 301.

PART-XIII: Art. 301. Freedom of tr ade, commerce and intercourse— Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Khyer bari Tea Co. V State of Assam AIR 1964 S.C. 925

Assam Taxation (on goods carried by road or on Inland Water ways) Act 1961. Validity?

- (1) constituted an unreasonable restriction on the freedom of trade guaranteed by Article 301 and
- (2) that the petitioner's fundamental rights guaranteed by Article 19(1) (g) of the constitution is infringed.

Supreme Court guideline—

Whether Arts 14, 19 or 301 has exercised unreasonably.

The scope of Art 301 was again defined by the Supreme Court in *Automobile Transport Ltd., V State of Rajasthan AIR 1962, S.C. 1406*, there the majority held that regulatory measure of imposing compensatory taxes for the use of trading facilities did not hamper trade commerce and inter-course but rather facilitated them and therefore were not hit by the freedom declared by the Art 301.

In *State of Assam, V Labanya Prabha, AIR 1967, S.C. 1575*, the impugned Act imposed tax on motor vehicles in Assam. The petitioner challenged the tax as violative of Art 301. The court rejected the plea as the said Act was only regulatory measures imposing compensatory taxes for facilitating trade commerce and intercourse.

ADVANCE TAX

Section 2(1) " advance tax"—means the advance tax payable in accordance with the provisions of Chapter XVII- C;

1. Liability for payment of Advance Tax:

Sec 207 (1): Tax shall be payable in Advance during the F Y in accordance with the provision of sec 208-219 in respect of the total income of the assessee which would be chargeable to tax.

Sec 207 (2): w.e.f 01.04.2012 the above subsection is not applicable to an individual resident in India who:

a. Does not have any income chargeable under the head -Profits and gains of business or profession and

b. Is of the age of sixty years or more at any time during the previous year.

2. When the advance tax liability arise:

Advance tax liability arises when the projected total income of an assessee exceeds the exemption limit and tax liability exceeds Rs.10, 000.

3. Due dates and Installments of advance tax:

Corporate— before June 15th → 15 %

before September 15 → 45 %

before December 15 → 75%

before March 15 → 100%

Non-Corporate— before September 15 → 30 %

before December 15 → 60%

before March 15 → 100%

Apart from above, any income tax payment made on or before 31 March of the previous year also treated as advance tax.

4. TDS/TCS need to be considered— While calculating the percentage of advance tax payment as per the above table, we shall consider the tax deductible or collectible at source and need to deduct the TDS/TCS from the assessed tax.

5. How the advance payment can be made—can be deposited through challan no.280 in banks. But all corporate assessee and the assessee those are subject to compulsory audit u/s.44AB need to deposit tax through electronic payment mode.

6. Specific exemption from payment of advance tax— An assessee, who opted for the scheme of computing business income u/s.44AD or 44AF on presumptive basis at the rate of 8% of turnover, shall be exempted from the payment of advance tax related to such business with effect from assessment year 2011-12. before March → 100%.

7. Consequences for nonpayment of Advance tax— Interest will attract—

(a) Section 234A → for default of payment of advance tax simple Interest @ 1% p.m. or part of the month.

(b) Section 234B → is less than 90% of the assessed tax, simple Interest @ 1% p.m. or part of

the month, from 1 April of Asst. year to the date of determination of income u/s 143 (1) i.e. regular asst. is made to the date of such asst.

- (c) Section 234C → is less than the % mentioned in the respective dates, simple Interest @ 1% p.m. or part of the month, for three months except in the case of last Installment where the period will be One month.
- In case of the Company there won't be any Interest applicable on shortfall of advance tax for installment due on 15 June and 15th September if the % of advance tax paid is not less than 12% and 36% respectively.

AGRICULTURAL INCOME

2(1A)—Agricultural Income. (Exempt u/s. 10(1).

- (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*
- (b) *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
- (ii) the land is either assessed to land revenue in India and not situated →

(a) municipality → population < 10000.

(b) urbanisation → not being eight kilometers distance., (Central Govt. may notify)

Certain income which is treated as Agriculture Income;

- (a) Income from sale of replanted trees.
- (b) Rent received for agricultural land.
- (c) Income from growing flowers and creepers.
- (d) Share of profit of a partner from a firm engaged
in agricultural operations.
- (e) Interest on capital received by a partner from a
firm engaged in agricultural operations.
- (f) Income derived from sale of seeds.

Certain income which is not treated as Agricultural Income;

- (a) Income from poultry farming.
- (b) Income from bee hiving.
- (c) Income from sale of spontaneously grown trees.
- (d) Income from dairy farming.
- (e) Purchase of standing crop.
- (f) Dividend paid by a company out of its agriculture income.
 - (g) Income of salt produced by flooding the land with sea water.
- (h) Royalty income from mines.
- (i) Income from butter and cheese making.
- (j) Receipts from TV serial shooting in farm
house is not agriculture income.

(k) Income from Plantation companies:- [Many plantation companies have launched schemes that offer tax-free agricultural income.]

Bacha F. Guzdar v. C.I.T., Bombay 1955 AIR 740.

The appellant, Mrs. Bacha F. Guzdar, was, in accounting year 1949-50, a shareholder in two Tea companies, Patrakola Tea Company Ltd., and Bishnauth Tea Company Ltd., and received from the aforesaid companies dividends aggregating to Rs 2750..

- 40% income taxable.
- 60% income agricultural income.

CIT v. Raja Bahadur Kamakshya Narayan Singh, 1971 AIR 794 dealt with the question whether interest on arrears of rent payable in respect of land used for agricultural purposes is agricultural income and therefore exempt from Income Tax. It was held that it was neither rent nor revenue derived from land within the meaning of Section 2(1A) of the Income Tax Act.

- Not agricultural income.

Maharajkumar Gopal Saran Narain Singh v. CIT 3 I.T.R. 237, --

The annuity arose out of a transfer made by the assessee of a portion of his estate for discharging his debts and for obtaining an adequate income for his life. It was held that it was not rent or revenue derived from land but money paid under a contract imposing personal liability on the covenanter the discharge of which was secured by a charge on land.

C.I.T. v. Benoy Kumar Saha Roy, (1957) 32 ITR 466 (SC).

Supreme Court observed that if the integrated activity of the agriculturist, viz., agriculture, which includes the basic operations and the subsequent operations, is undertaken and performed in regard to any land, that land can be said to have been used for agricultural purposes and the income derived there from can be said to be agricultural income derived from the land by agriculture

AMALGAMATION

Section (1B) states "**amalgamation**", as

- merger of one or more companies with another company or
- the merger of two or more companies to form one company; → that-
 - property/liability of the amalgamating company becomes the property/liability of amalgamated company.
 - Share holders holding minimum 75% shares become share holders of the amalgamated company.

