







## RELEVANT AMENDMENTS & CASE LAWS FOR NOV- 2019 EXAM



[For Nov'2019 Exam, The Income tax law as amended by the Finance Act, 2018 and relevant Notification and Circulars issued till 30.4.2019 is applicable and the relevant assessment year is A.Y 2019-20. In this note's relevant notification and circulars issued from 1.11.2018 to 30.4.2019 is covered and amendment made before that has already been covered in the study material and discussed in the class]

RELEVANT CASE LAWS		
<i>[All the case laws given in our MAT especially in Vol-4 are also equally important in addition to the following case laws]</i>		
(1)	<b>Citation:</b>	<b>Classic Binding Industries (2018)(SC)-407 ITR 429</b>
	<b>Facts:</b>	The assessee was engaged in manufacture of specified article in the State of Himachal Pradesh and eligible to claim deduction @100% of profit for the first 5 years and 25% of profit for the next 5 years u/s. 80IC(3). The assessee claimed 100% deduction for the first 5 years and in the seventh year once again claimed 100% deduction on the ground that it has undertaken substantial expansion in the 6 <sup>th</sup> year.
	<b>Issue:</b>	Can substantial expansion be considered as fresh commencement of business, thereby eligible to claim 100% of profit u/s. 80-IC (3) once again even after completion of first 5 years?
	<b>Decision:</b>	The Apex Court held that, once the assessee claimed 100% of profit for the first five year within the period of 10 years, there cannot be another "initial assessment year" on the basis of substantial expansion. The terms of provision of section 80-IC(3) is very certain and provides for deduction only @ 25% of profit for the next 5 years.
		
(2)	<b>Citation:</b>	<b>Ranjit Projects Private Ltd. (2018)(Gujarat HC) – 408 ITR 274</b>
	<b>Facts:</b>	<p>The assessee being a private limited company had undertaken road development project, after entering an agreement with the Gujarat State Road Development Corporation (GSRDC), set up by the State Govt. for the special purpose. Assessee claimed deduction u/s. 80IA(4) of ₹4.97 crores being profit from infrastructure development programme.</p> <p>The AO disallowed the same, on the ground that the agreement is neither entered with the Central Govt. nor with the State Govt. nor with the local authority, as one of the condition u/s. 80IA(4).</p>
	<b>Issue:</b>	Whether deduction u/s. 80-IA(4) allowed where agreement is not entered with Central Govt/State Govt/Local authority but with a Government Agency constituted by the State Govt. for the purpose of infrastructure development?
	<b>Decision:</b>	<p>The Honourable High Court, observed that GSRDC is a wholly owned Govt. Company. It is incorporated by virtue of the State Government's resolution as a nodal agency for the purpose of executing road development projects through private participation. Therefore, GSRDC, is a Govt. agency and agreement entered with it will satisfy the requirement of section 80-IA(4) on the category of any other statutory body for developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility.</p> <p>Hence, the assessee is entitled to claim deduction u/s. 80-IA.</p>
		
(3)	<b>Citation:</b>	<b>Sun Outsourcing Solutions Pvt. Ltd. (2018)(Telangana &amp; AP-HC) 407 ITR 480</b>
	<b>Facts:</b>	<p>The assessee a software development company operated through its H.O in Hyderabad and B.O in London. During the course of business, had deputed some employees of Hyderabad to complete a project in London along with local staff employed in U.K.</p> <p>The assessee had not deducted TDS on allowances paid to staff deputed and salary paid to local staff engaged in U.K.</p>

	<b>Issue:</b>	Whether interest u/s. 201(1A) is leviable even though non-deduction of tax at source is due to a <i>bona fide</i> belief that tax is not deductible, and the default is not wilful?
	<b>Decision:</b>	In the given case, the assessee was deemed to be an assessee in default, for non-deducting tax at sources on payment made to <b>Indian resident</b> deputed abroad. Therefore, interest u/s. 201(1A) is automatically attracted. Unlike section 221 where penalty is attracted, levy of interest u/s. 201(1A) does not require proof of wilful default. <i>Mens rea</i> or wilful conduct is not at all relevant for levying interest u/s. 201(1A).  Hence, the assessee shall be liable to pay interest even if he was is bona fide belief that tax is not deductible in such case.
		
