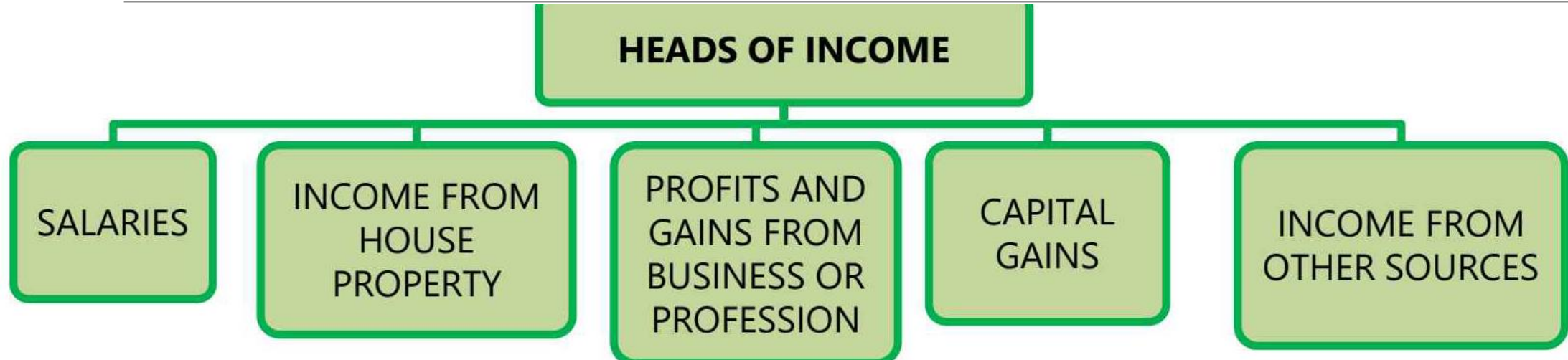

Heads of Income and Computation

June 15, 2021

CA NIMESH JAIN

Classification



Relevant Sections

HEADS OF INCOME					
	Salaries	Income from house property	Profits and gains from business or profession	Capital Gains	Income from Other sources
Charging Section	15	22	28	45	56
Deeming provisions	-	25A & 27	41	46, 46A, 50B, 50C, 50CA, 50D	59
Deductions allowable	16	24	30 to 37	48(i), (ii) & 54	57
Deductions not allowable	-	25	40 & 40A	Last proviso to section 48	58
Other provisions	17	23 & 26	29, 38, 43, 43A, 43B, 43CA, 44AA, 44AB, 44AD, 44ADA & 44AE	47, 47A, 49, 51, 55 & 55A	-

Heads of Income

➤ **Relevance of Heads of Income:**

- The entire scheme of the Act relating to determination of income proceeds as under:
 - ✓ Section 2(24) defines income
 - ✓ Section 4 creates a charge on income
 - ✓ Section 5 determines a range of income based on residential status of a person.
 - ✓ Section 14 classifies income under various heads
 - ✓ Section 15 to 59 quantify income along with certain charging sections enumerating conditions to be fulfilled to fall under each head of income.
- Section 14 assumes utmost relevance since it provides for each head appropriate rules for computation of income which are unique by themselves and defer from one head to another head.
 - ✓ **(Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CIT- [1997] (227 ITR 172)(SC)**

Heads of Income

- **Supreme Court in the case of United Commercial Bank Ltd. v. CIT (32 ITR 688) (1957) has held that:**
 - **All the heads of income are mutually exclusive**
 - ✓ It means that each head is separate, exclusive and specific
 - ✓ Every item of income, whatever its source, would fall under one particular head and for the purpose of computing the income for charging of income-tax the particular section dealing with that head will have to be looked at

Salaries

➤ Charging Section 15:

- Salary is chargeable to tax either on 'due' basis or 'receipt' basis whichever is earlier;
- Where advance salary is offered to tax in the year of receipt, then it cannot be subsequently brought to tax in the year in which it becomes due;
- Similarly if tax is paid on salary on due basis in year 1, the same cannot be taxed in year 2 when the same is actually received.
- Can be brought to tax only if there exist employer-employee relationship

Salaries

➤ Charging Section 15:

- **Example:** If Mr. A draws his salary in advance for the month of April 2021 in the month of March 2021 itself, the same is chargeable to tax on **receipt basis** in the F.Y. 2020-21 i.e. A.Y. 2021-22. However, in the A.Y. 2022-23 , the salary of April 2021 will not be taxed again.
- **Example:** If the salary for the March 2021 is received by Mr. A in April 2021, then the same will be chargeable in the F.Y. 2020-21 i.e. A.Y. 2021-22 on **due basis**.
- Advance against salary is different from advance salary. In that case, advance is generally adjusted against future salary payments over a specified period of time and thus not chargeable to tax under the head 'Salaries'

Salaries

➤ **Employer-Employee Relationship:**

- **Example:** Commission received by a Director from a company is salary if the Director is an employee of the Company (for eg. MD/WTD). However, if the Director is not an employee of the Company, then the same may be taxed under the head business or income from other source as the case may be.
- **Example:** Salary/bonus/commission/remuneration by whatever name called received by partner of a firm is appropriation of profits and hence cannot be taxed under the head salaries. The same has to be charged to tax under the head “ Business Income”

Salaries

Brief Checklist while computing income from salaries:

