LECTURE NOTES

ON

Business Taxation

4th Semester

MBA

Hi-Tech Institute of Technology

Industrial Estate, Khurda

DKF27: CORPORATE TAXATION

UNIT I

General Principles of Tax – Direct and Indirect Taxes – State Power to Levy Tax – Tax System – Provisions of Income Tax Act 1961 – Finance Act – Basic Concepts.

UNIT II

Tax Planning in relation to Business income, Capital gains and other sources – Income Tax authorities – Tax deducted at source and advance payment of Tax.

UNIT III

Wealth Tax

UNIT IV

Customs and Excise Duties.

UNIT V

Provisions of Central Sales Tax and Tamil Nadu General Tax Act.

References:

1. The Tax Act – Relevant Bare Acts as amended upto date
2. The Wealth Tax Act - Relevant Bare Acts as amended upto date
3. Income Tax Law and Practice – S. Battacharya
4. Direct Taxes Law and Practice

UNIT I
GENERAL PRINCIPLES OF TAX

Objectives

1. To understand the taxation structure in India.
2. To know the importance of taxes for the government and society.
3. To know legal frame work of tax laws and there operations.
4. To know types of taxes collected by the Government. To know the scope of Income Tax and its Applicability.
5. Keep one thing in mind; the very key to understanding anything in its right perspective is to ask one question…

Introduction

Government needs funds for various purposes, like maintenance of law and order, defence, social/health services, etc. Government obtains funds from various sources, out of which one important source is taxation. ―The hardest thing in the world to understand is income tax!‖ - Albert Einstein The above sentence is a statement, but if you study, nothing is impossible. The taxes are the basic source of revenue for the Government. Revenue raised from the taxes are utilized for meeting the expense of Government like, provision of education, infrastructure facilities such as roads, dams etc.

What is Tax?

Justice Holmes of US Supreme Court pointed out ‗tax' is the price which we pay for a Civilized Society. Taxes are broadly divided into two parts i.e. direct taxes and indirect taxes. The tax that is levied directly on the income or wealth of a person is called direct tax. As the name suggests, ‗direct taxes' are paid directly and ‗indirect taxes' are paid indirectly. The direct taxes are paid directly by a person or a business organization directly to the Government. In case of indirect taxes, one person pays them, but he recovers the same from another person. Thus, the person who actually bears the tax burden (the ultimate ‗consumer') pays it indirectly through some other person, who practically, merely acts as collecting agent. Of course, he is liable if he fails to collect and pay the taxes.

Direct taxes are those which the tax payer pays directly from his income/ wealth/ estate etc., while indirect taxes are those which the tax payer pays indirectly i.e. while purchasing goods and commodities, paying for services etc. Broadly speaking, direct taxes are those which are paid after the income reaches hands of taxpayer; while indirect taxes are paid before the goods / services reach the tax payer. Important direct taxes are Income Tax, Gift Tax and Wealth Tax. Important indirect taxes are Central Excise (Duty on Manufacture), Customs (Duty on Imports and Exports); Sales Tax; Octroi, Entry Tax, Service Tax, Expenditure Tax etc.

Since Constitution of India is foundation and source of powers to all laws in India, it is necessary to understand general background of Constitution to enable us to understand and appreciate each individual Law. In India, Constitution that came into effect on 26th January 1950 is supreme and all laws and Government actions are subordinate to our Constitution.

Constitution is supreme law - Clear understanding of concepts is important for any discussion on taxation matters as power to levy and collect tax is derived from Constitution. If it is found that any Act, Rule, Notification or Government order is not according to the Constitution, it is illegal and void and it is called ultravires the Constitution.

In Vinay Chandra Mishra In re (1995) 2 SCC 584, it was held that statutory provisions cannot override constitutional provisions. Various Laws can be passed (and amended) by Parliament within the framework prescribed by the Constitution. What is the Mode of Passing an Act? First, a bill is presented to Parliament. The bill is a draft of the proposed to be passed. Often the bill is presented on the basis of recommendations of some Committee. Sometimes, the bill is studied by a Parliamentary Committee after presented to Parliament. The bill is discussed and it is then passed with or without amendments. After both Houses of Parliament pass it, it is sent to President for his assent. The bill becomes a Statute (Act) on the date on which President gives his assent. The Act generally provides the date on which the Act comes into effect. Sometimes, it comes into effect immediately, while sometimes powers are delegated to government to decide the date on which the Act will come into force. Often, powers are given to bring the Act into force in parts, i.e. various provisions of the Act can be brought into force in stages on different dates. Similar procedure is adopted to amend (modify) an existing Act.

Features of Taxes

The features of taxes are as follows:

1. It is compulsory contribution, refusal to pay is a punishable offence.
2. In the payment of a tax, the element of sacrifice is involved because tax payer cannot claim direct benefit against tax.
3. Taxes are imposed by the Government only.
4. Tax should be paid regularly and periodically.
5. The aim of taxation is the welfare of the community as a whole.

Objectives of Taxation

The main objectives of taxation in India are given below:

1. To achieve high rate of economic growth.
2. To break the vicious circle of poverty.
3. To step up the rate of saving and investment.
4. To remove regional disparities.
5. To promote employment opportunities.
6. To mobilize resources for economic development. and
7. To equitably distribute income and wealth.

Tax system in India

India is a socialist, democratic and republic country. The Constitution of India is the supreme law of land. All other laws are subordinate to the Constitution of India. The Constitution provides that _no tax shall be levied or collected except by Authority of Law‘. The Constitution includes three lists in the Seventh Schedule providing authority to the Central Government and

the State Governments to levy and collect taxes on subjects stated in the lists.

India has a well-developed tax structure with clearly demarcated authority between Central and State Governments and local bodies. Central Government levies taxes on income (except tax on agricultural income, which the State Governments can levy), customs duties, central excise and service tax. Value Added Tax (VAT), stamp duty, state excise, land revenue and profession tax are levied by the State Governments. Local bodies are empowered to levy tax on properties, octroi and for utilities like water supply, drainage etc.

Indian taxation system has undergone tremendous reforms during the last decade. The tax rates have been rationalized and tax laws have been simplified resulting in better compliance, ease of tax payment and better enforcement. The process of rationalization of tax administration is ongoing in India.

Basic scheme of Taxation under Indian Constitution

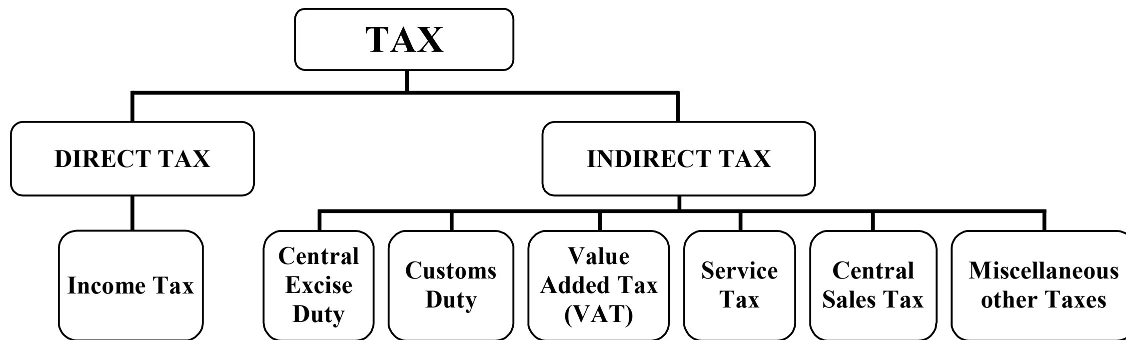
India has a well-developed tax structure with a three-tier federal structure, comprising the Union Government, the State Governments and the Urban/Rural Local Bodies. The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution. The main taxes/duties that the Union Government is empowered to levy are Income Tax (except tax on agricultural income, which the State Governments can levy), Customs duties, Central Excise and Sales Tax and Service Tax. The principal taxes levied by the State Governments are Sales.