<b>(4)</b>	<b>Citation:</b>	<b>Maruti Suzuki India Ltd. (2018) (Delhi-HC) 407 ITR 165</b>
	<b>Facts:</b>	The assessee make some payment to its agent working in outside India. It had non deducted tax at sources on the ground that the agent being a non-resident of India does not have any taxable income in India.  However, A.O disallowed the said expenses u/s. 40(a)(i) on the ground that the assessee has not make any application u/s. 195(2) for deduction of tax at nil rate or lower rate.
	<b>Issue:</b>	Whether the action of the A.O is correct on the ground that the assessee has failed to make any application to the A.O u/s. 195(2)?
	<b>Decision:</b>	Payment made to non-resident agent operated outside India does not accrue in India and therefore, there was no obligation on the part of the assessee to deduct tax at source u/s. 195. Accordingly, the Honourable High Court held that, section 40(a)(i) could not be invoked to disallow such payment in computing business income of the assessee.  In the given case, the High Court relied on the Judgement of Model Exims (Allahabad-HC) and Gujarat Reclaim & Rubber Product Ltd (Bombay -HC).
		
<b>(5)</b>	<b>Citation:</b>	<b>Indian Oil Corporation (2019) (Uttarakhand-HC) 410 ITR 106</b>
	<b>Facts:</b>	The assessee is engaged in refining crude oil and selling petroleum products. It has entered in an agreement with transport companies for transportation of petroleum products in road from its storage points to customer/another storage points. The A.O argued that payment to transporter is liable for TDS u/s. 194I and not u/s. 194C.
	<b>Relevant provisions:</b>	(1) TDS u/s.194-I applicable for payment made on account of rent. As per clause (i) of the Explanation to section 194-I, “rent” inter alia, includes payment, by whatever name called, for use of plant. (2) TDS u/s.194C applicable on payment made for works contract. As per clause (iv) of Explanation to section 194C, the term “work” includes carriage of goods or passenger by any mode of transport other than by railways.
	<b>Issue:</b>	Whether payment made to the road transport carrier liable for TDS u/s.194I or u/s. 194C?
	<b>Decision:</b>	It was observed that as per agreement the carrier was not hired full time. No payment would be made carrier other than the charges for actual transportation which is calculated on shortest route travelled by it and the contract did not require any payment of idle charges. Accordingly, it was held that the nature of payment in the given case is a contract of within the meaning of section 194C, even after amendment to the explanation u/s. 194-I to include within its ambit payment for use of plant.
		

<b>(6)</b>	<b>Citation:</b>	<b>C Aryama Sundaram (2018) 407 ITR 1 (Madras HC)</b>
	<b>Facts:</b>	<p>On 15.01.2010, assessee sold a residential house property for ₹12.5 crores. The gross LTCG arising on it was ₹ 10.48 crores. The assessee claimed exemption of entire LTCG in A.Y 2010-11 u/s. 54 on the basis of cost of land acquired in May, 2017 and construction of a residential house thereon, which was amounted to ₹34.70 crores.</p> <p>The A.O only allow cost of construction of house incurred after sale of original house property which was amounted to ₹1.15 crores.</p>
	<b>Relevant provisions:</b>	Section 54(1) provides exemption on LTCG arising on transfer of residential house property if the individual/HUF purchase 1 residential house in India either 1 year before or 2 years after the date of transfer of original assets or construct 1 residential house in India within a period of 3 years from the date of transfer of original assets. The cost of new house is allowed as exemption subject to maximum amount of LTCG.
	<b>Issue:</b>	Whether amount incurred for construction of residential house including cost of land before the sale of original asset would qualify for exemption u/s. 54?
	<b>Decision:</b>	<p>The Court opined that –</p> <p>(i) Section 54 being a beneficial provision has to be construed liberally on compliance with the stipulated condition. Further, statutory provisions to the extent feasible, be construed in accordance with the plain meaning of the language used in the provisions.</p> <p>(ii) Since section 54(1) does not specify that cost of construction of new residential house, it merely mentions that cost of new residential house, therefore, cost of new house would necessarily include cost of land, material used in the construction, labour and any other cost related to acquisition or construction of residential house.</p> <p>(iii) Neither section 54 lay down that construction could not be commenced prior to the date of transfer of original assets, nor it restrict that same money received from sale of original asset can only be used in the acquisition or construction of new residential house.</p> <p>(iv) The assessee had constructed the property within 3 years from the date of transfer of original assets, even though acquisition of land, demolition of existing superstructure, and new construction thereof has been started prior to sale of original assets.</p> <p>(v) The Court held that, the assessee shall <b>also be</b> eligible to get exemption in relation to the cost of land and cost of construction incurred thereon prior to sale of original assets. Since, the LTCG is lower than the cost of new residential house, therefore the entire LTCG shall be exempted u/s. 54.</p>
		