- Form 16/ Form12BA or Salary certificate received from the employer providing breakup of Basic Salary/Bonus, Allowances, Perquisites, etc
- Details of salary arrears (if applicable)
- If working with more than one employer, salaries received from all employers has to be taken into consideration
- Full and Final settlement statement (in case of a job change)
- Foreign Salary Slips
- Foreign tax returns filed
- HRA Calculation if proof of rent not given to the employer
- Details of Provident fund – Employer’s contribution/employees contribution
- Details of Gratuity or Leave encashment received or receivable
- Pension certificate – whether commuted/uncommuted
- Travel Documents

Salaries

Proforma for Computation of Income under the head salaries:

Sr. No.	Particulars	Amount (in Rs.)
i.	Basic Salary	xxx
ii.	Fees/Commission/Bonus	xxx
iii.	Allowances after claiming exemption	xxx
iv.	Taxable Perquisites	xxx
v.	Leave Travel Concession/Gratuity/Pension/Compensation/Leave Encashment after claiming exemption	xxx
	Gross Salary	xxx
Less:	Standard Deduction: (Rs. 50000+Entertainment allowance+ Profession Tax)	(xxx)
	Income under the Head Salary	xxx

House Property Income

➤ Charging Section 22:

- The **Annual Value of property (ALV)** comprising of **buildings or lands** appurtenant thereto of which the **assessee is a owner** is chargeable to tax under the head ‘Income from House Property’.

➤ **Exception to the above:**

ALV of an assessee engaged in the business of letting out of properties is to be taxed under the head Business Income.

House Property Income

➤ Conditions of Chargeability:

- **Property should consist of any building or land appurtenant thereto:**
 - ✓ Building includes not only residential buildings, but also factory building, shops, offices, godowns and other commercial premises
 - ✓ Land appurtenant thereto means land connected with the building like garden, garage, etc.
- **Assessee must be the owner of the property**
 - ✓ The requirement of registration of sale deed is not warranted;
 - ✓ Ownership includes deemed owner (section 27)
 - ✓ Income from Properties held outside India is also taxable provided they meet the other conditions of Income-tax Act

House Property Income

➤ **Deemed Owner (Section 27):**

Examples

- Transfer to spouse; (exception agreement to live apart)
- Transfer to minor child; (exception minor married daughter)
- Person allowed to take possession of property in part performance of contract;
- Rights in properties more than 12 years (exception month on month lease not exceeding one year);

Deemed Let out (Section 23(4)):

Where the assessee owns more than 2 self occupied properties, then the income of any 2 properties, at the option of the assessee shall be considered as nil and other self-occupied properties shall be treated as deemed let out.

House Property Income

➤ **Supreme Court in the case of Chennai Properties & Investments Limited v. CIT (373 ITR 673)(2015) has held that:**

- Deciding factor is not ownership of land or building but the nature of activity of the assessee (i.e. whether systematic/organized) and the nature of operations in relation to them;

➤ **PCIT v. Krome Planet Interiors (P.) Ltd. (2019) 265 Taxman 308 (Bom.)(HC)**

- Leasing of shops in a mall along with various other facilities is held as business income.

➤ **CBDT Circular No. 16/2017 dated 25.04.2017:**

- Lease rent from letting out buildings/developed space/maintaining an industrial park and providing infrastructure facilities along with other amenities in an Industrial Park/SEZ– is to be treated as business income

House Property Income

➤ Property taxes:

- Deduct Property/Municipal Tax only if **actually paid** during the previous year irrespective of method of accounting;
- Deduction of Property tax paid for property situated abroad is allowed (**CIT v. R. Venugopala Reddiar [58 ITR 439](1965)(Mad HC)**)
- Not allowed in the case of self-occupied properties where annual value is Nil.

• Deductions u/s. 24:

- ✓ 30% of the Net Annual Value (not allowed where annual value is itself nil as in the case of self occupied properties) is allowed as deduction. This 30% deduction is allowed even when your actual expenditure on the property is higher or lower.
- ✓ Interest including pre-construction interest on borrowed capital subject to other conditions and limits specified;
- ✓ Even interest on home loan taken from relatives/friends or any other money lenders is allowed and not necessary that home loan should be taken from financial institutions

House Property Income

Brief Checklist while computing income from house property:

- Address of Property
- Co-owner/Joint Owner Details (if the property is co-owned)
- Rent Agreement
- Interest certificate issued by a bank for housing loan/others
- Possession Letter
- Municipal Taxes Receipt
- Form 26AS for TDS Deduction
- Details of pre-construction interest paid

House Property Income

Proforma for Computation of Income under the head House Property:

Sr. No.	Particulars	Amount (in Rs.)
i.	Gross Annual Value (depending whether property is let out/self occupied)	xxx
Less:	Municipal taxes paid during the year	(xxx)
ii.	Net Annual Value (NAV)	xxx
Less:	Deduction u/s 24	
	Deduction under section 24(a) @ 30% of NAV	(xxx)
	Deduction under section 24(b) on account of interest on borrowed capital	(xxx)
Income under the Head House Property		XXX

Income from Business & Profession

➤ Charging Section 28:

- The profits and gains of any business/profession;
- Amount received by partner of partnership firm;
- Profits of speculation business;
- Others like compensation, sum received under key man insurance policy, non-compete fees, conversion of capital asset into stock-in-trade etc;

➤ Computation provisions – section 29:

- The income referred to in section 28 has to be computed in accordance with the provisions contained in section 30 to 43D

➤ Method of Accounting (section 145):

- The income chargeable would be computed in accordance with the method of accounting, either cash or mercantile basis, regularly and consistently employed by the assessee;
- Compliance with Income Computation and Disclosure Standards (ICDS);

Income from Business & Profession

➤ **What is business:**

• **G. Venkataswami Naidu & Co. (1959) 35 ITR 594 (SC)**

“.....When section 2(4) of the 1922 Act, refers to an adventure in the nature of trade, it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. **even an isolated and single transaction can satisfy the description of an adventure in the nature of trade.**”

“In each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction.”