Amalgamating vs. Amalgamated Company;

- X Ltd Merges with Y Ltd. Thus X Ltd goes out of existence. Here X Ltd is Amalgamating Company and Y Ltd is Amalgamated Company.
- X Ltd and Y Ltd both merges and form a new company say, Z Ltd. Thus both X Ltd and Y Ltd goes out of existence and form a new company Z Ltd. Here X Ltd and Y Ltd are Amalgamating Company and Z Ltd is Amalgamated Company.

Tax Relief to the Amalgamating Company:

- Exemption from Capital Gains Tax [Sec. 47(vi)]:
- Exemption from Capital Gains Tax International Restructuring [Sec. 47(via)]:
- At least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and
- Such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated.

Tax Relief to the shareholders of an Amalgamating Company:

Exemption from Capital Gains Tax [Sec 47(vii)]: i.e. capital gains arising from the transfer of shares by a shareholder of the amalgamating companies are exempt from tax as such transactions will not be regarded as a transfer for capital gain purpose, if:

- The transfer is made in consideration of the allotment to him of shares in the amalgamated company; and
- Amalgamated company is an Indian company.

Tax Relief to the Amalgamated Company:

Carry Forward and Set Off of Accumulated loss and unabsorbed depreciation of the amalgamating company [Sec. 72A]: → i.e. mergers of the sick companies with healthy companies if the following conditions are fulfilled:-

- There should be an amalgamation.
- The amalgamated company should be an Indian Company.

The amalgamating company should be engaged in the business, for 3 years or more.

- The amalgamating company should held continuously at least three-fourth of the book value of the fixed assets held by it two years prior to the date of amalgamation.
- The amalgamated company holds continuously minimum 5 yrs from the date of amalgamation at least three fourths in the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation.
- The amalgamated company continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation.
- The amalgamated company fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.

Assessee

Section 2(7) -assessee

means any person to whom tax or any other sum of money is payable, and includes—

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act ;

(c) every person who is deemed to be an assessee in default under any provision of this Act ;

It includes—

First category— A person (i.e. an individual; a Hindu undivided family; a company; a firm; an association of persons or body of individuals, whether incorporated or not; a local authority; and every artificial juridical person) by whom any tax or any other sum of money (including interest and penalty) is payable under the Act (irrespective of the fact whether any proceeding under the Act has been taken against him or not).

Second category—A person in respect of whom any proceeding under the Act has been taken (whether or not he is liable for any tax, interest or penalty). Proceeding may be taken—

(a) either for the assessment of the amount of his income or of the loss sustained by him; or

(b) of the income (or loss) of any other person in respect of whom he is assessable; or

(c) of the amount of refund due to him or to such other person.

Third category— Every person who is deemed to be an assessee. For instance, a representative assessee is deemed to be an assessee by virtue of section 160(2).

Fourth category— Every person who is deemed to be an assessee in default under any provision of the Act. For instance under section 201(1), any person who does not deduct tax at

source, or after deducting fails to pay such tax, is deemed to be an assessee in default. Likewise, under section 218 if a person does not pay advance tax, then he shall be deemed to be an assessee in default.

—Assessee in default

As per Income Tax Act, 1961 the term -assessee in default has nowhere been defined. However the term, in general is interpreted to refer to an assessee who has defaulted in discharging its obligations with respect to payment of tax, interest etc. under Income tax.

➤ person is regarded/deemed to be an assessee in default;

1. Failure to pay any tax, U/s. 156 → 30 days)
2. Failure to pay tax → the person responsible (distributed profits/income of company/UTI, MF/Securitisation trusts) — (without 156),
3. Failure to pay tax → whether or not ITR filed and whether or not notice of demand issued.
4. Defaults to deduct/collect tax at source or failure to pay the tax (by obtaining a certificate from a chartered accountants in form 26A (for TDS defaults) and in Form 27BA (for TCS defaults).

INCOME

Section 2(24) "**income**" includes—

- (i) profits and gains ;
- (ii) dividend ;
- (iia) contributions received by a trust;
- (iii) value of any perquisite;
- (iia) any special allowance or benefit,
- (iiib) any allowance to compensate;
- (iv) the value of any benefit or perquisite,
- (iva) the value of any benefit or perquisite, whether convertible into money or not,
- (v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59;
- (va) any sum chargeable to income-tax under clause (iia) of section 28 ;
- (vb) any sum chargeable to income-tax under clause (iiib) of section 28 ;
- (vc) any sum chargeable to income-tax under clause (iiic) of section 28 ;
- (vd) the value of any benefit or perquisite taxable under clause (iv) of section 28 ;
- (ve) any sum chargeable to income-tax under clause (v) of section 28 ;
- (vi) any capital gains chargeable under section 45;
- (vii) profits and gains of any business of insurance;
- (viiia) profits and gains of any business of banking;

- (ix) winnings from lotteries, crossword puzzles,
- (x) employees as contributions to any provident fund or superannuation fund;
- (xi) sum received under a Keyman insurance policy;
- (xii) sum referred to in clause (va) of section 28;
- (xiii) Any sum in clause (v) of sub-sec. (2) of sec. 56;
- (xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;
- (xv) any sum of money or value of property referred to in clause (vii) or clause (viiia) of sub-section (2) of section 56;
- (xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viiib) of sub-section (2) of section 56;
- (xvii) any sum of money referred to in clause (ix) of sub-section (2) of section 56;
- (xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement

-income in section 2(24) is inclusive and not exhaustive. Therefore, the term **-income** not only includes those things which are included in section 2(24) but also includes such things which the term signifies, according to its general and natural meaning.

Income is periodical monetary return with some sort of regularity. It may be broadly defined as the true increase in the amount of wealth which comes to a person during a fixed period of time.

Broad principles which clarify the concept of income—

- Regular and definite source—
- Receipt vs. Accrual—
- Illegal income—
- Disputed title—

- Relief or reimbursement of expenses not treated as income—
- Diversion of income by overriding title vs. Application of income—
- Surplus from mutual activity—
- Temporary and permanent income—
- Lump sum receipt—
- Tax-free income—

Revenue receipt vs. Capital receipt— A revenue receipt is taxable as income unless it is expressly exempt under the Act. On the other hand, a capital receipt is generally exempt from tax unless it is expressly taxable

Distinction between Capital Receipt and Revenue Receipt:

Revenue Receipt

Capital Receipt

It has short-term effect. The benefit is enjoyed within one accounting period.