Tax (tax on intra-State sale of goods), Stamp Duty (duty on transfer of property), State Excise (duty on manufacture of alcohol), Land Revenue (levy on land used for agricultural/non- agricultural purposes), Duty on Entertainment and Tax on Professions & Callings. The Local Bodies are empowered to levy tax on properties (buildings, etc.), Octroi (tax on entry of goods for use/consumption within areas of the Local Bodies), Tax on Markets and Tax/User Charges for utilities like water supply, drainage, etc.

Lets discuss about Taxation structure in India. Taxation Structure in India

Direct Taxes	Indirect Taxes
1. Income Tax	1. Excise Duty
2. Wealth Tax	2. Customs Duty
	3. Sales Tax.

As the above taxation structure states there are two types of taxes prevailing in India such as Direct taxes and indirect taxes. Direct taxes are those taxes which are directly paid to the government and indirect taxes are those which are indirectly paid to the government, through some intermediaries like manufactures, wholesalers, retailers etc. The following chart provides the broad classification of Tax system in India.



Direct Taxes and Indirect Taxes

A) Direct Taxes: They are imposed on a person's income, wealth, expenditure, etc. Direct Taxes charge is on person concern and burden is borne by person on whom it is imposed.
Example-Income Tax.

B) Indirect Taxes: They are imposed on goods / services. The Immediate liability to pay is of the manufacturer / service provider / seller but its burden is transferred to the ultimate consumers of such goods / services. The burden is transferred not in form of taxes, but, as a part of the price of goods / services.
Example-Excise Duty, Customs Duty, Service Tax, Value-Added Tax (VAT), Central Sales Tax (CST). Adam Smith's Canons of Taxation

Adam Smith's contribution to this part of economic theory is still regarded as classic. His enunciation of canons of taxation has hardly been surpassed in clarity and simplicity. His four celebrated canons are as follows:-

1. Canon of Equality: Equality here does not mean that all tax-payers should pay an equal amount. Equality here means equality or justice. Its means that the broadest shoulder must bear the heaviest burden.

The canon has given rise to two theories.

i. Equality of sacrifice theory. It means that the burden of taxation should involve an equal sacrifice for every individual. This equality, however, though good in theory, is difficult to attain in practice. Sacrifice is subjective, something in the mind and feelings of a person. It is difficult to measure. Besides, it has to take into consideration the number of dependants on the earning member in the family and their standard of living.
ii. The second principle indicating justice is the Ability or Faculty Theory, which holds that the rich should be made to pay something more than proportionate to their income. A man with an income of ` 12000 per month will not, other things being equal, feel the same pinch in parting with ` 120 as a man with income of only ` 2400 feels in paying ` 24 because the former's faculty to pay is greater. On this principle is based progression in taxation i.e., increasingly higher rates of taxation as incomes increase. Proportional taxation will not do justice.

2. Canon of Certainty: The individual should know exactly what, when and how he is to pay a tax. Otherwise, it causes unnecessary suffering. Similarly, the State should also know how much it will receive from a tax.
3. Canon of Convenience: Obviously, there is no sense in fixing a time and method of payment which are not suitable. Land revenue in India is realised after the harvest has been collected. This is the time when cultivators can conveniently pay.
4. Canon of Economy: This means that the cost of collection should be as small as possible. If the bulk of the tax is spent on its collection, it will take much out of the people�later pockets but bring little into the State‘s pocket. It is not a wise tax.

Difference between Direct Taxes & Indirect Taxes

Particulars	Direct Taxes	Indirect Taxes
Meaning	Direct Taxes are those taxes where the incidence and impact falls on the same person.	Indirect Tax is a tax where incidence and impact fall on two different persons.
Nature of tax	Direct Tax progressive in nature.	Indirect Taxes is regressive in nature.
Taxable Event	Taxable Income of the Assessees.	Purchase / Sale / Manufacture of goods and provisio of services.
Levy & Collection	Levied and collected from the Assessee.	Levied & collected from the consumer but paid/ deposited to the Exchequer by the Assessee / Dealer.
Shifting of Burden	Directly borne by the Assessee. Hence, cannot be shifted.	Tax burden is shifted or the subsequent / ultimate user.
Collected	After the income for a year is earned or valuation of assets is determined on the valuation date.	At the time of sale or purchases or rendering of services.

Advantages and Disadvantages of Direct Taxes

1. Direct taxes are _progressive‘, as they depend on paying capacity. Rich person is taxed more compared to poor person.
2. Direct taxes do not affect prices of goods and service.
3. Low income tax rates decrease tax revenues and tax evasion and Hawala transactions.
4. Direct taxes do not increase the cost of modern machinery and technology.
5. Direct taxes are not inflationary.

Disadvantages of Direct Taxes

1. It is psychologically very difficult for a person to pay some amount after it is received in his hands. Hence, there is psychological resistance [This is the reason why even Income Tax Act is widening

the scope of ―Tax Deduction at Source�So (TDS) and TCS. Thus, a direct tax is converted to an indirect tax].
2. Direct taxes are mainly on income of individuals, firms or corporate bodies, where millions of transactions are carried out in lakhs of places and keeping an eye over all such transactions is virtually impossible
3. Tax evasion is comparatively more in direct taxes where it is on unorganized sector, since control is difficult
4. Collection cost of direct taxes as percentage of tax collected are higher in direct taxes compared to indirect taxes
5. Direct taxes can control wasteful expenditure only indirectly by taxing higher income group people.
6. Government can judiciously use the direct taxes to support development in desirable areas, while discouraging in backward areas, infrastructure development etc

Advantages of Indirect Taxes

1. Since the price of commodity or service is already inclusive of indirect taxes, the customer i.e. the ultimate tax payer does not feel a direct pinch while paying indirect taxes and hence, resistance to indirect taxes is much less compared to resistance to direct taxes.
2. Manufacturer's/Dealer's Psychology favours indirect taxes: The manufacturer/ trader who collects the taxes in his Invoice and pays it to Government, has a psychological feeling that he is only collecting the taxes and is not paying out of his own pocket (though this feeling may not be always correct).
3. Indirect taxes are easier to collect as indirect taxes are mainly on goods/ commodities/services, for which record keeping, verification and control is relatively easy(atleast in organized sector).Manufacturing activities are carried out mainly in organized sector, where records and controls are better.
4. Tax evasion is comparatively less in indirect taxes in organized sector due to convenience of control
5. Collection costs of indirect taxes as percentage of tax collected are lower in indirect taxes compared to direct taxes.
6. Government can levy higher taxes on luxury goods, which reduces the wasteful expenditure
7. Government can judiciously use the indirect taxes to support development in desirable areas, while encouraging it in backward areas also, e.g. reducing taxes on goods manufactured in tiny or small scale units; lowering taxes in backward areas etc.

Disadvantages of Indirect Taxes

1. Indirect taxes do not depend on paying capacity. Since the indirect tax is uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as _regressive'.(This argument is only partially correct; as it is possible to levy lower taxes on goods of daily consumption while

levying higher taxes on luxury goods and the regressive effect can be reduced in many circumstances.)

2. Tax on goods and services increases its prices, which may reduce demand as per law of demand of goods and services. Lesser demand means lower growth of industrialization.
3. High customs/excise duty increases smuggling, hawala trade and mafia gangs, which is harmful in many ways. Similarly, high excise duty leads to evasion.
4. On the other hand, low tax rate will affect the government exchequer.
5. Higher customs duty and excise duty increases cost of modern machinery and technology.
6. Indirect taxes increase the prices of products.
7. And hence are often perceived as inflationary.

Features of Indirect Taxes

The special features of indirect taxes are as follows:

1. These taxes can be easily collected and generate much revenue for the Government
2. Imposition of indirect taxes directly affects the prices of commodities.
3. It is a tax on commodity or service, i.e., excise duty is imposed on goods which are manufactured within India.
4. Under indirect taxation the ability of the tax payer is determined indirectly.
5. Under this system of taxation everyone has to pay tax and there will be no exemption. For instance, sales tax should be paid by rich person and also by poor person if he is purchasing that particular commodity.
6. Recovery from buyer is not essential condition for levy of indirect taxes- In general, indirect taxes are recovered from buyer, it is not an essential feature of indirect taxes. Tax on goods or services will be valid even if it is not recovered or recoverable from buyer. It is valid liability of manufacturer / seller / service provider.