Thus, the decision about the character of a transaction in the context cannot be based solely on the application of any abstract rule, principle or test and must in every case depend upon all the relevant facts and circumstances.”

Income from Business & Profession

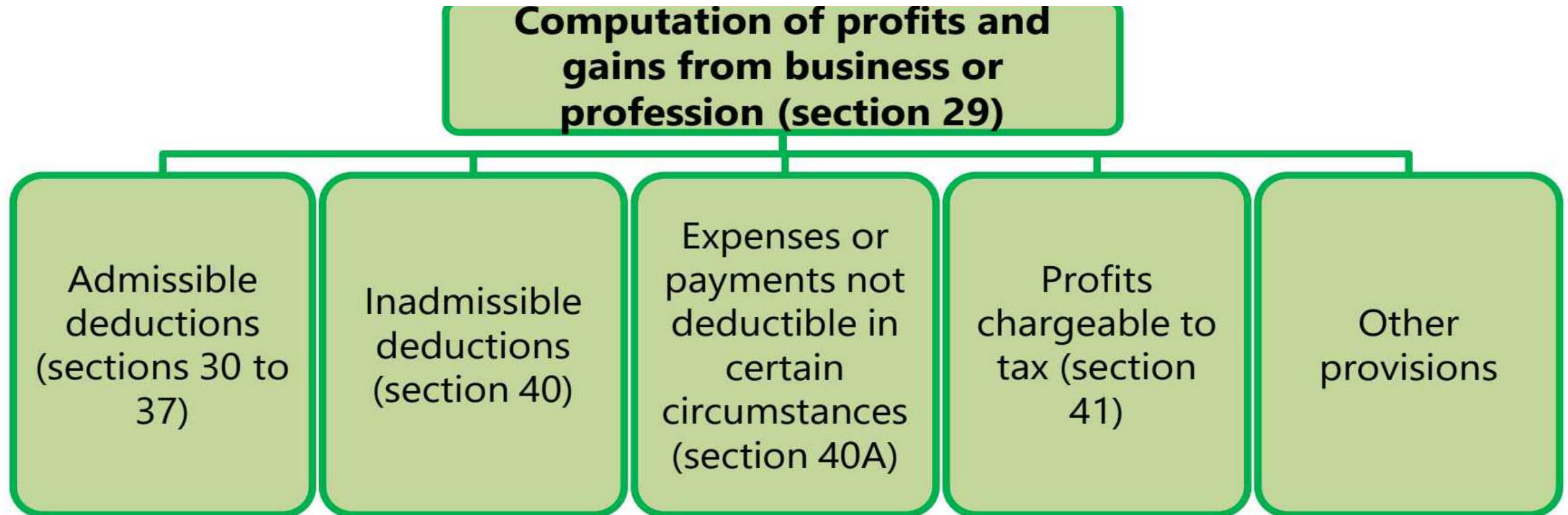
➤ **What is business:**

- **Sutlej Cotton Mills Supply Agency Ltd. (1975) 100 ITR 706 (SC)**

“It is not necessary to constitute trade that there should be a series of transactions, both of purchase and of sale. A single transaction of purchase and sale outside the assessee's line of business may constitute an adventure in the nature of trade. Neither repetition nor continuity of similar transactions is necessary to constitute a transaction an adventure in the nature of trade.”

“Where a purchase is made with the intention of resale, it depends upon the conduct of the assessee and the circumstances of the case whether the venture is on capital account or in the nature of trade. A transaction is not necessarily in the nature of trade because the purchase was made with the intention of resale.”

Income from Business & Profession



Income from Business & Profession

➤ Admissible Deductions (Relevant sections):

- **Section 30** - Rents, rates, taxes, repairs and insurance of buildings (except capital in nature);
- **Section 31** – Repairs and insurance of machinery, plant and furniture (except capital in nature);
- **Section 32 – Depreciation**
 - ✓ The asset must be used by the assessee for his business;
 - ✓ Use includes passive use (e.g. fire extinguisher)
 - ✓ Depreciation is compulsory; whether or not the assessee has claimed the deduction; (**CIT v Mahendra Mills (1999) 109 Taxman 225 (SC)**)
 - ✓ Depreciation is to be calculated as per rates given in Rule 5 of the Income-tax Rule, 1962;
 - ✓ Block of assets method (**defined in section 2(11)**) is to be followed for calculating depreciation;
 - ✓ If assets are used for a period of less than 180 days in the previous year, then only 50% depreciation is allowed;

Income from Business & Profession

➤ Amendments to provision of Goodwill by Finance Act 2021 and applicable for A.Y. 2021-22:

- **Section 32(1)(ii) and Explanation 3 to section 32** - Goodwill of a business or profession shall not be considered as an asset and shall not be eligible for depreciation;
- **S. 43(6) is amended to provide a mechanism for excluding goodwill from the block of asset:**
 - ✓ Value of goodwill to be reduced from the block of intangible asset would be calculated as if goodwill was the only asset in the block of asset and accordingly depreciation was claimed.
 - ✓ If the value so computed is more than the carrying value of the block of asset, the reduction would be restricted to the carrying value of the block of asset
 - ✓ No reduction is required from the carrying value of the block of asset if, goodwill is transferred in an earlier years

Income from Business & Profession

➤ Computation of WDV - Amendments to provision of Goodwill :

- Now the Computation of WDV of the block of intangible assets as on 31.03.2021 is as follows: -
 - ✓ Case-1 In April 2019, XYZ Ltd. sold the trademarks for Rs. 40 crores
 - ✓ Case-2 In April 2019, XYZ Ltd. sold the trademarks for Rs. 80 crores

Particulars	Case-1	Case-2
Previous Year 2018-19		
Intangible assets acquired on April 2018		
- Goodwill	100.00	100.00
- Trademarks	50.00	50.00
- Licenses & franchisees	50.00	50.00
Block of intangible assets [A]	200.00	200.00
Less: Depreciation [B = A * 25%]	(50.00)	(50.00)
WDV as on 31-03-2019 [C = A-B]	150.00	150.00

Income from Business & Profession

➤ Computation of WDV - Amendments to provision of Goodwill :

Particulars	Case-1	Case-2
Previous Year 2019-20		
Opening WDV [C]	150.00	150.00
Less: : Intangible assets sold during year [D]	(40.00)	(80.00)
Less: Depreciation [E = (C – D) * 25%]	(27.50)	(17.50)
WDV as on 31-03-2020 [F = C – D – E]	82.50	52.50

Income from Business & Profession

➤ Computation of WDV - Amendments to provision of Goodwill :

Particulars	Case-1	Case-2
Previous Year 2020-21		
Opening WDV [F]	82.50	52.50
Adjustment on account of goodwill	(56.25)	(52.50)
Less: Actual cost of goodwill included in block of assets as reduced by the previous years' depreciation [G]		
Cost of Goodwill	100.00	(Amount of reduction' on account of such goodwill shall not exceed the WDV)
Less: : Dep. allowed on goodwill:		
- Previous Year 2018-19 [100 * 25%]	(25.00)	
- Previous Year 2019-20 [(100-25) * 25%]	(18.75)	
WDV of Goodwill included in Block of Assets	56.25	
Less: Depreciation [H = (F – G) * 25%]	(6.56)	0.00
WDV of block of intangible assets as on 31-03-2021	19.69	0.00

Income from Business & Profession

➤ Admissible Deductions (Relevant sections):

• **Section 36(1)(iii) – Interest on borrowed funds**

- ✓ The funds should be utilized for the purpose of business;
- ✓ Capital may be borrowed for acquiring capital asset;
- ✓ Interest on loan taken for acquiring capital asset is allowed (*exception interest for the period beginning from the date on which such loan is taken for acquisition of the asset till the date on which such asset is first put to use shall not be allowed*)

• **Section 36(1)(vii) – Bad Debts**

- ✓ Debts should pertain to business;
- ✓ Debt should be **written off** as irrecoverable in the accounts;
- ✓ No need to prove that debt has become bad;
- ✓ Deduction allowed only if “corresponding income has been taken into account in computing income of the previous years

Income from Business & Profession

➤ Admissible Deductions (Relevant sections):

• **Section 37 – Residuary Expenses - Conditions**

- ✓ The expenditure should **not** be of the nature described in **sections 30 to 36**;
- ✓ It should be incurred for the purpose of business and should not be in the nature of **personal expenses**;
- ✓ It should **not** be in the nature of **capital expenditure**;
- ✓ It should have been laid out or expended **wholly and exclusively** for the purpose of such business;
- ✓ It should **not** have been incurred for any purpose which is an **offence or is prohibited by law**

✓ CIT v. Nainital Bank (1966)(62 ITR 638)(SC) (explaining wholly and exclusively);

Certain currency notes and a large quantity of jewellery pledged with bank by its customers were stolen by dacoits from premises of bank. The bank settled the claims of customers by paying to such customers.

Held that: Paying to the customers the price of the jewellery stolen in a robbery or a burglary was therefore expenditure for the purpose of the business. There can be no doubt that the expenditure was wholly and exclusively in the interest of the business

Income from Business & Profession

➤ **Admissible Deductions (Relevant sections):**

• **Section 37 – Prohibited by law**

✓ **CIT v. Khemchand Motilal Jain(2011)(340 ITR 99)(MP HC);**

One 'S', who was wholetime director of assessee-company, had gone on business tour where he was kidnapped for ransom by a dacoit. Police was unsuccessful to recover 'S' from clutches of dacoits and, ultimately, assessee had to pay ransom money for release of its director. Whether amount of ransom money paid by assessee could be allowed as business expenditure?

Held that: Kidnapping a person for ransom is an offence. Nowhere, it is provided that to save a life of the person if a ransom is paid, it will amount to an offence. No provision is brought to our notice that payment of ransom is prohibited by any law. In absence of it, the Explanation of sub-section (1) of section 37 will not be applicable in the present case.

Income from Business & Profession

➤ **Admissible Deductions (Relevant sections):**

• **Section 28(i) – Certain losses can be allowed as business loss on the grounds of commercial expediency**

✓ **Jackie Shroff v. ACIT (2019) 174 ITD 770 (Mum.)(Trib.)**

Actor advanced money to a production house run to produce films in which he acted as hero so as to boost his career. However films were not successful and the production house suffered loss and therefore the production house did not pay back the actor. It was held that such write off was allowed as expenditure.