<b>(7)</b>	<b>Citation:</b>	<b>Aditya Kumar Jajodia (2018)(Calcutta HC) 407 ITR 107</b>
	<b>Facts:</b>	The assessee acquired a perpetual leasehold property which is subjected to rights of a trust under a will. The testator (person who made the will) of the trust also entered into an agreement to sell its right to third party. Assessee in order to perfect the ownership of title made payment to the trust, to the third party to give up their right, and also to Delhi Development Authority (DDA) for conversion of leasehold rights to freehold rights, before he transferred the property.
	<b>Issue:</b>	Whether payment made to get freehold right (perfect title) in a leasehold property is included in the cost of acquisition in computing capital gains?
	<b>Decision:</b>	The Court observe that, the assessee was transferring the complete ownership rights to the transferee, and not the leasehold rights and payment made by the assessee was to get rid of encumbrances for better title of the property. Therefore, the cost of getting rid of such encumbrances in any immovable property had to be accepted as a part of the cost of

		<p>acquisition of the property within the meaning of section 48 and 55, subject to the assessment of genuineness and validity of such encumbrances.</p> <p>Hence, in the given case, the court held that the assessee is eligible to get deduction for payment made by him to perfect the title of the property acquired under will, as cost of acquisition u/s. 55.</p>
<b>(8)</b>	<b>Citation:</b>	<b>Gujarat State Fertilizers and Chemicals Limited (2018)(Gujarat HC) 409 ITR 378</b>
	<b>Facts:</b>	The assessee incurred loss due to the fact that the sale price of fertiliser is fixed by the Government of India which in many times is below the cost of production. Accordingly, a fertiliser subsidy is given by the Govt. which is the difference between the retention price of individual unit and sale price. Sometimes, subsidies are discharged by issue of fertiliser bonds, which is tradable in the market.
	<b>Issue:</b>	Whether loss incurred by the assessee on sale of fertiliser bonds amounted to business loss or a loss under the head capital gains?
	<b>Decision:</b>	<p>Observed that, if the assessee received direct subsidy from the Govt. to compensate the loss on sale of fertilizer, then there is no dispute that such subsidy is treated as business income. However, in the given case the assessee got fertilizer bond, the prices of which are varying and it has incurred losses.</p> <p>It was held that, since fertilizer subsidy is treated as business income, loss on sale of fertilizer bonds shall be treated as business loss.</p>
<b>(9)</b>	<b>Citation:</b>	<b>Ceebros Hotels Private Ltd. (2018)(Madras HC) 409 ITR 423</b>
	<b>Facts</b>	The assessee started operations of hotel business and filed application for classification of hotel as Three- star category in the 1 <sup>st</sup> April of the same previous year, but 3-star category classification granted to it in the next previous year, due to requirement of completion of inspection.
	<b>Issue</b>	<b>Can the assessee eligible to claim deduction u/s. 35AD in the previous year in which business is operated, even though 3-star classification is obtained in the next year?</b>
	<b>Decision</b>	<p>The assessee could not be penalised due to delay on the part of the Hotel and Restaurant Approval and classification committee. The assessee had started operation of new hotel business in the relevant previous year, filed application in the beginning of the said year which cannot be disputed and delay on the part of the concerned authority was beyond the control of the assessee. Further, section 35AD provides that business must be operated during the previous year and it does not mandate certificate must be dated with effect from a particular date.</p> <p>The honourable court allowed the claim of the assessee on the ground that section 35AD being beneficial provisions should be read and interpreted liberally.</p>
<b>(10)</b>	<b>Citation</b>	<b>Regen Powertech Pvt. Ltd (2019) (Madras HC) 410 ITR 483</b>
	<b>Facts</b>	Assessee filed return with a delay of 37 days. The delay was on account of obtaining the audit report u/s. 44AB. As the original audit firm had some reservation regarding some business transaction which was informed to the assessee only on the last day of filing the audit report. Thereafter, the assessee looked for an alternative auditor, the appointment of which was subjected to NOC from erstwhile auditor, which was received on 15.12.2014 and the assessee filed its return along with audit report on 7.1.2015