Constitutional validity of Tax system in India

Power of Taxation under Constitution of India is as follows:

(a) The Central Government gets tax revenue from Income Tax (exception Agricultural Income), Excise (exception alcoholic drinks), Customs and Central Sales Tax.

(b) The State Governments get tax revenue from sales tax, state excise duty on certain commodities viz. from liquor and alcoholic drinks. Also tax on agricultural income.

(c) The Local Self Governments e.g. municipalities, etc. get tax revenue from entry tax and house property tax. Article 265 provides that no tax shall be levied or collected except by Authority of Law. The authority for levy of various taxes, as discussed above, has been provided for under Article 246 and the subject matters enumerated under the three lists set out in the Schedule-VII to the Constitution.

Administration and Relevant Procedures

In India, Constitution which came into effect on 26thJanuary, 1950 is supreme and all laws and Government actions are subordinate to our Constitution. Clear understanding of concepts is vital for any discussion on taxation matters as power to levy and collect tax is derived from Constitution. If it is found that any Act, Rule, Notification or Government order is not according to the provisions of the Constitution, it is illegal, null and void and it is called ultravires the Constitution.

India is Union of States–The structure of Government is federal in nature. Article1(1) of Constitution of India reads, ‗India, that is Bharat, shall be a Union of States'.

Government of India (Central Government) has certain powers in respect of whole country. India is divided into various States and Union Territories and each State and Union Territory has certain powers in respect of that particular State. Thus, there are States like Gujarat, Maharashtra, Tamil Nadu, Kerala, Uttar Pradesh, Punjab etc. and Union Territories like Pondicherry, Chandigarh etc.

Sources and Authority of Taxes in India

Powers of Central or State Government to levy tax

Article Empowers For

246(1) Central Government Levy taxes in List I of the Seventh Schedule of the Constitution.

246(2) Central or State Government Levy taxes in List III of the Seventh Schedule

246(3) State Government Levy taxes in List II of the Seventh Schedule of the Constitution.

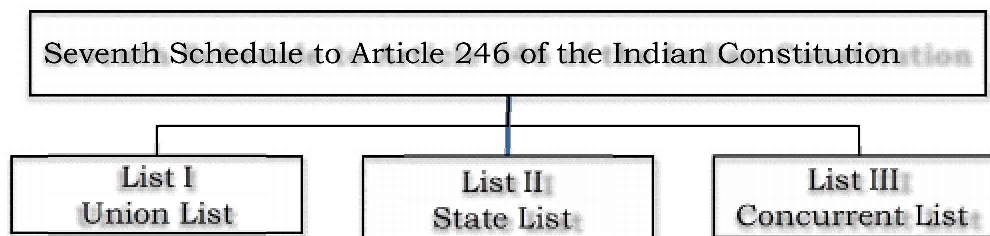
Bifurcation of powers between Union and States – Article 246(1) of Constitution of India states that Parliament has exclusive powers to make laws with respect to any of matters enumerated in List I in the Seventh Schedule to Constitution (called ‗Union List'). As per Article 246(3), State Government has exclusive powers to make laws for State with respect to any matter enumerated in List II of Seventh Schedule to Constitution.

Seventh Schedule to Constitution consists of following three lists:

• List I (Union List) contains entries under exclusive jurisdiction of Union Government.

• List II (State List) contains entries under exclusive jurisdiction of States.

• List III (Concurrent List) contains entries where both Union and State Governments can exercise power.[In case of Union Territories, Union Government can make laws in respect of all the entries in all three lists].



Taxation under Constitution

Union List (List I)	State List (List II)
Only Union Government can make laws.	Only State Government can make laws.
Given in Schedule Seven of Constitution	Given in Schedule Seven of Constitution.
Important taxes in Union List	Important taxes in State List
Entry No. 82 – Tax on income other than agricultural income. Entry No. 83 – Duties of customs including export duties. Entry No. 84 – Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, narcotic drugs, but including medicinal and toilet preparations containing alcoholic liquor, opium or narcotics. Entry No. 85 – Corporation Tax. Entry No. 86 – Taxes on the capital value of assets, exclusive of agricultural land, of individuals and companies; taxes on capital of companies Entry No. 92A – Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of interstate trade or commerce. Entry No. 92B – Taxes on consignment of goods where such consignment takes place during interstate trade or commerce. Entry No. 92C – Tax on services [Amendment passed by Parliament on15-1-2004, but not yet made effective]. Entry No. 97 – Any other matter not included in List II, List III and any tax not mentioned in list II or list III. (These are called _Residua Powers‘.)	Entry No. 46 – Taxes on agricultural income. Entry No. 51 – Excise duty on alcoholic liquors, opium and narcotics. Entry No. 52 – Tax on entry of goods into a local area for consumption, use or sale there in (usually called Entry Tax or Octroi). Entry No. 54 – Tax on sale or purchase of goods other than newspapers except tax on interstate sale or purchase. Entry No. 55 – Tax on advertisements other than advertisements in newspapers. Entry No. 56 – Tax on goods and passengers carried by road or inland waterways. Entry No. 59 – Tax on professions, trades, callings and employment.

List III : Concurrent List
Both union and State Government can exercise power
Given in Schedule Seven of constitution
Entry No. 17A – Forest Income

Entry No. 25 – Education Income

Direct Taxes

A Tax can be called as Direct Tax when the burden of taxation falls directly on the tax payer.

Under the Income Tax Act, 1961 The Central Government levies direct taxes on the income of individuals and business entities as well as Non business entities also. The taxation level depends on the residential status of individuals. The thumb rule of residential status is that an individual becomes resident in India if he has remained in India for more than 182 days in a particular residential year. If he becomes resident in India, then his global income i.e. income earned even outside India is taxable in India. This has to be noted very carefully by Expatriates on deputation to India. They need to plan their stay in such a manner as to avoid becoming a resident in India.

In addition to the individual income tax is collected from other types of persons such as Hindu Undivided Family, Partnership firms, Companies, Juridical persons, etc. In the case companies, income tax has been levied on both Indian company and foreign company functioning in India. Generally Company means a company which is functioning under the provisions of any Act in India which is in force on the day of the existence of a company either registered or unregistered. The Income Tax Act, 1961 is an example for the Corporate Tax..

A Company means:-

1. Any Indian company, or
2. Any corporate body, incorporated by or under the laws of a country outside India, or
3. Any institution, association or a body which was assessed as a company for any assessment year under the Income Tax Act,1922 or was assessed under this Act as a company for any assessment year commencing on or before April 1, 1970,or
4. Any institution, association, or body, whether incorporated or not and whether Indian or Non-Indian, which is declared by a general or special order of the Central Board of Direct Taxes to be a company.

Companies in India, whether public or private are governed by the Companies Act, 1956. The registrar of companies and the company law board administers the provisions of the Act. However, for the purpose of taxation, companies are broadly classified as:-

Domestic company [Section 2(22A)]:- means an Indian company (i.e. a company formed and registered under the Companies Act,1956) or any other company which, in respect of its income liable to tax, under the Income Tax Act, has made the prescribed arrangement for declaration and

payments within India, of the dividends payable out of such income. A domestic company may be a public company or a private company.

Foreign company [Section 2(23A)]:- means a company whose control and management are situated wholly outside India, and which has not made the prescribed arrangements for declaration and payment of dividends within India.

Need for Corporate Taxations

1. Corporate income taxes raise essential revenue for schools, hospitals and the rule of law.
2. Less well understood is the fact that the corporate tax helps hold the whole tax system together: without it, people will stash their money in zero-tax corporate structures and defer or even escape tax entirely.
3. The corporate income tax curbs inequality and protects democracy. The tax charge falls largely on the wealthy owners of capital: without it, corporations and their wealthy owners free-ride off the public services paid for by others.
4. Corporate taxes enhance national welfare. So-called ―competitive‖ tax-cutting is fools' gold, particularly for the larger economies.
5. Corporate tax cuts, incentives and loopholes ricochet around the world. A tax cut in one place may suck capital out of others and prompt other jurisdictions to follow suit, in a race to the bottom where the only winners are the very wealthiest sections of society.
6. The corporate income tax is particularly important for developing countries, which rely more heavily on it than rich countries do.
7. Corporate taxes can rebalance economies. Corporations around the world are hoarding cash, not investing it. Corporate taxes harness this idle cash and put it to productive uses, via government spending on education, roads and other public services.
8. The corporate tax curbs rent-seeking. Because rent-seeking tends to be more profitable than genuine productive activity, the corporate tax falls more heavily on it.
9. Tax cuts and special incentives don't stop at zero: they turn negative. In this race to below the bottom there is no limit on corporations' zeal for free-riding off public goods and subsidies paid for provided by others.
10. Corporate taxes spur transparency and more accountable government. To collect the tax, states must put in place good tracking measures.