✓ **DCIT v. Pioneer Investcorp Ltd. (2019) 72 ITR 376 (Mum.)(Trib.)**

When the assessee has advanced funds to its subsidiary and the subsidiary has gone into liquidation then the funds advanced to such subsidiary must be treated as a business loss if they are advanced on the grounds of commercial consideration and commercial expediency

Income from Business & Profession

➤ Inadmissible Deductions (Relevant sections):

- **Section 40(a)(i)** – TDS not deducted on certain payments made to a non-resident on which tax was liable to be deducted
- **Section 40(a)(ia)** - TDS not deducted on certain payments made to a resident on which tax was liable to be deducted. However, in the present case only **30% of such expenses** is disallowed
- **Section 40(a)(ii)** – Any sum paid on account of **any rate or tax** levied on profits on the basis of or proportion to the profits and gains of any business or profession

However, in the following decisions it has been held that Education Cess and Higher and Secondary Education Cess are allowed as deduction:

✓ **Sesa Goa Ltd. v. JCIT (423 ITR 426)(2020) (Bom HC);**

✓ **Chambal Fertilisers & Chemicals Ltd. v. JCIT (107 taxmann.com 484)(2018)(Raj HC)**

(Note: Where appeal is open, one can take additional ground, but otherwise should avoid taking this stand)

Income from Business & Profession

➤ **Inadmissible Deductions (Relevant sections):**

• **Section 40(b)**

- ✓ Remuneration to non-working partner;
- ✓ Remuneration to working partner not authorized by partnership deed
- ✓ Interest to any partner in excess of 12% p.a.
- ✓ Remuneration to working partner in excess of prescribed limits;

Book Profit	Quantum of deduction
On the first ₹ 3 lakh of book profit or in case of loss	₹ 1,50,000 or 90% of book profit, whichever is higher
on the balance of book profit	60% of book profit

Income from Business & Profession

➤ **Expenditure and payments not allowed in certain circumstances (Relevant sections):**

- **Section 40A(2):** Payment made to related parties above the fair market value;
- **Section 40A(3):** Payments made to a person in a day exceeding Rs. 10,000 in cash; subject to certain exceptions

➤ **Profits chargeable to tax (Section 41):**

- **Remission or cessation of trading liability:**
 - ✓ Trade payable no longer to be paid;
 - ✓ Bad Debts recovered subsequently;

Income from Business & Profession

➤ Certain deductions to be allowed only on actual payments-Section 43B:

- any sum payable by way of **tax, duty, cess or fee**, by whatever name called, under any law for the time being in force;
- any sum payable **as an employer** by way of **contribution to any provident fund or superannuation fund or gratuity fund or any other fund** for the welfare of employees;
- **Bonus/Commission** payable to employees;
- any sum payable as **interest on any loan or borrowing** from any **public financial institution or a State financial corporation or a State industrial investment corporation**;
- any sum payable as **interest on any loan or borrowing** from a **deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company**;
- any sum payable as **interest** on any loan or advanced taken from a **scheduled bank or a co-operative bank** other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank;
- any sum payable as an employer in lieu of any leave at the credit of his employee;
- any sum payable to the **Indian Railways for the use of railway assets** ;

For deduction to be claimed in the relevant previous year, payment has to be made on or before the due date of furnishing the return of income u/s. 139(1)

Income from Business & Profession

➤ Certain deductions to be allowed only on actual payments-Section 43B:

- Despite section 43B of the Act covers only employer's contribution and does not cover employees' contribution, many courts have applied the provision of section 43B on employees' contribution as well and allowed the deduction to employer even if the employees' contribution is deposited by the due date of filing (ITR) as mentioned under section 139(1).
- The Budget 2021 (**applicable from A.Y. 2021-2022**) has amended the provisions of section 36(1)(va) and section 43B as under:
 - (a) amend section 36(1)(va) of the Act by inserting another explanation 2 to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the due date under this clause; and
 - (b) amend section 43B of the Act by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies

Now therefore, single day delay in deposit by the employer, deduction will not be allowed

Income from Business & Profession

➤ Presumptive Taxation:

- Subject to other conditions the same has to be computed as under;

Section 44AD	Section 44ADA	Section 44AE
8% (cash receipts) and 6% (digital receipts) of total turnover/sales/gross receipts or such higher sum claimed to have been earned	50% of gross receipts of such profession or such higher sum claimed to have been earned	a. Heavy Goods Vehicle Rs. 1000 per ton of gross vehicle weight for every month or part of a month b. Other than Heavy Goods Vehicle Rs. 7500 per month (applicable only if owns not more than ten carriages at any time during the previous year)

Income from Business & Profession

➤ Presumptive Taxation:

Section 44AD	Section 44ADA
<p>Eligibility:</p> <ul style="list-style-type: none">- A Resident Individual- A Resident HUF- A Resident Partnership Firm (not being an LLP)- has not claimed deductions u/s. 10A, 10AA, 10B, 10BA, 80HH to 80RRB	<p>Eligibility:</p> <ul style="list-style-type: none">- A Resident Individual- A Resident Partnership Firm (not being an LLP) <p>(Note: HUF, Company, LLP AOP/BOI has been removed from Finance Act 2021)</p>
<p>Turnover/Gross Receipts</p> <ul style="list-style-type: none">- should not exceed Rs. 2 Crores	<p>Turnover/Gross Receipts</p> <ul style="list-style-type: none">- should not exceed Rs. 50 lakhs

Income from Business & Profession

➤ Issues in Presumptive Taxation:

- GST and all others levies to be included in turnover;
- Turnover of all eligible business (for e.g. turnover of F&O Shares and turnover of trading of goods to be added);
- Deductions u/s 30 to 38 deemed to be allowed;
- No disallowance can be made u/s. 40(a)(ia) /40A(3)/43B;
- Salary/interest to partners deemed to have been allowed in case of Section 44AD and 44ADA. Therefore no further deduction. However, under 44AE the same is allowed subject to 40(b) limits.