It has long-term effect. The benefit is enjoyed for many years in future.

It occurs repeatedly. It is recurring and regular.

It does not occur again and again. It is nonrecurring and irregular.

It is shown in profit and loss account on the credit side.

It is shown in the Balance Sheet on the liability side.

It does not produce capital receipt.	Capital receipt, when invested, produces revenue receipt e.g. when capital is invested by the owner, business gets revenue receipt (i.e. sale proceeds of goods etc.).
This does not increase or decrease the value of asset or liability.	The capital receipt decreases the value of asset or increases the liability..
expenses of capital nature are to be incurred for revenue receipt, e.g. purchase of shares of a company is capital expenditure but dividend received on shares is a revenue receipt.	expenses of revenue nature are to be incurred for such receipt e.g. loan (a capital receipt) interest is paid until its repayment.

PERSON

Section 2(31) "person" includes—

- (i) *an individual,*
- (ii) *a Hindu undivided family,*
- (iii) *a company,*
- (iv) *a firm,*
- (v) *an association of persons or a body of individuals, whether incorporated or not,*
- (vi) *a local authority, and*
- (vii) *every artificial juridical person, not falling within any of the preceding sub-clauses.*

(i) Individual—

It refers to a natural human being whether male or female, minor or major. Deities and statutory corporations are assessable as –juridical personl. –Individuall includes a minor or a person of unsound mind. Individual also includes a group of individuals. Trustees of a discretionary trust have to be assessed in the status of –individuall and not in status of –association of personsl.

(ii) Hindu Undivided Family—

A Hindu undivided family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. Profits made by a joint Hindu family are chargeable to tax as income of the Hindu undivided family as a distinct entity or unit of assessment. Once a family is assessed as a Hindu undivided family, it will continue to be assessed as such till a finding of partition is made. The manager of HUF is called –Kartal and its members are called ‘_Coparceners’. So long as HUF exists, individual members cannot be separately assessed in respect of HUF’s income.

(iii) Company.

Registered under Indian Companies Act 2013.

- (a) any Indian company; or
- (b) any body corporate incorporated under the laws of a foreign country; or
- (c) any institution, association or a body which is assessed or was assessable/ assessed as a company. or
- (d) any institution, association or a body, whether incorporated or not and whether Indian or non-Indian, which is declared by Central Board of Director Taxes to be a company.

(iv) Firm—

It is an entity which comes into existence as a result of partnership agreement between persons to share profits of the business carried on by all or any one of them. Section 4 of the Indian

Partnership Act, 1932 defines partnership as –relationship between persons who have agreed to share the profits of business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually partners and collectively a firm and the name under which their business is carried on is called the firm name.

A partnership firm does not have a separate legal entity, yet it has been regarded as a separate entity under Income Tax Act. Under Income Tax Act, 1961, a partnership firm can be of following two types—

(i) a firm which fulfill the conditions prescribed u/s 184.

(ii) A firm which does not fulfill the conditions prescribed u/s 184.

It is important to note that for Income Tax purposes, a limited liability partnership (LLP) constituted under the LLP Act, 2008 is also treated as a firm.

(v) Association of Persons or Body of Individuals—

Therefore, –association of persons| means an association in which two or more persons join in a common purpose or common action. An association of persons may have companies, firms, joint families as its members. A body of individuals, on the other hand, cannot have non-individuals, as its members. Co-operative societies, MARKFED, NAFED etc. are the examples of such persons. When persons combine together to carry on a joint enterprise and they do not constitute partnership under the ambit of law, they are assessable as an association of persons.

Receiving income jointly is not the only feature of an association of persons. There must be common purpose, and common action to achieve common purpose i.e. to earn income. An AOP can have firms, companies, associations and individuals as its members.

A body of individuals (BOI) cannot have non-individuals as its members. Only natural human beings can be members of a body of individuals.

Whether a particular group is AOP or BOI is a question of fact to be decided in each case separately.

(vi) Local Authority—

Local authority is a separate unit of assessment. As per section 3(31) of the General Clauses Act, a local authority means a municipal committee, district board, body of port commissioners, or other authority legally entitled to or entrusted by the Government with the control and management of a municipal or local fund. Municipality, Panchayat, Cantonment Board, Port Trust etc. are called local authorities.

(vii) Every artificial juridical person—

It covers not only deities but also all artificial persons with a juridical personality such as a Bar Council. This is residuary classification and, therefore, it does not cover those falling within any of the preceding classifications.

Charge of income-tax & Scope of total income.

Section 4. Charge of income-tax.

(1)

- *charged for any assessment year at any rate or rates,*
- *total income of the previous year;*

(2)

- *income-tax shall be deducted at the source or*
- *paid in advance, where it is so deductible or payable under any provision of this Act.*

Individual/HUF/AOP/BOI/AJP.

Up to Rs. 2,50,000	<i>Nil</i>
Rs. 2,50,000 to Rs. 5,00,000	5%
Rs. 5,00,000 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%
Above 60 Yrs → Rs. 3,00,000	Nil
Above 60 Yrs → Rs. 3,00,000	Nil

Surcharge: 10% exceeds Rs. 50 lakh

 15% exceeds Rs. 1 crore

Education cess: 3% of tax plus surcharge

There are five heads of income namely—

- Income from Salary;

- Income from House Property;
- Income from Business & Profession;
- Income from Capital Gain;
- Income from Other Sources;
 - (-) TDS & Advance Tax paid.
 - (+) Interest u/s 234A, 234B & 234C
 - rounded off nearest ten rupees.

Section 4 provides that:

- (i) total income is computed;
- (ii) shall be charged at the rate,
 - (i) on various persons specified u/s 2(31);
 - (ii) previous year and not of the of assessment year
- (iii) the levy of tax on the assessee;
- (iv) be deducted at source or paid in advance, under any provision of the Act.

five exceptions –

- (a) non-residents from shipping business (Sec.172)
- (b) persons leaving India (Sec.174)
- (c) AOP/BOI/AJP formed for a particular event or purpose (Sec.174A)
- (d) trying to alienate their assets with the object of avoiding tax (Sec.175)
- (e) from discontinued business (Sec.176)

Scope of total income

Section 5. Scope of total income.

(1) is a resident includes all income derived —

(a) is received in India in such year by or on behalf of such person ; or

(b) accrues or arises in India during such year ; or

(c) accrues or arises to him outside India during such year :

(2) is a non-resident income derived —

(a) is received in India or on behalf of such person ; or

(b) accrues or arises in India during such year.

Income determined to his residential status—

(Resident and ordinarily Resident)—

(a) received, or deemed to be received in India in such year by him or on his , behalf; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(a) accrues or arises to him outside India during such year.