State Power to Levy Tax

State Governments have exclusive powers to make laws in respect of matters in list II of Seventh Schedule to our Constitution. These entries include Police, Public Health, Agriculture, Land etc. State Governments can levy the following taxes:

Value Added Tax (VAT): This is tax on sale of goods. While intra-state sale of goods are covered by the VAT Law of that state, inter-state sale of goods is covered by the Central Sales Tax Act. Even the revenue collected under Central Sales Tax Act is done so by the State Governments themselves and actually the Central Government has no role to play so.

Stamp duties and Land Revenue: Since land is a matter on which only State Governments can govern, thus the Stamp duties on transfer of immovable properties are levied by State Governments.

State Excise on Liquor and certain agricultural goods.

Apart from the above, certain powers of taxation have been devolved in the hands of local bodies. These local governing bodies can levy taxes on water, property, shop and establishment charges etc.

List III of Seventh Schedule, called ―concurrent list‘, includes matters where both Central Government and State Government can make laws. This list includes entries like Criminal Law and Procedure, Trust and Trustees, Civil procedures, economic and social planning, trade unions, charitable institutions, price control, factories, etc. In case of entries included in concurrent list, in case of conflict, law made by Union Government prevails. The only exception is that if law made by State contains any provision repugnant to earlier law made by Parliament, law made by State Government prevails, if it has received assent of President. Even in such cases, Parliament can make fresh law and amend, repeal or vary law made by State. [Article 254 of Constitution]. Article 265 of the Constitution states that ―no tax shall be levied or collected except by authority of law‖, and Article 300A of the Constitution states that ―no person shall be deprived of its property save by authority of law‖.

The effect of these provisions is that any taxation which is found to be beyond the powers of Law is illegal and Government has no authority to levy that tax. If any amount is collected under a law which is found to be illegal, Government cannot retain such amount and must repay such illegally collected tax, Thus, whenever it has been found that Government has collected tax without proper authority of law, Courts have held that the illegally collected taxes must be refunded, subject to provisions of ‗Unjust Enrichment‘ in respect of Indirect Taxes.

Since 1991 tax system in India has under gone a radical change, in line with liberal economic policy and WTO commitments of the country. Some of the changes are:

Reduction in customs and excise duties lowering corporate Tax Widening of the tax base and toning up the tax administration.

An understanding of the Income-tax law requires a study of the following:

a. The Income-tax Act, 1961 (amended up-to-date)
b. The Income-tax Rules, 1962 (amended up-to-date)
c. Circulars, clarifications issued from time to time by the CBDT
d. Judicial decisions

INCOME-TAX

Income-tax is a Direct Tax. It is a most significant source of revenue of the government. It plays an important role in the growth and development of economy of India. Tax can be broadly classified into Direct Taxes and Indirect Taxes. Direct Taxes are those taxes in which the tax payers themselves bear the tax burden. E.g. Income tax and wealth tax. Indirect Taxes are those taxes which the tax payers can pass the tax burden to others. E.g., Sales tax customs duty etc. Income tax is one of the major sources of Direct taxes. Every person has to pay income tax on the income if it exceeds the minimum taxable limit.

Scheme of Taxation under Income tax

Every person, whose total income of the previous year exceeds the maximum amount which is not chargeable to income tax, is an assessee and chargeable to income tax at the rate or rates prescribed in the Finance Act for the relevant assessment year. However, his total income shall be determined on the basis of his residential status in India.

History of Income-tax in India

- In India, Income-tax was introduced for the first time in 1860 by *Sir James Wilson* in order to meet the losses sustained by the Government during that time.
- In 1886, a *Separate Income Tax Act was passed.* This act was amended from time to time.
- In 1918, a new Income Tax Act was passed and again it was replaced by another new Act which was passed 1922

The Income Tax Act 1922 has become very complicated due to several amendments. The Government of India referred it to the Law Commission in 1956 with a view to simplify the Act. The Law Commission submitted its report in September 1958. In consultation with Ministry of Law, Income Tax Act 1961 was passed.

The *Income-tax Act 1961* has been brought into force with effect from 1st April 1962. It applies to the whole of India. Central Board of Direct Taxes (CBDT) working under the control of Finance Ministry is charged with an obligation of framing rules for the administration of Income-tax Act. These rules are known as *Income-tax Rules 1962.* The CBDT also issues various circulars from time to time.

Every year the central government made various amendments through Union Budget. These amendments pass through the Parliament and get approval of the President of India.

Attempts are being made to draft a new legislation for direct tax in India. Accordingly the Direct tax code Bill 2009 was released in August 2010 for public discussion so for, Direct Tax code has not been passed by the Parliament.

Basis of Charge of Income-tax

- Income tax is an annual tax on income
- Income of the previous year is taxable in the next following assessment year at the rates applicable to that assessment year
- Tax rates are fixed by the Finance Act
- Tax is charged on the total income of every person
- Income tax is to be deducted at source or paid in advance as per the provisions of the Act.
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Components of Income-tax Law

The following are the components of Income-tax Law

1. The Income-tax Act 1961
2. The Income-tax Rules 1962
3. Finance Act
4. Circulars and Notification from Central Board of Direct Taxes [CBDT]
5. Court Decisions

a. The Income-tax Act, 1961 (Amended upto date) The provisions of income tax are contained in the Income-tax Act, 1961 which extends to the whole of India and (extended to state of Sikkim from 1.4.1990) became effective from 1- 4 -1962 (Section 1).

Scope of Income-tax Act

The Income-tax Act contains provisions for determination of taxable income, determination of tax liability, procedure for assessment, appeals, penalties and prosecutions. It also lays down the powers and duties of various Income-tax authorities. Since the Income-tax Act, 1961 is a revenue law, there are bound to be amendments from time to time in this law. Therefore, the Income-tax Act has undergone innumerable changes from the time it was originally enacted. These amendments are generally brought in annually along with the Union Budget. Besides these amendments, whenever it is found necessary, the Government introduces amendments in the form of various Amendment Acts and Ordinances.

Annual amendments: Every year a Budget is presented before the Parliament by the Finance-Minister. One of the most important components of the Budget is the Finance Bill, which declares the financial proposals of the Central Government for the next financial year. The Bill contains various amendments, which are sought to be made in the areas of direct, and indirect taxes levied by the Central Government. The Finance Bill also mentions the rates of income tax and other taxes that are given in the First Schedule attached to such Finance Bill. The First Schedule gives the rates of income-tax in 4 parts:

Part-I : It gives the rates of income-tax for various assessees for the current assessment year e.g. the Finance Act, 2004 has given the rates of Income tax for the assessment year 2005-06.

Part-II: It gives the rates for deduction of tax at source from the income earned in the current financial year e.g. the Finance Act, 2004 has given the rates at which tax is to be deducted at source in the financial year 2004-05.

Similarly, Finance Act, 2005 shall give the rates of TDS on the income earned during the financial year 2005-06.

Part-III: It gives the rates for calculating income-tax for deducting tax from income chargeable under the head _Salaries‘. The same rates are applicable for computation of advance tax to be paid in the current financial year, e.g., Finance Act, 2004 has given the rates for the computation of advance tax for the assessment year 2005-06 and the Finance Act, 2005 shall give the rates of advance tax for assessment year 2006-07.

Part-IV: It gives the rules for computation of Net Agricultural Income.