Income from Business & Profession

➤ Issues in Presumptive Taxation – 44AD(4) and 44AD(5):

- Where an assessee declares profit for any previous year in accordance with the provisions of section 44AD and

he declares profit for any of the five succeeding A.Ys. not in accordance with the provisions of section 44AD and;

his total income exceeds the basic exemption limit for the relevant A.Y.

he shall be required to maintain books of accounts as per Section 44AA & gets the accounts audited & furnish audit report as required u/s 44AB for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of this section

Income from Business & Profession

➤ Issues in Presumptive Taxation – 44AD(4) and 44AD(5):

- For example, an eligible assessee claims to be taxed on presumptive basis under section 44AD for Assessment Year 2017-18 and offers income of Rs. 4 lakh on the turnover of Rs. 50 lacs.
- For Assessment Year 2018-19 and Assessment Year 2019-20 also he offers income in accordance with the provisions of section 44AD. However, for Assessment Year 2020-21, he offers income of Rs. 6 lakh on turnover of Rs. 1 Crore. In this case since he has not offered income in accordance with the provisions of section 44AD for five consecutive assessment years, after Assessment Year 2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years i.e. from Assessment Years 2021-22 to 2025-26

Income from Business & Profession

Brief Checklist while computing income from business and profession:

- Profit and loss account and Balance sheet
- Books of accounts (if applicable)
- Bank statements
- Sales register or details of all sales during the year
- Purchase register or details of all purchases (including capital asset) during the year
- Form 26AS
- GST Returns
- Partnership Deed
- Rent Agreements/Other Business Agreements

Income from Business & Profession

Proforma for Computation of Income under the head Business:

Sr. No.	Particulars	Amount (in Rs.)	Amount (in Rs.)
i.	Net Profit as per Statement of Profit and Loss		xxx
Add:	Expenses debited to Profit and Loss account not allowable	xxx	
Less:	Expenditure allowable as deduction but not debited to statement of profit and loss	(xxx)	
Less:	Income credited in statement of profit and loss but not taxable/taxable under any other head	(xxx)	
Add:	Deemed Income	xxx	
Profit and Gains from Business & Profession			xxx

Capital Gains

➤ **Charging Section 45:**

- Any profit or gains arising from a **transfer** of **capital asset** effected in the previous year shall be chargeable to income-tax under this head in the year in which such transfer takes place.

➤ **Transfer is defined in Section 2(47) which includes:**

- Sale, exchange or relinquishment of asset;
- Extinguishment of rights;
- Compulsory acquisition under any law;
- Conversion of Capital asset into stock-in-trade;
- Maturity or redemption of zero coupon bond;
- Part-performance of contract

Capital Gains

➤ **Capital Asset is defined in section 2(14). It means:**

- Property of any kind;
- Securities held by Foreign Institutional Investor which as invested in accordance with the SEBI Regulations;
- Unit linked policy to which exemption under 10(10D) does not apply

- **But do not include:**
 - ✓ stock-in-trade;
 - ✓ Personal effects of movable nature held for personal use (excluding jewellery, archaeological collections; drawings; paintings; sculptures or any work of art)
 - ✓ Rural Agricultural land in India;
 - ✓ Specified Gold Bonds/Bearer Bonds/Gold Deposit Bonds

Capital Gains

➤ Asset to be classied as short-term asset/long-term asset on the basis of period of holding:

Period of holding: A summary

STCA, if held for \leq **12 month**

LTCA, if held for $>$ **12 months**

- Security (other than unit) listed in a recognized stock exchange
- Unit of equity oriented fund/ unit of UTI
- Zero Coupon bond

STCA, if held for \leq **24 month**

LTCA, if held for $>$ **24 months**

- Unlisted shares
- Land or building or both

STCA, if held for \leq **36 month**

LTCA, if held for $>$ **36 months**

- Unit of debt oriented fund
- Unlisted securities other than shares
- Other capital assets

Capital Gains

➤ Conversion of Capital Asset into stock-in-trade – 45(2):

- Capital asset should be converted;
- The transfer is said to be taken place in the year of conversion.
- However, income-tax would be payable when such stock-in-trade is sold or otherwise transferred
- FMV as on date of conversion will be allowed as cost for the purpose of computing business income

Example 1: X is having rural agricultural land which is outside the definition of a capital asset u/s 2(14) and such land is converted into stock in trade by X in his business of real estate, then there wont be any capital gains of section 45(2).

Example 2: If a person converts his personal jewellery costing Rs. 2,00,000/- into stock in trade of his business of Jewellery in the A.Y. 2021-2022 and sell such jewellery in the year A.Y. 2022-2023 then though conversion has taken place in the A.Y 2021-2022, capital gain/loss shall be computed in the year of sale i.e. A.Y. 2022-2023. The fair market value as on date of conversion was Rs. 6,00,000/-. The person ultimately sells the same at Rs. 8,00,000/-.