Accrual of Income— When right to receive the income become vested in the assessee,

(Resident but non- Ordinarily Resident)—

(a) is received or is deemed to be received in India in such__ year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(c) accrues or arises to him outside India and is derived from business controlled in India or a profession set up in India.

Difference between resident and non ordinarily resident.

- The basic difference relates to the income which accrues or arises to him outside India.
- In case of a resident it is included in his total income irrespective of the source of such income.
- But in case of a not ordinarily resident it will be included in his total only if it is derived from a business which is controlled in or a profession set up in India.

Scope of total income of Non- Resident—

- (a) is received or is deemed to be received in India in such year by or on behalf of such person, or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year. Thus non-residents are not liable in respect income accruing or arising outside India even if it is remitted to India.

Residential Status

Section 6—Residential Status.

In India and other countries—

➤ two categories of taxable entities viz.

(1) Residents, and

(2) Non-residents.

(i) resident and ordinarily resident, and

(ii) resident but not ordinarily resident

Charge of income tax—

➤ Indian income is taxable in India whether the person earning income is resident or non-resident.

➤ Conversely, foreign income of a person is taxable in India only if such person is resident in India.

➤ Foreign income of a non-resident is not taxable in India.

Resident (Ordinary Resident) [Section 6(1)]

➤ A person is said to be –resident in India in any previous year if he—

(a) is in India in that year for an aggregate period of 182 days or more; or

(b) having within the four years preceding that year been in India for a period of 365 days or more, is in India in that year for an aggregate period of 60 days or more.

Period of 60 days will be extended to 182 days in two cases—

(i) where an Indian citizen leaves India in any year for employment outside India; and

- (ii) Where an Indian citizen or a foreign citizen of Indian origin (NRI), who is outside India, comes on a visit to India.

Both the days of entry and exit are counted while calculating the number of days stay in India.

Sec. 6(6) — Resident but Not Ordinarily Resident.

- a non-resident in India 9yrs / 10 P. Yrs. or
- 7 P. Yrs. in India for 729 days or less.

Resident u/s 6(1) can claim N.O.R. if—

- (a) non resident in India for 9 previous years out of 10 previous years.

OR

- (b) In India for a period of 729 days or less during seven previous years.

An individual who is resident u/s 6(1) can claim the beneficial status of N.O.R. if he can prove that :

- (a) He was non resident in India for 9 previous years out of 10 previous years preceding the relevant previous year.

OR

- (b) He was in India for a period or periods aggregating in all to 729 days or less during seven previous years preceding the relevant previous year.

Non-resident [Section 2(30)]

Under section 2(30) of the Income-tax Act, 1961 an assessee who does not fulfill any of the two conditions given in section 6(1)(a) or (b) would be regarded as ‘Non-resident’ assessee during the relevant previous year for all purposes of this Act.

A non-resident is merely defined as a person who is not a resident i.e. one who does not satisfy either of the two prescribed tests of residence.

Residential status of Hindu Undivided Family

Resident India.

if control and management of its affairs is wholly or partly situated in India.

Not Ordinarily Resident [Section 6(6)(b)] if :

- its manager (Karta) has not been resident in India in 9/10 P. yrs. or
- the manager → had not, In preceding 7, in India 730 days.

Non-Resident [Section 2(30)], if—

- control and management wholly outside India.

Residential status of FIRM and AOP or BOI.

Resident India.

if control and management of its affairs is wholly or partly situated in India.

No such Ordinarily Resident .

Non-Resident [Section 2(30)], if—

- control and management wholly outside India.

Residential status of Company.

Ordinary Resident [Section 6(3)] if:

- (i) it is an India company, or
- (ii) control and management of its affairs is situated wholly in India.

No such Ordinarily Resident .

Non-Resident [Section 2(30)], if—

- control and management wholly outside India.

Residential status—every Other Person. [Sec. 6(4)]

- i.e. Body of individuals, A Local Authority and an Artificial Juridical Person.
- They are either ‘_Resident’ or -Non-Residentl.
- The test to be applied shall be the of control and management. If it is situated wholly outside India, the assessee will be non-resident. If the control and management is wholly or partially situated in India, the status will be that of ‘_Resident’.

Sources of Income	R & OR	R & NOR
<u>Indian Income</u>	TI	TI
Income received or deemed to be received in India during the current financial year.		
Income accruing or arising or deemed to accrue or arise in India during the current financial year.	TI	TI
Income accruing/arising or deemed to accrue/arise out side India,	TI	TI

Sources of Income	R & OR	R & NOR
<u>Foreign Income</u>	TI	TI
Income accruing or arising or deemed to accrue or arise outside India and received outside India,		
Income accruing/arising or outside India from a Business/profession controlled in/from India,	TI	TI
Income accruing/arising outside India from source other than Business Profession controlled from India	TI	TI

Income deemed to accrue or arise in India

Income deemed to accrue or arise in India has different categories of Incomes within its ambit.

They are as follows:

- 1) Any income accruing or arising in any place outside India whether directly or indirectly.
 - (a) Through or from any *business connection in India*,
 - (b) through or from *any property in* India,
 - (c) through or from any *asset or source of income in India*
 - (d) through the *transfer of any capital asset in India*.

- 2) Income which falls under the head —*Salaries*"; *if it is earned in India*.
- 3) Income from —*Salaries*" which is payable by Government to a citizen of India for services rendered outside India.
- 4) *Dividend by an Indian Company* outside India.
- 5) *Interest*.
- 6) *Royalty*.
- 7) *Fees for technical Services*.

Section 9(1)(i)] - Income Arising From Business Connection in India.

accrue‘ and arise‘ →

- —*receive*". Income is said to be received when it reaches the assessee;
- right to receive the income becomes vested in the assessee.

accruing or arising, whether directly or indirectly, through or from any *business connection* in India.

Business connection. [Finance Act, 2003]

- There must be element of continuity as well as real and intimate connection —*CIT v. R.D. Aggarwal & Co. [1965] 56 ITR 20 (SC)*,
- Business‘ includes profession, vocation and callings - *Barendra Prasad Ray v. ITO [1981] 129 ITR 295 (SC)*,
- Mere purchase abroad and use in India is not continuing business‘ - *CIT v. Fried Krupp Industries [1981] 128 ITR 27 (Mad.)*
- Isolated transactions are not covered -*Anglo-French Textile Co. Ltd. v. CIT (No. 2) [1953] 23 ITR 101 (SC)*,

- Capital gains derived outside India is excluded - *CIT v. Quantas Airways Ltd. [2002] 256 ITR 84/122 Taxman 935 (Delhi)*.
- General business operations –
 - no nexus to income under consideration,
 - rights and obligations under agreement cannot be taken as proof;
 - business connection must exist between a non-resident and an Indian resident.