Finance Act

1. When the Finance Bill is approved by both the Houses of Parliament and receives the assent of the President, it becomes the Finance Act. The provisions of such Finance Act are thereafter incorporated in the Income-tax Act.
2. Besides the rates which are given in the Finance Act every year, there are certain incomes which are taxable at the special rates given in the Income-tax Act itself *e.g.* long- term capital gain is taxable @ 10%/20% and income from lotteries, crossword puzzles, etc. are taxable @ 30% for assessment year 2004-05.

Existing Finance Act to have effect pending legislative provision for charge of tax [Section 294]

If on the first day of April in any assessment year, the provision has not yet been made by a Central Act for the charging of income-tax *i.e.* the Finance Act has not been enacted, the provisions of the previous Finance Act would continue to be effective. In case the Finance Bill is before the Parliament but has not yet been passed, then the rates at which the income is to be taxed shall be the rates prescribed in such Bill or the rates prescribed in the preceding Finance Act, whichever are more favourable to the assessee.

b. Income-T**ax Rules‖ 1962** (amended upto date)

Every Act normally gives power to an authority, responsible for implementation of the Act, to make rules for carrying out purposes of the Act. Section 295 of the Income-tax Act has given power to the Central Board of Direct Taxes to make such rules, subject to the control of Central Government, for the whole or any part of India. These rules are made applicable by notification in the Gazette of India. These rules were first made in 1962 and are known as Income-tax Rules, 1962. Since then, many new rules have been framed or existing rules have been amended from time to time and the same have been incorporated in the aforesaid rules.

c. Circulars and Clarifications by CBDT

The CBDT in exercise of the powers conferred on it under section 119 has been issuing certain circulars and clarifications from time to time, which have to be followed and applied by the Income-tax Authorities. However, these circulars are not binding on the assessee or the ITA T or on the Courts. But whenever there is any instruction that is in favour of the assessee, the Income-tax Authorities would not be permitted to go back on

these instructions or circulars. Therefore, such circulars or clarifications are binding upon the Income-tax Authorities, but the same are not binding on the assessee, although the assessee can claim benefit under such circulars. [UCO Bank v CIT (1999) 237 ITR 889 (SC).

d. Judicial Decisions

Any decision given by the Supreme Court becomes a law which will be binding on all the Courts, Appellate Tribunals, the Income-tax Authorities as well as on all the assessees. Where there are apparently contradictory rulings by the Supreme Court, the decision of larger bench (whether earlier or later in point of time) should always prevail. However, where the apparently irreconcilable decisions are given by benches having equal number of judges, the principle of the later decision being applicable would be attracted.

Decisions given by a High Court, Income-tax Appellate Tribunal, etc. are binding on all the assessees as well as the Income-tax Authorities that fall under their jurisdiction, unless it is over-ruled by a higher authority. The decision of a High Court is binding on the Tribunal and the Income-tax Authorities situated in the area over which the High Court has jurisdiction.

BASIC CONCEPTS OF INCOME TAX

In order to understand the framework of the Income-tax Act we should know the following important concepts.

1. Assessment year
2. Previous year
3. Person
4. Assessee
5. Income
6. Gross Total Income
7. Total Taxable Income
8. Agricultural Income
9. Casual Income
10. Rounding off of Income
11. Rounding off of Income-tax
12. Capital and Revenue
13. Residential status of an Assessee
14. Incidence of tax
15. Exempted Income

1. Assessment Year [Sec.2 (9)]

- Assessment Year refers to a period of twelve months starting form 1st April and ending on 31st March of the next Year.
- The year in which tax is paid is called Assessment Year
- The Income of the Previous Year is taxed in the Assessment Year.

For example, Assessment Year 2017-18 will commence from 1st April 2017 and ending on 31st March 2018.

2. Previous Year [Sec. 3]

- Previous Year is the financial year immediately preceding the Assessment Year.
- The year in which income is earned is known as previous year (otherwise called as Financial Year).
- It is the *income earning year*.
- The Income of the Previous Year is taxed in the Assessment Year.
  For example, for the Assessment Year 2017-18, previous year is the immediately preceding financial year i.e., 2016-17

a. *Uniform Previous Year*: From the assessment year 1989-90 onwards, all assesses are required to follow the financial year as previous year i.e., 01st April to 31st March

b. *Previous Year for newly set-up Business:* In case of newly set-up business or new source of income, the previous year is determined as follows.

- ✓ If the business is stared on 1st April, the previous year will be 1st April to 31st March.
- ✓ If the business is started on any other date other than 1st April, the previous year will be start from the date of setting up of business to the immediately following March.
  Example.1 If the business is set-up on 28th August 2015, the previous year will start from 28th August 2015 and end on 31st March 2016.
  Example.2 If the business is set-up on 28th February 2016, the previous year will start from 28th February 2016 and end on 31st March 2016.
  A question arises whether a previous year can be less than 12 months

It is learnt from the above example; a previous year can be less the 12 months in case of newly set up business. The second and subsequent previous year is always 12 months (Financial Year)

c. *When the income of the Previous Year is not taxable in the Assessment Year? Or Instances where the previous year and the assessment year is same.*

There is a general rule that the income of the previous year is assessable in the assessment year. But it has some exceptions. They are as follows:

1. *Income of a Non-resident Shipping Business.* Income earned by a Non – Resident from a shipping Business at a port in India will be taxed in the year of earning itself.
2. *Income of persons leaving India either permanently or for a long time* An individual who is leaving India with the intention of not returning to India in the near future, the income of such individual will be assessed in the same year itself.
3. *Income of bodies formed for short duration* Joint Venture etc.,

4. *Income of a person trying to alienate his assets to avoid tax* If in the opinion of the Assessing officer, an Assessee is likely to transfer his property to avoid tax, the total income of such person will be taxed in the current year itself.
5. *Income of discontinued business.* The income of discontinued business/ profession will be taxed in the year in which such business or profession is discontinued.

In the above instances, the income of the previous year may be taxed in the same year instead of the next financial year i.e. Assessment Year.

3. Person [Sec 2(31)]

The term ―Person‖ includes

a. an individual
b. a Hindu Undivided Family (HUF)
c. a Company
d. a firm
e. an association of persons or body of individuals whether incorporated or not
f. a local authority
g. every artificial juridical persons

What do you mean by 'Association of persons' (AOP)

Co-operative societies are examples of association of persons. When persons combine together to carry on a joint enterprise & they do not constitute partnership under the ambit of law, they are assessable as AOP. Receiving income jointly is not the only feature of an AOP. There must be common purpose & common action to achieve the common purpose. i.e. to earn income.

What are the Differences between 'AOP' & 'BOI'

An A.O.P can have Firms, Companies, Associations and individuals as its members. But a ‗Body of Individuals' cannot have non-individuals as its members. Only natural human beings can be members of a Body of individuals.

Company Sec 2(17)

Company means:

i. any Indian Company; or
ii. anybody corporate incorporated by or under law of a country outside India (Foreign company)

Indian Company: Sec 2(26)

Indian company means a company formed and registered under the Indian companies Act or any law relating to Companies in India or a corporation established by or under Central, State or Provincial Act or any institution or Association which is declared by the Board to be a company

Domestic Company Sect 2(22A)

It means an Indian Company or any other company which has made the prescribed arrangement for the Declaration and payment of dividend with in India.

4. Assessee [Sec2 (7)]

Assessee means any person who is liable to pay income-tax or any other sum of money under the Income-tax Act 1961 It includes –

a. Any person who is liable to pay tax or
b. Any person who is liable to pay interest or penalty
c. Any person on whom any proceedings has been taken
d. Any person who has file a loss return
e. Any person who is entitle for refund of tax
f. Any person who is deemed to be an assessee
g. Any person who is assessee-in-default

Types of Assessee: The assesses can be classified as three types

1. Ordinary Assessee
2. Representative Assessee or Deemed Assessee
3. Assessee- in-Default

1. *Ordinary Assessee:* An ordinary assessee is a person who is liable to *pay tax* or liable to *pay interest or penalty* or on who has filed a *loss return* or on whom *any proceedings has been taken* under Income-tax Act.
2. *Representative Assessee/Deemed Assessee:* A Representative Assessee is a person who is responsible for the *income of other persons*. For example a guardian in case of minor child, an agent of non-resident and legal heir in case of deceased person.
3. *Assessee-in-Default:* If any person *fails to fulfil his duty or obligation* under the Income-tax Act 1961, he is termed as assessee-in-default. For example, a person who fails to submit a return of income is an assessee-in-default

5. Income [Sec.2 (24)]

- Income-tax is charged on the income of a person.
- The term income is not defied by the Income-tax Act 1961.
- The dictionary meaning of the income is anything which brings benefit in the form of cash or kind.