		The application before CBDT u/s. 119(2)(b) was pending long time. The assessee filed a writ petition before the High Court.
	<b>Issue</b>	Can the CBDT refuse to condone the delay in filing return by the assessee where such delay was due to circumstances beyond the control of the assessee?
	<b>Decisions</b>	Application for condonation of delay cannot be rejected by the CBDT, as in the given case, the circumstances causing delay is beyond the control of the assessee and assessee cannot be blamed for delay in getting NOC and carrying out its audit, due to misunderstanding with the erstwhile auditor. Held that, CBDT must exercised its discretion in a proper manner and condone the delay. Also, advice the CBDT that in condonation matter, a highly pedantic approach should be eschewed and a justice-oriented approach should be adopted.
		
<b>(11)</b>	<b>Citation</b>	<b>Reebok India Company (2018) (Delhi HC) 409 ITR 587</b>
	<b>Facts:</b>	The assessee had taken unsecured loan of ₹502.69 crores and had given ₹ 172.59 crores as interest free advance to a third party out of the amount borrowed. The AO disallowed the part of the interest paid on loan to the extent advance given to third party i.e interest related to ₹ 172.59 crores.
	<b>Issue:</b>	<b>Whether interest paid by the assessee on part of a loan which is given as interest free advance to third party should be disallowed u/s. 36(1)(iii)</b>
	<b>Decision</b>	The Court opined that just because interest free advance was given to third party out of the borrowed money it cannot be said that the test of “commercial expediency” was not satisfied. In the given case, the parties to whom interest free advance given were connected to the business of the assessee and money taken for business were not diverted to non-business purpose. Commercial expediency is wider than mere expression” for purpose of earning income, profits or gains” and is satisfied, once it is established that there is a nexus between the interest paid with the assessee’s business.  Further, the department cannot assume the role and occupy the armchair of a businessman to decide “business expediency” matter. The Court relied on the Apex Court ruling in the case of S.A Builders Ltd. (2007).
		

## NOTIFICATIONS/CIRCULARS

<b>1. Notification 16/2019, dated 2019</b>	<b>No. 8.3.</b>	<b>Maximum exemption limit of Gratuity u/s. 10(10)(iii) for employee not covered under Gratuity Act raised to ₹ 20 lakhs</b> in relation to employees who retire, or become incapacitated before retirement, or expire on or after 29.03.2018, or whose employment is terminated on or after 29.03.2018.
<b>2. Notification 26/2019, 20.3.2019</b>	<b>No. dated</b>	No TDS u/s. 194A where income credited or paid to Housing and Urban Development Corporation Ltd. (HUDCO), New Delhi.
<b>3. Notification 31/2019, 31.3.2019</b>	<b>No. dated</b>	Every person who has been allotted PAN as on 1.7.2017, and who is eligible to obtain Aadhar No. shall intimate his Aadhar no. to the principal DGIT (Systems) or Principal Directors of Income tax (Systems) by 30.9.2019.
<b>4. Notification 4/2019, 30.1.2019</b>	<b>No. dated</b>	an income-tax authority not below the rank of Assistant Commissioner of Income-tax who has been authorised by the Central Board of Direct Taxes to act as income tax authority u/s. 133C to call for information.
<b>5. Rule 114(4) amended</b>	<b>Following person must apply for PAN-</b>	<b>Time limit</b>