Sec. 9 (1) (i):- Business Connection income in India.

Any income through or from any Property in India—includes any tangible property both movable or immovable. Intangible assets.

Any income through or from any asset or source of income in –source means: a practical man would regard as a real source of income.

Any income through the transfer of a capital asset situate in India—

- transfer of capital asset.
- Capital asset is situated in India.

transfer is paid outside India is irrelevant.

Section 9 (1) (ii) Income under Salaries,

CIT v. S.G. Pgnatale, 1980 ITR 124 HC(Guj). Finance Act 1976 → Service rendered in India.

-Salaries if the income is payable for:-

- i) Services rendered in India; and
- ii) Forms part of the service contract of employment.

Sec. 10(6) → grants exemption foreign nationals under certain circumstances and subject to certain conditions.

Section 9 (1) (iii)— Income chargeable under the head –Salaries'' is payable by the Government to a citizen of India for service outside India.

- ❖ four conditions needs to be satisfied:
 - Salary should be payable by Govt of India,
 - The recipient should be an Indian Citizen, irrespective of their residential status,
 - The services should be rendered.

Dividend paid by an Indian Company outside India is deemed to accrue or arise in India.

- any dividend paid by an Indian Company → chargeable to tax in India irrespective of the residential status.
- Dividend from a foreign company paid in India shall be taxable in India on receipt basis.
- Place of accrual of dividend decided on the basis of the place of registered office. Place of declaration/payment of dividend is immaterial.
- Dividend declared by a Domestic company is exempt U/s.10(34).

Section 9(1)(v) – Interest— income by way of a interest is deemed to accrue or arise in India in case of interest is payable by—

- the Government both Central or State,
- resident person [except → interest pertain to debt earning any income from any source outside India]
- a non resident → interest pertains to any debt incurred or moneys borrowed and used for a business or profession carried on by such person in India

Section 9(1)(vi) – Royalty.

General Meaning of Royalty –

- All these rights are valuable intellectual property rights.
- This can be transferred by way of sale and purchase, assignment, license or lease.
- Taxation of these rights needs to be analyzed

Section 9(1)(vii)— technical service deemed to accrue or arise in India if payable by—

- the Government both Central or State
- resident person → except business or profession carried on by such person outside India or earning any income from any source outside India
- Non-resident where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purpose of the Govt.

Exempted Incomes

Income can be classified into Three categories—

- I. Income Forming part of Total Income and subject to Tax: --
- II Incomes forming part of Total Income but entitled to Rebate or Relief: --
- III Income Exempted from Tax --

The incomes which are exempted from tax are as follows:-

1. 10(1) — Agricultural Income.
2. 10(2)—Any sum received from HUF.
3. 10(2A)—Partnership Share

4. 10(4) – Interest received by a Non-Resident from prescribed securities.
5. (10(4B) — Interest credited in the — Non- Resident(External) Accountl.
6. 10(5) — Leave Travel Concession → shall in no case exceed the amount of expenses actually incurred.
7. 10(6)—who is not a citizen of India,—
 - Remuneration of officials of Foreign embassies, High Commissions, Legations, Commissions, Consultants or Trade Representatives.
 - Remuneration of Employees of certain Foreign Enterprises.
 - Salaries to non-residents employed on a foreign ship.
 - Remuneration to certain trainee foreigners.
8. 10(6A)—Fg. Co→approved royalty /Fees for Technical services.
9. 10(6B)—IT paid by Govt. on behalf of certain non-residents.
10. 10(6BB)—IT paid by Co.→ operation of aircraft on behalf of foreign State.
11. 10(6C)—Income of all notified Fg. Co.
12. 10(7)—Foreign Allowance for posted abroad.
13. 10(8)&(9)—Employees of Fg. Countries under Cooperative Technical Assistance Programme.
14. 10(10)—Death cum Retirement Gratuity.
15. 10(10A)—Commutated value of Pension.
16. 10(10AA)—Leave encashment on retirement.
17. 10(10B)—Retrenchment compensation→ 5L.
18. 10(10C)—Voluntary Retirement→ 5L.
19. 10(10D)—Any sum received under LIC policy.
20. 10(11)—Payment from Statutory PF.
21. 10(12)—Payment from Recognized Fund.
22. 10(13)—Payment from an approved superannuation fund.
23. 10(13A)—House Rent Allowance.

24. 10(14)—allowance for meeting Business Expd.
25. 10(16)—Scholarships for cost of education.
26. 10(17)—Allowance of M.P. / M.L.A. / or M.L.C.
27. 10(17A)—Award instituted by Government.
28. 10(18)—Winners of Vir Chakra etc.
29. 10(19)—Family Pension on operational death.
30. 10(20)—Income of a local authority.
31. 10(21)—Any income of an approved Scientific Research Association:
32. 10(22B)—Income of News Agency (notified).
33. 10(23A)—Professional Inst. Income (Object?).
34. 10(23AA)—Inst. established by armed forces.
35. 10(23AAA)—Income of welfare Fund.
36. 10(23AB)—Income of a Pension Fund.
37. 10(23B)—Income for development of Khadi and Village Industries.
38. 10(23BB)—State Level Kahdi Village Industries
39. 10(23BBA)— manage Religious and Charitable
40. 10(23BBE)—Insurance Regulatory etc.
41. 10(23C)—Any Income of following Funds:
 - (i) P.M.Relief Fund; or
 - (ii) PM (Promotion of Folk Art); or
 - (Iii) PM Aid to Students Fund; or
 - (iiiia) National Communal Harmony; or
 - (iiiab) university of Govt. or
 - (iiiac) hospital of Govt. or
 - (iv) any other fund Official Gazette
42. 10(23D)—Income of Mutual Fund:
43. 10(23EA)— investor protection fund.
44. 10(23EB)—Trust Fund for Small Industries.
45. 10(23EC)—Investor Protection Fund;
46. 10(23FA)—Dividend or TG etc.
47. 10(24)—Income of Registered Trade Unions:

48. 10(25)—Income PF and Superannuation Fund;
49. 10(26)—Income of Schedule Tribe Members :
50. 10(32)—Income of Child clubbed u/s 64(1A);
51. 10(33)—transfer of capital assets of UTI.
52. 10(34) — dividend from Indian company.
53. 1034A—buyback of shares of unlisted Co.
54. 10(35)—Income from units of UTI etc.
55. 10(35A)—Income from securitization trust.
56. 10(36) — LTG on transfer of listed Share.
57. 10(37) — CG on urban Agricultural Land.
58. 10(38)—LTG under Security Transaction Tax.
59. 10(39)—international sporting event in India.
60. 10(40) — certain grants etc. of holding Co.
61. 10(41)— Income from distribution of power
62. 10(42)— income set up by two countries.
63. 10(43)—Income of Reverse Mortgage.
64. 10(44)—Income of New Pension System Trust.
65. 10(45)—Specified allowance UPSC members.
66. 10(46)— notified certain commercial activity.
67. 10(47)—notified ‘Infrastructure debt fund’.
68. 10(48)—sale of Crude Oil in India.
69. 10(48A)—sale of crude oil stored as reserves.
70. 10(49)—National Financial Holdings Co. Ltd.
71. 10 (50)—any specified service

Heads of income

Section 14—Five main Income tax heads:

- Income from Salary;
- Income from House Property;
- Income from Profits and Gains of Profession or Business;
- Income from Capital Gains;
- Income from Other Sources.