The term income includes

i. Profit and gains
ii. Dividend
iii. Voluntary contribution received by a Trust
iv. Any allowances or benefit
v. Capital gain
vi. Insurance profit
vii. Winning from lottery
viii. Amount received under key man insurance policy
ix. Gift of an amount exceeding ` 50,000

Features of Income

The concept of income is not so easy to understand. Any benefit in the form of cash or kind can be considered as income and can be taxed if one is clear about the features of income.

i. Income must be from a definite source

ii. Self-generated income cannot be taxed. Hence income must come from outside.
iii. Legal as well as illegal income is taxed. Any income earned illegally will be taxed
iv. It is not necessary that income should be in the form of money. It can also be in the form of kind
v. Income may be temporary or permanent
vi. Pin Money(Pocket Money) received by housewife is not an income
vii. Any amount received due to devaluation of currency is taxable income
viii. If income is diverted without receiving, it is not taxable income (Diversion of money)
ix. If income is collected and then distributed that income will be taxable income
x. Any loss is also included in income
xi. In case there is any dispute regarding title of the income, the beneficiary will be taxed
xii. Income may be lump sum or instalment
xiii. Revaluation of assets and excess if any cannot be considered as income

6. *Gross Total Income [Sec.14]*

Gross Total income refers to the sum total of various heads of income such as Income from salary, house property, business or profession, capital gains and other sources.

As per Section 14, Income of a person is computed under the following five heads of income namely

- Income from Salary
- Income from House Property
- Income from Business or Profession
- Income from Capital Gains
- Income from Other Sources

The aggregate of income under the above heads are termed as Gross Total Income.

7. *Total Taxable Income.*

Total Income or Total Taxable Income is an income which is arrived after deducting permissible deduction from the Gross Total Income. Total Taxable Income = Gross Total Income – Deduction under section 80C to 80U

8. *Agricultural Income [Section 2(1A)]*

Agricultural income in India is not chargeable to tax. Agricultural Income refers to –

1. Any rent or revenue derived from land, which is situated in India and used for agricultural purposes
2. Any income derived from such land, which is used for agricultural operations.(It includes any process by the cultivator or receiver of rent in kind as well as cash or receipts of sale of such produce)
3. Any income from a farm house.
4. Any income derived from saplings or seedlings grown in a nursery will be deemed as agricultural income

9. Causal Income

Any income accrued by chance or luck which is not regular and non-recurring. But they are taxable under the head _income from other sources‘. E.g.,

1. Winnings from crossword puzzles
2. Races including horse races
3. Card games and other games of any sort or
4. Betting of any nature.

Tax @ 30% is deducted at source from casual incomes.

Illustration

State whether the following receipts are casual income

a) Mr. A received ` 5,000 for acting as a arbitrator without any stipulation as to remuneration

b) Mr. B received ` 5,000 for acting as an arbitrator with a clear and definite stipulation for remuneration

Solution

a) Casual Income as it is non-recurring nature
b) Not a Casual Income as it is recurring nature

10. Rounding –off of Income [Section 288A]

The total taxable income shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of the rupee shall be ignored If the amount is not a multiple of ten,

a) If the amount is five or more, the amount shall be increased to next higher ten rupees
b) If the amount is less than five, the amount shall be reduced to next lower ten rupees

Example: If the total income is ` 7,88,456 it shall be rounded off to ` 7,88,460. If the total income is ` 12,64,333 it shall be rounded off to ` 12,64,330

11. Rounding off of Income-tax [Sec 288B)

The amount payable by the assessee and amount of refund due shall be rounded off to the nearest ten rupees (as same above).

12. Capital and Revenue

Receipts

- Receipts are of two types a) capital receipts and b) revenue receipts.
- The Income-tax Act does not define the terms Capital Receipts and Revenue Receipts.
- Capital receipts are exempt from tax unless they are expressly taxable. (Capital Gains)
- Revenue receipts are taxable unless they are expressly exempt

Now we can understand the above terms from the following paragraph

Capital Receipts vs. Revenue Receipts

1. Fixed capital is a capital receipt whereas circulating capital is revenue receipt
2. Substitution of source (Termination) is a capital receipt whereas substitution of income (Reward) is revenue receipt.
3. Compensation for the surrender of rights is a capital receipts whereas compensation for an agreement is a revenue receipt
4. Income from the sale of any asset is a capital receipts whereas sale of any asset purchased for resale is a revenue receipts
5. Any subsidy or grant received from the government for fixed asset is capital receipts whereas any subsidy or grant received from the government for trading purpose is revenue receipt
6. A receipt under the insurance policy may be capital receipt, if the policy relates to capital asset whereas it may be a revenue receipt if the policy relates to circulating asset.

Expenditure

- Expenditure is of two types a) Capital Expenditure and b) Revenue Expenditure.
- Capital expenditure is not deductible from the gross total income of the business
- Revenue expenditure is deductible from the gross total income of the business

Capital Expenditure Vs. Revenue Expenditure

1. Purchase of fixed assets is a capital expenditure whereas purchase of assets for resale is revenue expenditure
2. Expenditure for increasing the earning capacity of the fixed assets is a capital expenditure whereas expenditure for maintaining the fixed assets is a revenue expenditure
3. A lump sum payment is a capital expenditure whereas installment or small payment is a revenue expenditure
4. Expenditure incurred for cancellation of a full contact is a capital expenditure whereas expenditure incurred for cancellation of a par of the contract is a revenue expenditure

Capital loss Vs. Revenue Loss

A Capital Loss is one which relates to any loss from capital asset whereas a revenue loss is one which arises in the normal course of business

1. Loss on sale of Fixed assets Capital loss
2. Loss on sale of goods Revenue loss
3. Loss sustained by embezzlement by the employee Revenue loss
4. Loss by theft committed by the employee during the business hours Revenue loss
5. Loss of money by cashier on his way to the bank Revenue loss

13. Residential status of an Assessee

Introduction

1. Section 6 of the Income-tax Act 1961 deals with the residential status of the assessee.

2. Income-tax is charged on the basis of income earned by the assessee during the previous year.
3. There are two types of taxpayers. They are
   - Resident in India
   - Non-resident in India
4. Income of a person is determined on the basis of the type of the assessed, (Whether Resident or Non-Resident)
5. Residential Status is determined by number of days the assessee has stayed in India in a particular previous year.
6. All the taxable entities are divided into the following categories for the purpose of determining residential status
   a. An individual;
   b. A Hindu Undivided Family
   c. A firm or Association of persons
   d. A company
   e. Every other person.

Note: An Indian Citizen may be a Non-resident and a Foreigner may be an Indian Resident. Hence Residential status is not related to Citizenship.

Types of Residents

On the basis of residential status, a person may be divided into three categories

i. Resident and Ordinarily Resident in India
ii. Resident and Not Ordinarily Resident in India
iii. Non-Resident in India

In case of Individual and Hindu Undivided Family, the assesses are classified as

i. Resident and Ordinarily Resident in India
ii. Resident and Not Ordinarily Resident in India
iii. Non-Resident in India

In case of all other persons (a firm, an AOP, a company and every other person)

i. Resident in India
ii. Non-Resident in India

Residential Status of an Individual [Sec 6(1)]

Step: 1 – Basic Conditions

An individual is *resident* in India if he satisfies *any one* of the following two conditions:

i. He is in India for *182 days or more* in the relevant previous year *or*
ii. He is in India for *60 days or more* during the relevant previous year and for *365 days or more* during *4 years* Immediately proceeding the previous year.