Rs. 4,00,000 will be taxed as Capital Gains in the year A.Y. 2022-2023 (6 lacs -2 lacs)

Rs. 2,00,000 will be taxed as Business income in the year A.Y. 2022-2023 (8 lacs – 6 lacs)

Note: In eg. 2, it is assumed that jewellery is held for a period less than 36 months before conversion

Capital Gains

➤ **Taxability of capital gains in case of Specified Agreement (i.e. Joint Development Agreement (JDA))– 45(5A):**

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

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

Capital Gains

➤ **Taxability of capital gains in case of Specified Agreement– 45(5A):**

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

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

Capital Gains

➤ Analysis – 45(5A):

- Applicable in respect of JDA entered on or after 01.04.2017 (i.e. with effect from Assessment year 2018-19);
- Applicable to Individual and HUF, even if non-residents;
- Applicable only when JDA is registered;
- Stamp duty value is taken as on the date of issue of completion certificate and not as on the date of original transfer;
- **Year of Transfer & Taxability:**

Year of taxability: PY in which the completion certificate is issued by the competent authority for whole or the part of project.

Year of transfer: – Section 45(5A) deals with two aspects (a) year of taxability and (b) full value of consideration. It does not deal with year of transfer. Therefore year of transfer remains same i.e. the year in which the transfer takes place under Section 2(47). Thus, the year of transfer might not be same as year of taxability.

Section 45(5A) would not defer the date of transfer. It would only defer the time of taxation

Capital Gains

➤ Analysis – 45(5A):

S.No.	Particulars	Amount (in Rs.)
i.	X Bought Land on April 01, 2001	60,00,000
ii.	<p>ABC Builders entered into registered JDA on 01/04/2018 on the following terms and conditions</p> <p>(a) Mr. 'X' will hand over the possession of plot to ABC builders on 01.04.2018. (b) ABC Builders will pay a cheque of 80,00,000 to Mr. 'X' on 01.04.2018. (c) ABC Builders will construct 10 residential units on the plot of land and will give 6 units to Mr. 'X'. (d) Completion certificate issued on 20.02.2021 (e) The stamp duty value of each flat on 20.02.2021 is 50,00,000</p>	

Capital Gains

➤ Analysis – 45(5A):

S.No.	Capital Gains to be worked in A.Y. 2021-2022	Amount (in Rs.)
i.	Year of Transfer: F.Y. 2018-19 Indexation Available till 01/04/2018 Year of Taxability: A.Y. 2021-22 Full Value of Consideration: (80,00,000+(50,00,000*6))	3,80,00,000
	Less: Indexed Cost of Acquisition (60,00,000*280/100)	(1,68,00,000)
	Long-term Capital Gains	2,12,00,000

Capital Gains

➤ Exemption-: Relevant Sections

Sr. No.	Particulars	Section 54	Section 54B	Section 54EC	Section 54F
1	Eligible Assessee	Individual/HUF	Individual/HUF	Any assessee	Individual/HUF
2	Asset Transferred	Residential House (Long-term)	Urban Agricultural Land	Land or building or both LTCA	Any LTCA other than residential house
3	Other Conditions	Income from such house would be chargeable under the head house property	Land should be used for agricultural purpose by assessee or his parents or HUF for 2 years immediately preceding the date of transfer	-	Assessee should not own more than one residential house on the date of transfer. He should not purchase within 2 years or construct 3 years after the date of transfer another house other than the new house.
4	Asset to be purchased/constructed	One residential house in India/Two residential houses In India (one time option) where Capital Gain does not exceed 2 crores	Land being used for agricultural purposes	Bonds of NHAI or RECL or other notified bonds	One residential house situated in India

Capital Gains

➤ Exemption-: Relevant Sections

Sr. No.	Particulars	Section 54	Section 54B	Section 54EC	Section 54F
5	Time Limit	Purchase within 1 year before or 2 years after the date of transfer or construct within 3 years after the date of transfer	Purchase within 2 years after the date of transfer	Purchase within a period of 6 months after the date of transfer	Purchase within 1 year before or 2 years after the date of transfer or construct within 3 years after the date of transfer
6	Amount of Exemption	Cost of new Residential House or two houses, as the case may be or Capital Gain, whichever is lower, is exempt	Cost of new Agricultural Land or Capital Gain, whichever is lower, is exempt	Amount invested in bond or Capital Gain, whichever is lower, is exempt. Maximum limit of investment is Rs. 50 lakhs	Cost of new Residential House \geq Net sale consideration of original asset, entire gain is exempt. Cost of new Residential House < Net sale consideration of original asset, proportionate gain is exempt.
7	Capital Gain Scheme	If purchase/construction is not made as mentioned in point no. 5 before the due date of filing the return of income, then the same be deposited in Capital Gains Scheme Account	If purchase/construction is not made as mentioned in point no. 5 before the due date of filing the return of income, then the same be deposited in Capital Gains Scheme Account	-	If purchase/construction is not made as mentioned in point no. 5 before the due date of filing the return of income, then the same be deposited in Capital Gains Scheme Account

Capital Gains

➤ Issues in Exemptions:

- **PCIT v. Dilip Ranjrekar (2019) 260 Taxman 317 (Karn.)(HC)**
The exemption is available even though the construction of new property was not completed within period of three years as the delay was beyond control of assessee because construction was delayed by builder.
- **ACIT v. Ramani Joseph (Smt.) (2019) 200 TTJ 522 (Chennai)(Trib.)**
The exemption claimed u/s. 54 and 54EC both will be allowed.
- **Ashok G. Chauhan v. ACIT (2019) 176 ITD 717 (Mum.)(Trib.)**
Assessee claimed deduction under S. 54F. AO held that at time of transfer of capital asset, assessee was owner of two residential houses out of which one he had jointly purchased with his wife. Accordingly he denied the exemption. On appeal the Tribunal held that word 'own' in S. 54F would include only case where a residential house is fully and wholly owned by assessee and, consequently, would not include a residential house owned by more than one person. Since a residential property was co-jointly owned in name of assessee and his wife, he could not be treated as absolute owner of said property and, thus, deduction under S. 54F could not be denied.

Capital Gains

Brief Checklist while computing income from Capital Gains:

- Sale and purchase deed of the property including stamp valuation of the property (for land/building)
- Documents for the cost of an improvement on the property (if improvement is made)
- The stock statement in the case of trading in shares etc. (specifying sale and purchase value of shares)
- In case of another capital asset, the cost of purchase, sale value and cost of improvement if any
- Details of expense incurred on transfer
- Re-investment purchase deed for claiming exemption from Capital Gains
- Details of investment in Capital Gains Accounts Scheme (if applicable)
- Reversal of deduction claimed earlier if the amount of capital gain is not utilised for specified purposes.

Capital Gains

➤ Profroma of Computation of Capital Gains– Section 48:

- It shall be computed as under:

Particulars	Amount in Rs.
Full value of Consideration received/accrued as a results of transfer	xxx
Less: Expenditure incurred wholly and exclusively in connection with such transfer (e.g. brokerage on sale) <i>Note: Deduction on account of STT paid will not be allowed</i>	(xxx)
Less: Cost of acquisition and cost of improvement thereto (price to be increased on the basis of cost inflation index in case of long-term capital asset wherever indexation is applicable)	(xxx)
Computation of Capital Gains	XXX
Less: Exemption u/s. 54/54B/54D/54EC/54F	(Xxx)
Net Capital Gains Chargeable to tax	xxx

Income from Other Sources

➤ **Charging Section 56:**

- This is the residuary head. If income is not chargeable to tax under any other head but is taxable under the Act, then the same is chargeable to tax under this head.

➤ **Illustrative items falling under Income-from Other Sources:**

- Dividend including Deemed Dividend;
- Income in the nature of winnings from lotteries, crossword puzzles, races including horse races; card games and other games of any sort, etc. These are taxable @flat rate @30%;
- Advance forfeited due to failure of negotiations for a transfer of a capital asset;
- Compensation or any other payments received in connection with the termination of employment;
- Income from letting out of plant. Furniture, machinery;
- Interest on loans, securities, etc;

Income from Other Sources

➤ **Receipts:**

- All 'revenue' receipts are chargeable to tax unless specifically exempt. On the contrary, 'capital' receipts may or may not be chargeable to tax. They constitute income and are chargeable to tax only if they fall within the parameters of section 45.

- **CIT vs Krishna Industrial Corporation Ltd- [1973] 92 ITR 261 (Andhra Pradesh)**

The foregoing discussion may be summed up thus: The income-tax being a tax on the real income computed as per the provisions of the Act of a person earned during the previous year relevant for the assessment year in question, the receipts of capital nature during the same period and others exempted as per the provisions of the Act are not liable to be taxed. Hence, whether a particular receipt is income or capital assumes great importance and it is always a debatable moot point in the law of taxation, which turns upon the cumulative effect of all the relevant and material facts and circumstances of each case.

Income from Other Sources

- **Bhojisaon Infrastructure Pvt. Ltd. v. ITO (Ahd.)(Trib.)**

The "right to sue" which arises on breach of a development agreement is a "personal right" and not a "capital asset" which can be transferred. Consequently, the damages received for relinquishment of the "right to sue" is a non-taxable capital receipt.

- **Peerless General Finance and investment Co. Ltd. v. CIT (2019) 416 ITR 1 (SC)**

On appeal the Court held that the primary liability and onus is on the Dept to prove that a certain receipt is liable to be taxed. Deposits collected by a finance company are capital receipts and not revenue receipts. The fact that the deposits are credited to the profit and loss account is irrelevant. The true nature of the receipts have to be seen and not the entry in the books of account. Order of High Court is set aside and order of the Tribunal is affirmed

Income from Other Sources

Brief Checklist while computing income from other sources:

- Bank passbook/ statement or interest income certificate
- PPF passbook for interest
- Interest certificates on bonds
- Details of accrued interest on NSC during the year
- Receipts of any income from winning the lottery, horse races, etc
- Form 26AS

Computation of Income

Brief Checklist while computing income Total Income:

- Determine the residential status
- Compute income under each head;
- Check whether clubbing provisions apply;
- List of Investments/payments made for Claiming Chapter-VI A Deduction;
- Check for set-off losses (current and past both);'
- Check whether the assessee is eligible for rebate;
- Check whether the assessee would like to opt for new scheme (section 115 BAC)/old scheme

Q & A

Note : Please refer Income Tax Act and Income Tax Rules for detailed information.

THANK YOU !