Income from salary

Section 15 to section 21 →

- any remuneration,
- wages,
- any annuity,
- pension,
- gratuity,
- advance of salary,
- leave encashment,
- commission,
- Perquisites and
- retirement benefits.

Money Received on a contract of employment, Qualifies for income tax only, if there is employer-employee relationship, between payer and payee respectively.

Allowances : An allowance is a fixed monetary amount paid by the employer to the employee for expenses related to office work. Allowances are generally included in the salary and taxed unless there are exemptions available.

- Conveyance Allowance: Up to Rs 800/- P.M.
- HRA → least of following—
 1. Actual HRA received;
 2. 50% of [Basic+ DA]/ (40% for non-metros);
 3. Actual rent paid less 10% of salary.

Income from house property.

Sections 22 to 27 any tangible property both movable or immovable. Intangible assets.

Income chargeable to tax under the head —**Income from House Property** is computed as Annual Value and is the higher of the fair rental value, rent received or municipal rent. Standard deduction of 30% is allowed on the Annual Value. Further, one can reduce the interest on borrowed capital.

Profits and gains of business or profession. (Section 28 to 45).

Section 2(13) : Business.— Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

- The third head of Income Tax heads is Income from Profits of Business.
- The difference between the expenses and revenue earned will be chargeable.
- Profits earned by the assessee during the assessment year;
- Profits on income by an organization;
- Profits on sale of a certain license;
- Cash received by an individual on export under a government scheme;

- Profit, salary or bonus received as a result of a partnership in a firm;
- Benefits received in a business.

Income from Capital gains.

- profits or gains earned by an assessee by selling or transferring a capital asset,
- Section 45 is the charging section for capital gains.
- The capital gains are two sub-heads –
 - short term capital gains or
 - long term capital gains.
- There are tax exemptions under section 54 or section 54F or section 54EC or section 54B.

Income from other sources.

- any other form of income,
- Interest income from bank deposits, etc.
- Chargeable Section 56(2);

Income computed –

All these heads shall be aggregated after adjusting past and present losses;

- Gross Total Income‘.

allows certain deductions under section 80.

- Total Income‘;

tax liability is computed at the prescribed rates.

DEDUCTION UNDER CHAPTER VI-A

❖ Not all of the deductions provided in Chapter VI A are applicable to individuals.

The deduction under Chapter VI-A can be divided into three classifications.

1. Deduction in respect of certain Payments (Ss. 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80G etc.);
2. Deduction in respect of certain Incomes (Ss. 80QQB, 80RRB);

1. Deduction in respect of Payments.

Section 80C: Life Insurance Premium, Deferred Annuity, contributions to Provident Fund, Subscription to certain Equity Shares or Debentures, etc.

Eligibility— Individuals and HUF.

Payments eligible—

- (1) L.I.C. → i. Self, spouse and any child; and
 - ii. Any member, in case of HUF <20%
- (2) deferred annuity contract on life of self, spouse and any child in case of individual (not applicable for HUF);
 - No lump sum payment.
- (3) Above (2) by Government.
 - should not exceed 1/5th of salary.
- (4) individual to Statutory Provident Fund/Recognized Provident Fund;
- (5) Public Provident Fund scheme, 1968;

- (6) approved superannuation fund.
- (7) (ULIP) of UTI/ LIC;
- (8) annuity plan of the LIC/ any other Insurer.
- (9) notified deposit scheme/ NSS 1992;
- (10) National Savings Certificates (VIII issue).
- (11) Mutual Fund (Equity Linked Saving).
- (12) notified pension fund;
- (13) National Housing Bank (NHB),
- (14) Subscription to notified deposit schemes of:
 - i. PSU finance for residential houses in India;
 - ii. housing or planning, development
- (15) Tuition fees.
- (16) Principal cost of house property.
- (17) 5 yrs FD's by the Central Government.
- (18) Subscription to (NABARD);
- (19) Investment in Term Deposit;
- (20) Subscription to Equity shares [80IA(4)].
- (21) Amendment AY 2009-10]
 - i) Post Office Time Deposit Rules, 1981; and
 - ii) Senior Citizens Savings Scheme Rules, 2004

Other important provisions –

1. No deduction allowed→

- (i) discontinues a LIC policy;
- (ii) purposely terminating the ULIP;
- (iii) Transfers house property (before 5yrs);
- (iv) Sales or transfers equity shares (within 3yrs).

2. Any sum paid or deposited as above should not exceed the total income of the relevant previous year.

Section. 80CCC: contribution to certain Pension Fund.

Eligibility— Only Individual. But→

- 1. must be deposited/paid during the previous year.
- 2. paid out of income chargeable to tax.
- 3. pension received from the plan is taxable;
- 4. If claimed u/s. 80C→ not available u/s. 80CCC.

Section 80CCD: contribution to Pension Scheme of Central Government.

Eligibility— Only Individual.

Amount of deduction: least of 10% EE or 20% EE/ER.

Section 80D: Medical Insurance premier.

Eligibility— Individual and HUF.

➤ assessee or his family members.

➤ Rs. 15,000/- & Rs. 20,000/- (Sr. Citizen).

Section 80DD: Medical Treatment of Dependant Disabled.

Eligibility— Individual and HUF.

- Rs. 50,000/- normal disability, or
- Rs. 75,000/- severe disability,

Section 80DDB: Medical Treatment, etc.

Eligibility— Individual and HUF.

- assessee or his family members.
- Rs. 40,000/- & Rs. 60,000/- (Sr. Citizen).

Section 80E: Loan Taken for Higher Education.

- full-time studies—Individual/spouse or children;
- graduate or post-graduate course;
- approved financial institution;
- initial assessment year and seven assessment years immediately succeeding the initial assessment year.