If he does *not satisfy any one* of the conditions above, he shall be *non-resident.* In other words,

- If an individual satisfies any one of the conditions (i) OR (ii), he is a resident
- If an individual does not satisfies any one or none of the conditions, he is non-resident

Condition (ii) above is not applicable in following cases (means in following cases a person shall be resident of India *only* when he is in India for *182 days or more* in the previous year instead of *60days or more* in the condition (ii)stated above):

a. If *Indian Citizen* leaves India during the previous year for *employment outside India*
b. If *Indian Citizen* leaves India during the previous year as a *member of crew of an Indian Ship*
c. If *Indian citizen* or *person of Indian origin* visits India during previous year.

Other points:

1. Residential status is determined for *every year* separately
2. India includes *territorial waters* of India.
3. Employment includes *self-employment*
4. In computing the period of 180 days, the *day of entry* into India and the *day of exit* from India shall be included.
5. The Number of days stayed in India need not be *at a stretch*.
6. The place of stay in India *need not be the same*. He can stay anywhere in India.
7. The *purpose of visit* to India need not be considered.

Person of Indian origin is a person who *himself* or *any of his parents* or *any of his grandparents* was born in *undivided India* before 15th August 1947.

Step: 2 Additional Conditions

If the assessee is a resident, the next step is to ascertain whether the assessee is ordinarily resident or non-ordinarily resident.

In order to find out whether the assessee is an ordinarily resident or not-ordinarily resident, he has to satisfy the following additional conditions.

a. He has been *resident* in India for at least *2 out of 10* previous years immediately preceding the relevant previous Year *And*

b. He has been in India for *730 days or more* during *7* previous years immediately preceding the relevant previous Year.
   - ➢ If both the conditions are satisfied, he shall be resident ordinarily resident
   - ➢ If he does *not* satisfy *any or both* of the above conditions, he shall be *resident but not ordinarily resident (RNOR)* in India.

Conclusion

Resident ordinarily Resident	Satisfies any one of the basic conditions and both the additional conditions [(i) or (ii) + (a +b)]
Resident but non-ordinarily Resident	satisfies any one of the basic conditions and does not satisfy both or any one of the additional conditions [(i) or (ii) + (a)] [(i) or (ii) + (b)] [(i) or (ii)]
Non-Resident	Does not satisfy any one of the basic conditions

Residential Status of Hindu Undivided Family (HUF) - [Sec6 (2)]

Like Individual, A HUF can either be a resident or non-resident. A resident HUF is either an ordinary resident or not ordinary resident.

Step.1

A HUF is said to be a *resident* in India if the control and management of its affairs is *wholly or partly situated in India*

A HUF is said to be a *non-resident* in India if the control and management of its affairs is *wholly situated outside India*

Step.2

A resident HUF is further divided into ordinary resident or not ordinary resident.

A resident HUF is said to be ordinary resident in India if the ―Karta‖ or ―Manager‖ of the family satisfied the following two additional conditions as laid down in section 6(b)

a. a. He has been *resident* in India for at least *2 out of 10* previous years immediately preceding the relevant previous Year *And*

b. He has been in India for *730 days or more* during *7* previous years immediately preceding the relevant previous Year.

- If the ―Karta‖ or ―Manager‖ of the family satisfy both the conditions, the HUF shall be *resident ordinarily resident*
- If the ―Karta‖ or ―Manager‖ of the family does *not* satisfy *any or both* of the above conditions, the HFU shall be *resident but not ordinarily resident in* India.

Note: What is a control and Management?

Control and management means de facto control and management. Control and management is situated at a place where the head and the directing power are situated. The decisions regarding the affairs of the family are taken at that place.

Residential Status of a Company [Sec 6(3)]

1. An Indian company (any company incorporated in India under the Indian Companies Act) is *always resident* in India
2. A foreign company (any company incorporated outside India) is *resident* if the control and management of its *affairs is situated wholly in India.*
3. A foreign company (any company incorporated outside India) is *non-resident* if the control and management of its *affairs is either wholly or partly situated outside India*

Residential Status of Partnership Firm or Association of persons [Sec 6(4)]

1. A partnership firm or Association of Persons are said to be *resident* in India if the control and management of its affairs was *wholly or partly situated in India.*
2. A partnership firm or association of person are said to be *non-resident* if the control and management of its affairs is situated *wholly outside India.*

Residential status of every other person [Sec 6(4)]

1. Every other person is said to be *resident* in India if the control and management of its *affairs was wholly or partly situated in India.*

2. Every other person is said to be *non-resident* if the control and management of its *affairs is situated wholly outside India.*

14. Incidence of tax

Section 5 deals with the scope of total income. The scope of total income depends on the residential status of a particular person. As per section 5 of the Income-tax Act 1961 the tax incidence depends on the following:

- Residential Status of the Assessee
- The *place* of accrual or receipt of Income
- The *time* of accrual or receipt of Income

In order to understand the relationship between residential status and tax liability, we must understand the meaning of Indian income and foreign income.

Indian Income: The following are the Indian income

1. *Income received or deemed to be received in India* during the previous year and it *accrues or deemed to be accrue in India* during the previous year
2. *Income received or deemed to be received in India* during the previous year but it *accrues or deemed to be accrue outside India* during the previous year
3. *Income received outside India* during the previous year but it *accrues or deemed to accrue in India* during the previous year.

Foreign Income: The following are foreign Income.

1. Income not received in India
2. Income not accrued in India
   (*Income accrued and received outside India*)

Conclusion:

- Indian income is always taxable in India
- Foreign income is taxable in India in the hands of resident ordinarily resident Foreign income is taxable in India in the hands of resident not-ordinarily resident if it is
  - i. Business Income: the business is controlled wholly or partly from India
  - ii. Professional Income: the profession is set up in India.
  - iii. Any other Income: Not Taxable
- Foreign income is not taxable in the hands of non-resident in India.

Rules of Residence

Sl. No	Type of Income	Resident Ordinarily Resident	Resident Not-Ordinarily Resident	Non-Resident
1	Income received or deemed to be received in India	Taxable	Taxable	Taxable
2	Income accrued or deemed to accrue in India	Taxable	Taxable	Taxable
3	Income received or accrued outside			

	India			
	a) From a business or profession Controlled in India	Taxable	Taxable	Not Taxable
	b) From a business or profession controlled outside India	Taxable	Not Taxable	Not Taxable
	c) From any other source	Taxable	Not Taxable	Not Taxable
4	Income received or accrued outside India			
	a) Past untaxed profit brought into India	Not Taxable	Not Taxable	Not Taxable
	b) Earlier year profit later on remitted to India	Not Taxable	Not Taxable	Not Taxable
5	Dividend from an India company is exempt from tax u/s 10(34)	Not Taxable	Not Taxable	Not Taxable

15. Exempted Income

Every income earned by the assessee in India is taxable unless it is specifically exempted by the Income-tax Act 1961. Section 10 of the Income-tax Act deals with the income which are exempt from income-tax. The following are some of the exempted incomes.

Sl. No	Exempted Income	Section
1	Agriculture Income: Any income derived from the land situated in India	10(1)
2	Sum received by the member from HUF Any income received by the member of HUF from the income of the family	10(2)
3	Share of profit received by the partner from a Firm Any amount received by the partner as a share of profit from a Firm	10(3)
4	Interests received by a Non-Resident: Any interest received by a non-resident from certain prescribed securities	10(4)
5	Leave Travel Concession: If an employee receives Leave Travel Concession from his employer once in Four years, he can claim exemption subject to the following: If the journey is performed by Air -Economy Fare If the journey is performed by Rail – Air-conditioned first class rail fare If the journey is performed by any other mode – First class or deluxe fare	10(5)
6	Foreign Allowance paid to Indian Government employees Any allowances or perquisites paid or allowed to employees of government of India working abroad for rendering services outside India.	10(7)
7	Death-cum-Retirement Gratuity	10(10)