to insert clause (iv) and (v)-	(i) if the total income exceeds maximum exemption limit.	On or before 31 <sup>st</sup> May of the relevant assessment year.
	(ii) carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹5,00,000 in any previous year	Before the end of that previous year/F. Y
	(iii) who is required to furnish a return of charitable trust u/s. 139(4A)	Before the end of that previous year/F. Y
	(iv) Resident, other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year	on or before the 31st day of May immediately following such financial year
	(v) person, who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (iv) or any person competent to act on behalf of the person referred to in clause (iv) above	on or before the 31st day of May immediately following the financial year in which the person referred to in clause (iv) enters into financial transaction specified therein
<b>6. Notification 13/2019 [Angel Taxation]</b>	<b>No.</b>	Section 56(2)(viib) shall not be applicable for share issued at premium by an eligible start-up company, which fulfils the conditions specified in Para 4 of the Notification No. G.S.R. 127(E), dated the 19th February, 2019 issued by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade (DPIIT).
➤ <b>Meaning of Start-up</b>	<ul style="list-style-type: none"> <li>☞ Entities which are working towards innovation, development or improvement of products or processes or services, or</li> <li>☞ Entities having a scalable business model with a high potential of employment generation or wealth creation.</li> <li>☞ Entity means a private limited company/ partnership firm/LLP registered in India and shall not be formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.</li> <li>☞ An entity shall cease to be a Startup on completion of 10 years from the date of its incorporation/ registration or if its turnover for any previous year exceeds ₹100 crores.</li> </ul>	
➤ <b>Conditions required to be satisfied for exemption u/s. 56(2)(viib)</b>	<p><b>Para 4 of notification No. G.S.R. 127(e), dated 19.2.2019, DPIIT:</b></p> <p>(i) it has been recognised by DPIIT as start up  (ii) aggregate amount of paid up share capital and share premium (issued/proposed) does not exceed ₹ 25 crore.  In calculation of ₹ 25 crores share issued to (a) a non-resident; or (b) a venture capital company or a venture capital fund; (c) specified company shall not be considered.</p> <p>Specified company means a company whose shares are frequently traded within the meaning of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and whose net worth on the last date of financial year preceding the year in which shares are issued exceeds ₹ 100 crores or turnover for the F.Y preceding the year in which shares are issued exceeds ₹ 250 crores.</p> <p>(iii) has not invested in any of the following asset,  (a) building or land appurtenant thereto, being a residential house, (except if used for renting or held as stock in trade, in the ordinary course of business).  (b) land or building, or both, not being a residential house, (except if used for renting or held as stock in trade, in the ordinary course of business).  (c) loans and advances, (except if in money lending business)  (d) capital contribution made to any other entity;</p>	

		<p>(e) shares and securities;</p> <p>(f) a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ₹ 10 lakhs (except if held for plying, hiring, leasing or as stock in trade, in the ordinary course of business)</p> <p>(g) jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, bullion.</p> <p>However, the Startup should not invest in any of the assets mentioned above for the period of 7 years from the end of the latest financial year in which shares are issued at premium</p>
7. Circular No. 04/2019, dated 28.1.2019		<p>Where an order of Insolvency is passed against a debtor by the concerned Court, property of the debtor gets vested with the Court appointed Official Assignee. The Official Assignee then realizes property of the insolvent and allocates it amongst the creditors of the insolvent. Consequentially, Official Assignee has the responsibility to handle income-tax matters of the estate assigned to him.</p> <p>(i) For the purpose of discharge of tax-liability under the Act, the status of Official Assignees is that of an 'artificial juridical person' and not that of a 'Representative Assessee' u/s. 160(1)(iii).</p> <p>(ii) Therefore, Official Assignee is required to file income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.</p> <p>(iii) In view of the above position, Official Assignees would have to obtain a separate PAN for each of the estate of the insolvent</p>
8. Notification No. 32/2019, dated 1.4.2019	No. dated	<p><b>Prescribed Income Tax Return Forms (ITR) for A.Y 2019-20 [Ref. Note 1]</b></p> <p><b>All ITR Forms are to be filed electronically.</b> However, an Individual aged 80 years or more at any time during the previous year can file return in Form ITR 1 (SAHAJ) and ITR 4 (SUGAM) in <b>Paper Form</b>.</p> <p><b>Note- Quoting of Aadhar No. is mandatory in returns filled whether electronically or manually on or after 1.4.2019 except specifically exempt cases u/s. 139AA (3). [Circular No. 6/2019, dated 31.3.2019]</b></p>
9. Notification No. 88/2018, dated 18.12.2018	No. dated	<p><b>Section 286(4):</b> The constituent entity of an international group, resident in India, other than the parent company or the alternative reporting entity, is required to furnish a report in respect of international group for a reporting accounting year within <b>the prescribed period</b>, if the parent entity is resident of a country or territory,</p> <p>(a) where the parent entity is not obligated to file the report of the nature referred to in section 286(2)</p> <p>(b) with which India does not have an agreement providing for exchange of the CbC report; or</p> <p>(c) there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity: (i.e, not exchanging information by a country with which India has an agreement)</p> <p><b>Rule 10DB(4):</b> The prescribed time period is within 12 months from the end of the reporting accounting year. However, in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report shall be <b>6 months from the end of the month in which said systemic failure has been intimated.</b></p>