Section 80G: Charitable Institutions, etc.

Eligibility— All assessee → 50% or 100%.

Section 80GG –Rent Paid for Residence.

Form No. 10BA

Amount of deduction-least of the three:

- a) Rs. 2,000 per month; or
- b) 25% of the total income or
- c) the excess of actual rent paid over 10% of the total income.

Section 80QQB: Royalty income of authors.

Eligibility—Resident Indian.

Amount of deduction – whichever is lower.

(1) In case of lump sum consideration:-

- grant of any interest in the copyright; or
- Amount of Royalty or Copyright fees; or
- A fixed sum of Rs. 3 lakhs,

(2) Where no lump sum consideration:-

- not exceed 15% of value of books;
- Rs. 3 lakhs, whichever is lower.

Section 80 RRB: Royalty on patents.

Eligibility—Resident Indian.

- Must be register under Patents Act, 1970,
- Maximum exemption is Rs. 3, 00, 000;
- brought to India in convertible foreign exchange within 6 months.
- certificate from the prescribed authority along with the return of income.

Section 80U: person with disability.

Eligibility—Resident Indian with prescribed medical authority,

- Blindness
- Low vision
- Leprosy-cured

- Hearing impairment
- Locomotors disability
- Mental retardation
- Mental illness.

Rebate and Relief.

- From tax on total income,
- Assesse entitled rebates & reliefs Ch-VIII.
- direct reduction of taxes unlike deductions under chapter VIA;
- At present there is only one rebate and one relief available to the tax payers. The major rebate under section 88 has already been replaced with deduction under section 80C.

Section 87A:- Income Tax Rebate.

Rebate u/s Section 87A provides for a marginally lower payment of tax to individuals earning income below the specified limit.

FY 2017-18, individual can claim a maximum rebate of Rs. 2,500. [FY 5,000].

Eligibility—

- a Residential Individual; and
- Total Income Less Deductions (u/s 80) is equal to or less than Rs 3,50,000.

Sec.89:- Relief when salary, etc. is paid in arrears or in advance.

- receives salary in arrears,
- received family pension in arrears;
- relief is provided to mitigate the hardships on account of differential rate of income tax for different years.

- Procedure under Rule 21A;
- receives salary for more than 12 month being paid in arrears or in advance.
- Due to excess salary at higher rate than that at which it would otherwise has been assessed,
- **When an employee can claim this Relief?**
- 1. When employee receives salary in arrears in the previous year.
- 2. When employee receives salary in advance.
- 3. When employee receives compensations in connection with termination of employment.

Tax Deduction	Tax Rebate	Tax Relief
A deduction from gross income that arises due to various types of expenses incurred by a taxpayer.	The return of excess amounts of income tax that a taxpayer has paid to the state or federal government throughout the past year.	Any program or incentive that reduces individual or business entity.
Reduction of income	Refund of tax paid	Any relief of tax

Indirectly reduce tax bills	Refunds excessively paid tax	Directly or indirectly reduce taxes
Expenses, particularly those incurred to produce additional income	Taxes already paid	Can be on the basis of Taxes already paid or to encourage behaviors like investment or parenting. It can also be on the basis of expenses, particularly those incurred to produce additional income.

If any person files the return after due date of filing of return, he can not carry forward any loss for claiming in next assessment years. Belated return can be filed after due date up to one year from the end of the relevant assessment year. Return relating to financial year 2017-18 can not be filed after 31.03.19.

Filing of Revised Return.

1. within one year from the end of the relevant assessment year or before the assessment has been made, whichever is the earlier, he can file the revised return.
2. In case the defect is pointed out by the assessing officer, he has to file return within 15 days of receiving the information.

Note: A revised return cannot be filed in a case where the original return has been filed late i.e. after the due date.

Interest for Late Filing of Income Tax Return. - non filing of return on or before due date, to pay simple interest @ 1 % per month on amount of tax payable from the due date, (u/s 234 A).

Interest for Short Payment/Non Payment of Advance Tax- If the short payment is more than 10% of total tax payable or failure to pay the advance tax, 1% interest from 1 April to the date u/s 234-B.

The Customs Act,1962

What is Custom Duty ?

- Custom Duty is a duty or tax charged on goods imported into India or exported outside India.
- The basic law for levy and collection of customs duty is Customs Act, 1962.
- On Imports, goods are allowed to be entered India only if custom is paid
- Similarly in case of exports, goods are allowed to be exported outside India only if custom duty is paid.

Aim & Objectives of Custom Act–

1. **Indirect Tax** - Customs Duty is a type of indirect tax levied on goods imported into India as well as on goods exported from India.
2. **Taxable Event** - Taxable event is import into or export from India.
3. **Provisions** - It provides for levy and collection of duty on imports and exports, import/export procedures, prohibitions on imports and exports of goods, penalties, offences, etc.
4. **Apex Body** - The Central Board of Excise & Customs (CBEC) is the apex body for customs matters.

- **There are 2 laws of Customs -**

1. The Customs Act, 1962 - Containing procedures of Customs
2. The Customs Tariff Act, 1975 - Containing rates of Customs Duty

- **Different Rate of Duties?**

1. There are 2 types of rates in Custom
 - Preferential Rate of Duty
 - Standard Rate of Duty

If goods are imported from the preferential areas [as notified by the Central Government] otherwise, Standard rate will be applicable.

- **Definition of "goods" according to Section 2(22) of Customs Act-**

1. vessels, aircraft and vehicles;
2. stores;
3. baggage;
4. currency and negotiable instruments; and
5. any other kind of movable property;

- **Applicable- whole of India**

- **Non-Applicability-** According to Section 44 the provisions of this Chapter shall not apply to

1. baggage, and
2. goods imported or to be exported by post.

- **Assessment of duty (Section 17) -**

1. **Examination and Testing** - After an importer has entered any imported goods, or an exporter has entered any export goods the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.
2. **Duty leviable** - After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise, be assessed.
3. **Furnishing Information** - For the purpose of assessing duty, the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy insurance,

catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

4. **Re – Assessment** - If information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.
- **Provisional assessment of duty (Section 18)** - The proper officer may direct that the duty leviable on such goods may,
 1. pending the production of such documents or
 2. furnishing of such information or
 3. completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.
 - **Refund of export duty in certain cases (Section 26)** -
Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if-
 1. the goods are returned to such person otherwise than by way of re-sale;
 2. the goods are re-imported within one year from the date of exportation; and
 3. an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.
 - **Penalty for Improper Importation of Goods, Etc. {Section 112}** –
In the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding five times the value of the goods or one thousand rupees, whichever is the greater.