	<p>Note- For accounting year ending upto 28<sup>th</sup> February 2018, the time limit to furnish the CbC report is extended to 31.3.2019 as one-time measure. [Circular No. 9/2018, dated 26.12.2018]</p> <p>Further, in respect of Constituent entities whose parent entities are resident in USA, the furnishing of report in respect of reporting accounting years ending upto 29<sup>th</sup> April 2018 to 30<sup>th</sup> April 2019 [Circular No. 7/2019, dated 8.4.2019]</p>
<b>10. Conversion of an Indian branch of Foreign Company into subsidiary Indian Company</b>	<b>Notification No. 85 &amp; 86/2018, dated 6.12.2018: Refer Note 2</b>

### **Note 1: Income Tax Return Forms (ITR) for A.Y 2019-20**

Forms	Person Eligible to file
ITR-1 (SAHAJ)	<p>an individual who is a resident other than not ordinarily resident and having total income <b>upto ₹50 lakh</b> and receiving income under the head–</p> <p>(i) Salaries</p> <p>(ii) "Income from house property", where assessee does not own more than one house property and does not have any brought forward loss or loss to be carried forward under the head</p> <p>(iii) "Income from other sources", except winnings from lottery or income from race horses and does not have any loss under the head.</p> <p><b><u>ITR 1 shall not apply to a person who</u></b></p> <p>(i) has assets (including financial interest in any entity) located outside India, (ii) has signing authority in any account located outside India, (iii) has income from any source outside India, (iv) has income to be apportioned in accordance with provisions of section 5A, <b>(v) has claimed deduction under section 57, other than deduction for family pension, (vi) is a director in any company, (vii) has held any unlisted equity share at any time during the previous year, (viii) is assessable for the whole or any part of the income on which tax has been deducted at source in the hands of a person other than the assessee,</b> (ix) has claimed any relief of tax under section 90 or 90A or deduction of tax under section 91, (x) has agricultural income, exceeding ₹5,000, (xi) has income taxable under section 115BBDA/115BBE.</p>
ITR-2	Individuals and HUFs having income under any head other than business or profession
ITR-3	Individuals and HUFs having income under the head business or profession
ITR-4(Sugam)	<p>Individuals/ HUF (ordinarily resident), resident firm (other than LLP) opting Presumptive Taxation Scheme u/s. 44AD, 44ADA, 44AE and <b>total income does not exceed ₹ 50 lakhs</b></p> <p><b><u>ITR 4 shall not apply to a person who</u></b></p> <p>(i) has income includes winnings from lottery and income from race horses, income taxable under section 115BBDA and income of the nature referred to in section 115BBE.</p> <p>(ii) has agricultural income in exceeding ₹ 5,000</p> <p>(iii) has claimed relief of foreign tax paid under section 90, 90A or 91.</p> <p>(iv) has asset (including financial interest in any entity) located outside India or signing authority in any account located outside India or income from any source outside India</p> <p>(v) has income to be apportioned in accordance with provisions of section 5A,</p> <p><b>(vi) is a director in any company,</b></p> <p><b>(vii) has held any unlisted equity share at any time during the previous year,</b></p> <p><b>(viii) is assessable for the whole or any part of the income on which tax has been deducted at source in the hands of a person other than the assessee,</b></p> <p><b>(ix) owns more than one house property, the income of which is chargeable under the head "Income from house property</b></p> <p><b>(x) has any brought forward loss or loss to be carried forward under any head of income</b></p>
ITR 5	For persons other than, - (i) individual, (ii) HUF, (iii) company and (iv) person filing Form ITR-7



ITR 6	For Companies other than companies claiming exemption under section 11
ITR 7	For persons including companies required to furnish return under sections 139(4A) or 139(4B) or 139(4C) or 139(4D)

**Note 2: Conversion of an Indian branch of Foreign Company into subsidiary Indian Company**

**[Section 115JG read with Notification No. 85 & 86/2018, dated 6.12.2018]**

(1) Where a foreign company is engaged in the business of banking in India through its branch situated in India and such Indian branch is converted into a subsidiary of such foreign company in accordance with the scheme framed by the RBI, then following benefits shall be allowed –

Benefits	Conditions/Modifications/exception/adaption
<b>(i) the capital gains arising from such conversion shall be exempted;</b>	<p><b><i>Following conditions must be satisfied:</i></b></p> <p>(a) the Indian branch amalgamates with the Indian subsidiary company in accordance with the scheme of amalgamation approved by the shareholders of the foreign company and the Indian subsidiary company and sanctioned by the RBI under paragraph 20(h) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India.</p> <p>(b) all the assets and liabilities of the Indian branch immediately before conversion shall become the assets and liabilities of the Indian subsidiary company;</p> <p>(c) the asset and liabilities of the Indian branch are transferred to the Indian subsidiary company at values appearing in the books of account of the Indian branch immediately before its conversion.</p> <p>Note- The value of the assets for the purposes of this clause, any change in the value of assets consequent to their revaluation shall be ignored;</p> <p>(d) the foreign bank or its nominee shall hold the whole of the share capital of the Indian subsidiary company during the period beginning from the date of conversion and ending on the last day of the previous year in which the conversion took place and continue to hold the share of Indian subsidiary company carrying not less than 51% of the voting power for a period of 5 years immediately succeeding the said previous year;</p> <p>(e) the foreign company 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 Indian subsidiary company;</p>
<b>(ii) Allowability of depreciation u/s. 32</b>	<p>1. First, Compute depreciation u/s. 32, as if the conversion had not taken place,</p> <p>2. thereafter, depreciation shall be apportioned between the Indian branch and the Indian subsidiary company in the ratio of the number of days for which the assets were used by them.</p>
<b>(iii) the accumulated non-speculative business loss and the unabsorbed depreciation of the Indian branch</b>	<p>1. shall be deemed to be the loss or unabsorbed depreciation of the Indian subsidiary company for the previous year in which conversion was effected and provisions of the Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.</p>
<b>(iv) actual cost of block of assets u/s. 43(1) for Indian Subsidiary company</b>	<p>1. shall be the written down value of the block of assets as in the case of the Indian branch on the date of its conversion. [Nil, for assets on which deduction u/s. 35AD allowed]</p>
<b>(v) actual cost in case of non-depreciable capital assets for computation of capital gains</b>	<p>(i) the cost for which the Indian branch acquired it or, the cost for which previous owner has acquired it. [previous owner means the person who actually acquired the assets other than by way of exempted transfer referred u/s. 49(1)(i)/(ii)/(iv) or u/s. 115JG (1).</p>

	The period of holding for which the Indian branch held the asset/the previous owner who acquired the assets shall be included in determination of period of holding of capital assets. [Notification 86/2018]
<b>(vi) MAT Credit</b>	<b>The remaining MAT Credit of the Indian branch</b> shall be deemed to be the tax credit of the Indian subsidiary company in the previous year in which conversion was effected and the provisions of section 115JAA of the Act shall apply accordingly.
<b>(vii) amortisation of VRS Exp. u/s. 35DDA</b>	The provisions of section 35DDA <b>shall be</b> , as far as may be, apply to the Indian subsidiary company, as they would have applied to the Indian branch, if the conversion had not taken place;
<b>(viii) the credit balance in the provision for bad and doubtful debts account made u/s. 36(1)(viia) of the Indian Branch on the date of conversion</b>	shall be deemed to be the credit balance of the Indian subsidiary company and the provisions of section 36 of the Act shall apply accordingly;
<b>(ix) non-applicability of section 56(x)</b>	<b>the provisions of section 56(2)(x)</b> of the Act shall not apply to the transaction of receipt of shares in the Indian subsidiary company by the foreign company or its nominee in consequence of the conversion of the Indian branch into the Indian subsidiary company.