Judicial decisions

Associated Cement Companies Ltd. V/S Cc 2001(128) Elt 21 (Sc)

Legal Background

Goods, whether imported or the ones to be exported, are the subject matter of Customs law. Section 2 Sub-section 22 of the Customs Act, 1962 defines goods as-

1. Vessels, aircraft, and vehicles
2. stores
3. baggage
4. currency and negotiable instruments and;
5. any other kind of movable property

Facts

The Petitioners, who aggrieved with the order of the Customs, Excise, and Gold (Control) Appellate Tribunal had approached the Supreme Court, were the importers of designs and drawings in the form of hard copies that were transported through courier or parcel system. In the instant case, the Assistant Commissioner of Customs, classifying them as imported goods, levied customs duty on these design and drawing papers.

The appellants argued that drawings and designs do not fall within the ambit of the definition of “goods” provided under Section 2(22) of the Customs Act and therefore the Assistant Commissioner of Customs did not have the authority to levy customs duty on their imported designs and drawings.

Decision

The Highest Court of the Land noted that while a design or a drawing in a digital format are intangible in nature and does not fall within the definition of goods, the instance they are converted or transformed into any tangible format in the form of paper or CDs or DVDs, they become movable goods and thus start falling within the definition given under Customs Act.

Therefore, the Apex Court held that the Assistant Commissioner of Customs had the authority under the Customs Act, 1962 to levy duties on the items imported by the petitioners.

Aidek Tourism Services Pvt. Ltd. V/S. Commissioner Of Customs 2015 (318) Elt 3 (Sc)

Legal Background

Section 3 (1) of the Customs Tariff Act, 1975 mandates for the subjection of imported goods to an additional duty equal to the excise duty levied under Central Excise Act, 1944 on the domestic goods of like nature. This is done to bring the domestic producers/ manufacturers at par with their foreign counterparts.

Question of law

Whether an imported good be exempted from an additional duty under Section 3(1) of the CTA if a good of like nature being produced/ manufactured in India has been exempted or is exempt from Excise duty?

Decision

The Supreme Court while hearing this appeal held that the language used in Section 3(1) of the CTA warrants for the imposition of such additional duty on the imported goods that is equivalent to the excise duty being levied on a like domestic good. Meaning thereby that if the excise duty has been reduced or exempted by notification, the additional duty on the imported good will have a direct impact of such modification in the excise duty. Therefore, the additional duty under Section 3(1) will be reduced, increased or be even made nil depending upon the change in the excise duty.

The Apex Court, thus, gave an affirmative answer to the aforementioned question of law.

Rishiroop Polymers Pvt. Ltd. V/S Designated Authority And Additional Secretary 2006

(196) Elt 385 (Sc)

Legal Background

Section 9A (5) of the CTA provides that the time-period for the imposition of an anti-dumping duty cannot exceed five years. However, the proviso to the said sub-section authorises the Central Government to extend the aforementioned time-period for another five years, if after conducting a review, it is of the notion that a lapse in the duty will lead to a relapse of the practice of dumping or the injury caused therefrom.

Facts

The appellant was an importer of rubber goods from Korea. Upon the complaint made by certain domestic industries that the import of the rubber goods from Korea is in the nature of dumping and is therefore seriously harming them, an enquiry was conducted by the Designated Authority which then recommended the Central Government to levy anti-dumping duty on the goods in question. After the passage of five years, upon a review enquiry, the Authority found that the cessation of anti-dumping duty may lead to a recurrence of the dumping or the damage caused to the domestic industry. The Central Government, working on the recommendation of the said authority, extended the period of duty imposition for another five years. The appellants challenged the same-

Decision

The Supreme Court, upholding the decision of the Designated Authority and the Tribunal that had upheld the decision of the former, stated that the primary objective for the setting up of a review enquiry is not to ascertain whether there was a need for the extension of the duty or not, rather it is to see if the non-extension of the duty would lead to the recurrence of dumping and cause serious injury to the domestic industry with a causal link present between the two.

The Central Excise Act, 1944.

Central Excise Duty is a form of tax that is indirectly applicable to goods or products that are manufactured or produced within India. These goods are specifically created for the purpose of personal consumption. This tax is also known as Central Value Added Tax (CENVAT) and is levied on the manufacture or retail of goods or products.

Central Excise Tax in India is levied in accordance with the rules, regulations and stipulations contained within the following Acts

- The Central Excise Act 1944
- The Central Excise Act 1985

Central Excise Act, 1944:

The Central Excise Act, 1944 was created to ensure that laws concerning the Central Duties of Excise on any goods or products manufactured within the length and breadth of India, could be consolidated as well as amended by the Central Government.

Important Definitions

Adjudicating Authority: It means any authority competent to pass any order or decision under this act, but does not include the Central Board of Excise or Customs constituted under Central Boards of Revenue Act, 1963. (Sec 2(a)).

Broker or Commission agent: It means a person who in the ordinary course of business makes contracts for sale or purchase of excisable goods for others. (Sec 2(aaa))

Central Excise Officer: It means the Principal chief commissioner, Chief Commissioner, Principal commissioner, Commissioner, Joint Commissioner, Assistant Commissioner or Deputy Commissioner of Central Excise or any person (including an officer of the State Government) invested by the Central board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 with any of the powers of a Central Excise Officer under this act. (Sec 2(b)).

Curing: It includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture. (Sec 2(c)).

Excisable goods: It means goods specified in First Schedule and the Second Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. (Sec 2(d)).

Explanation to Sec 2(d): For the purpose of this clause goods includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Factory: It means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process. (Sec 2(e)).

Fund: It means the Consumer Welfare Fund established under section 12C. (Sec 2(ee))

Manufacture: It includes any process: (i) Incidental or ancillary to the completion of a manufactured product; and (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the CETA, 1985 as amounting to manufacture; or (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer. (Sec 2(f)).

Sale and Purchase: With their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration. (Sec 2(h))

Wholesale dealer: It means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale. (Sec 2(K)).

Levy of excise duty by Constitution of India: 1) Constitution of India gives authority to levy tax Article 246 of Constitution of India gives the respective authority to Union and State governments for levying tax. Seventh schedule to the Constitution of India contains three lists setting out matters under which the state and Union have the authority to make laws. **List I [Union List]** This list enumerates the matters in respect of which the parliament has an exclusive rights to make laws.

List II [State List] This list enumerates the matters in respect of which the legislature of any state has an exclusive rights to make laws.

List III [Concurrent List] This enumerates the matters in respect of which both parliament and subject to list I legislature of any state, have powers to make laws.