(2) In case of failure to comply with any of the conditions specified in the scheme or in the notification issued all the provisions of this Act shall apply to the foreign company and the said Indian subsidiary company without any benefit, exemption or relief. [Section 115JG (2)]

## QUESTION FOR PRACTICE

**Question 1:** The income tax department found Jewellery valued ₹ 5 lakhs kept by Mr. Shyam which was not recorded in the books and Mr. Shyam fails to offer any explanation about the nature and source of thereof. Discuss the taxability u/s. 115BBE and penalty payable u/s. 271AAC.

**Answer- Section 69B of the Income Tax Act, 1961 provides that** where in the financial year the assessee has made investments or found to be the owner of any money, bullion, jewellery or valuable article not recorded in the books of account wholly or partly, and the assessee offers no explanation about the nature and source thereof the value of the investments etc. may be deemed to be the income of the Assessee for such financial year.

Further, as per section 115BBE such undisclosed incomes are taxable under the head other sources @ 60% tax rate PLUS Surcharge @25% of tax and 4% HEC without basic exemption limit. Further, no adjustment shall be allowed w.r.t any expenses, allowances or set of losses.

Accordingly, in the given case,

(i) The tax liability u/s. 115BBE shall be as under –

Tax @ 60% of ₹ 5,00,000	= 3,00,000
Add: Surcharge @ 25%	= <u>75,000</u>
	3,75,000
Add: HEC @ 4%	= <u>15,000</u>
	3,90,000

(ii) Penalty payable u/s. 271AAC @ 10% on income tax i.e 10% of 3,00,000 = ₹ 30,000. However, no penalty shall be levied to the extent such income has been included in the return and the tax has been paid on or before the end of relevant previous year.

**Note:**

- ☞ **No basic exemption limit is allowed.** No deduction/adjustment shall be allowed w.r.t any expenses, allowances or set of losses in computing the income referred to in sec. 68,69 etc.
- ☞ Provisions of penalty u/s. 270A (under-reporting) shall not be applicable.
- ☞ Provisions of section 274 and 275 shall be applicable in relation penalty levied.
- ☞ Penalty provisions u/s. 271AAC shall not apply where penalty is leviable u/s. 271AAB (search cases).

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**Question 2:** Compute the tax liability of Mr. X, a resident of India, from the following information –

(i) Income from Business	₹ 50 lakhs
(ii) Dividend received from Indian Company	₹ 11 lakhs
(iii) Dividend received from notified mutual fund	₹ 15 lakhs
(iv) Share of profit from a partnership firm	₹ 5 lakhs
(v) Sale of listed equity shares:	
Selling price	₹ 10 lakhs
Cost	₹ 5 lakhs
Indexed cost	₹ 8 lakhs
STT levied on acquisition and on sale	

**Solution:** Computation of Total Income and tax liability

	₹	₹ in lakhs
<b>1. Profit and Gains from business or professions</b>		30
Share of profit from partnership firm- fully exempted u/s. 10(2A)		-
<b>2. Capital Gains:</b>		
Long term capital gains on sale of shares		5
<b>3. Income from other sources:</b>		
Dividend from Indian company	11	
Less: Exempted u/s. 10(34)	<u>10</u>	1
Dividend from mutual fund company - Fully exempted u/s.10(35)		<u>-</u>
Total		36 lakhs

Tax on normal income of ₹ 30 lakhs

Upto 2,50,000	Nil	
Next 2,50,000@5%	12,500	
Next 5,00,000@20%	1,00,000	
On bal. @ 30%	<u>6,00,000</u>	₹ 7,12,500
<u>Tax on LTCG u/s. 112A @10% in excess ₹ 1,00,000</u>		
(without indexation) i.e 10% of 4 lakh	₹ 40,000	
Tax payable u/s. 115BBDA @ 10% of 1 lakhs	<u>₹ 10,000</u>	
Tax Payable	₹ 7,62,500	
Add: Health & Education Cess @ 4%	<u>₹ 30,500</u>	
Total liability		₹ 7,93,000

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*For better performance in exam students are advised to refer ICAI RTP relevant for Nov,2019 Exam.*