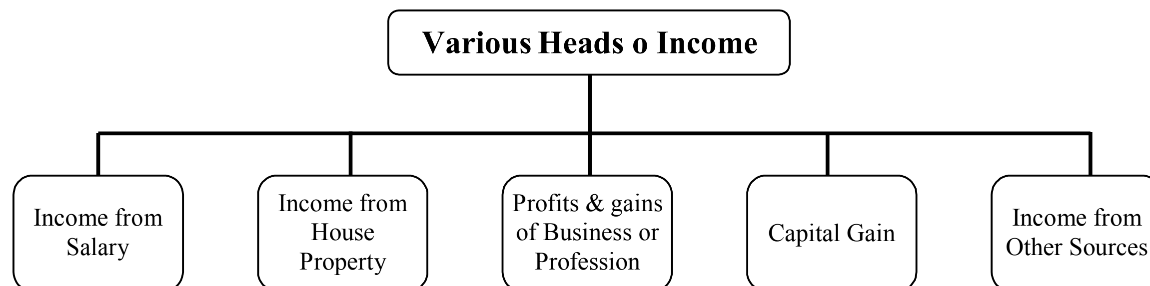
Sl. No	Exempted Income	Section
	Gratuity is a lump sum payment made by an employer to his employee at The time of death or retirement from service	
8	Commuted Pension Commuted pension refers to lump sum amount received by the employee from his employer in lieu of periodical pension.	10(10A)
9	Leave Salary Leave Salary refers to the amount received by the employee in respect of leave not availed by the employee during the employment	10(10AA)
10	Compensation for voluntary Retirement Any amount received by the employee at the time of voluntary retirement	10(10C)
11	Life Insurance Policy Amount Any amount received from Life Insurance policy including bonus (Other than Key man Insurance Policy)	10(10D)
12	Amount received from Statutory or Public Provident Fund	10(11)
13	Amount received from Recognised Provident Fund	10(12)
14	House Rent Allowance It is allowance paid to meet cost of rent of the house. It is exempted to certain extent	10(13A)
15	Special Allowance Certain allowances such as transport allowance conveyance allowance, travelling allowance etc	10(14)
16	Educational Scholarship: Scholarship granted by the government or any organisation to meet cost of education	10(16)
17	Daily Allowance of MP‘s and MLA‘s Daily Allowance received by the MP,MLA and MLC	10(17)
18	Pension received by certain awardees/member of their family Any income by way of pension/family pension received by the individual or any member of his family (Param Vir Chakar Maha Vir Chakra)	10(18)
19	Income of local authority: Income earned by Local authority like municipal corporation, municipality, Panchayat, etc., from supply of water, electricity and house property	10(20)
20	Income of approved Scientific Research Association	10(21)
21	Income of public charitable institutions, educational institutions and hospitals	10(23C)
22	Income of Trade Union	10(24)
23	Income of Statutory Provident fund, recognised provident fund, approved gratuity fund etc	10(25)
24	Subsidy received from Tea Board	10(30)
25	Income of a Minor child (` 1500 each child)	10(32)
26	Dividend Income from domestic Companies	10(34)

VARIOUS HEADS OF INCOME UNDER INCOME-TAX

As per Section 14 of the Income Tax Act, for the purpose of charging of tax and computation of total income, all incomes are classified under the following 5 Heads of Income:-

1. Income from Salaries
2. Income from House Property
3. Profits and Gains of Business or Profession
4. Capital Gains
5. Income from Other Sources

The total income under all these 5 heads of Income is then added and disclosed in the Income Tax Return. The tax on the total taxable income (after allowing deductions) is then calculated as the Income Tax Slab Rates of the taxpayer.



1: Income from Salaries

Introduction and Meaning:

Salary is a consideration received by the employee for the services rendered to employer. Section 15 of the Income-tax Act 1961 deals with the provisions regarding taxability of salary income. To understand the meaning of salary, one has to keep in mind the following points.

1. There exists an employer-employee relationship between the payer and payee. (Master-servant relationship)
2. There is no difference between salary and wages. Both are the compensation paid for work done or services rendered. Salary is paid for administrative i.e., non-manual work whereas wages is paid for manual service.
3. Salary received from more than one employer during the same previous year is taxable under the head salaries.
4. Salary income must be real and not fictitious
5. If an employee foregoes his salary, it does not mean that salary so foregone is not taxable. Once salary has accrued to an employee its subsequent waiver does not make it exempt from liability.
6. If an employee surrenders his salary to the Government, the salary so surrendered would be excluded from taxable salary.
7. If an employee receives tax-free salary, he has to include the tax –free salary in his taxable income and claim the tax paid by the employer.

Important Notes:

1. Salary received by the partner from his partnership firm for the services rendered is not taxable under the head salary as there is no

employer- employee relationship. But it is taxable under the head Business and Profession.

2. Pension is taxable under the head income from salary whereas family pension received by a widow is taxable under the head income from other sources as there is no employer-employee relationship.
3. Salary received by MP, MLA is taxable under the head income from other sources as there is no employer-employee relationship.
4. Remuneration received for paper valuation by the profession from university or board is taxable under the head income from other sources as there is no employer-employee relationship.

Definition of Salary

As per Section 17(1), salary is defined to include the following

a) Wages;
b) Any annuity or pension;
c) Any gratuity;
d) Any fees, commission;
e) Perquisites or profits in lieu of salary or wages;
f) Any advance salary;
g) Any leave salary;
h) Any amount credited to recognised provident fund
i) Any amount of annual accretion to the balance standing in recognised provident fund
j) Contribution made to Notified pension scheme

Basis of Charge (Section 15)

1. As per section 15, salary consists of;
    a) Any salary due from the employer whether actually paid or not
    b) Any salary paid by the employer whether due or not due
    c) Any arrears of salary paid in the previous year
2. Salary income is taxable on due or receipt basis whichever is earlier
3. Accounting method is not relevant

2. Income from House Property

Tax on Income from House Property is the tax on rental income which is being earned from the House Property. However, in case the property is not being rented out, tax would be levied on the expected rent that would have been received if this property was rented out.

Income from House Property is perhaps the only income that is charged to tax on a notional basis. Tax under this head does not only include Income from letting out of House Property but also includes Income from letting out of Commercial Properties and all types of properties. Various Deductions like Standard Deduction, Deduction for Municipal Taxes paid and Deduction for Interest on Home Loan is also allowed under this head of income.

House property Chargeable to income-tax [Section 22]

(i) The process of computation of income under the head –Income from house property‖ starts with the determination of annual value of the

property. The concept of annual value and the method of determination is laid down in section 23.

(ii) The annual value of any property comprising of building or land appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head ―Income from house property‖.

Conditions for Chargeability

(i) Property should consist of any building or land appurtenant thereto.
  (a) Buildings include not only residential buildings, but also factory buildings, offices, shops, godowns and other commercial premises.
  (b) Land appurtenant means land connected with the building like garden, garage etc.
  (c) Income from letting out of vacant land is, however, taxable under the head ―Income from other sources‖.

(ii) Assessee must be the owner of the property.
  (i) Owner is the person who is entitled to receive income from the property in his own right.
  (ii) The requirement of registration of the sale deed is not warranted.
  (iii) Ownership includes both free-hold and lease-hold rights.
  (iv) Ownership includes deemed ownership.
  (v) The person who owns the building need not also be the owner of the land upon which it stands.
  (vi) The assessee must be the owner of the house property during the previous year. It is not material whether he is the owner in the assessment year.
  (vii) If the title of the ownership of the property is under dispute in a court of law, the decision as to who will be the owner chargeable to income-tax under section 22 will be of the Income-tax Department till the court gives its decision to the suit filed in respect of such property.

(iii) The property may be used for any purpose, but it should not be used by the owner for the purpose of any business or profession carried on by him, the profit of which is chargeable to tax.

(iv) Property held as stock-in-trade etc.: Annual value of house property will be charged under the head ―Income from house property‖ in the following cases also -
  (a) Where It Is held by the assessee as stock-in-trade of a business;
  (b) Where the assessee is engaged in the business of letting out of property on rent;

Conditions for Taxability [Section 22]

Basis of Charge

1. The property must consist of Building or Land appurtenant thereto
2. The assessee must be the owner of such property
3. The property is not used for assessee‘s own business or profession

Rental income received by a tenant from sub-letting cannot be charged to tax under the head ―Income from house property‖. Such income is taxable under the head ―Income from other sources‖ In case of rental

income from shop and the shop being a building, rental income will be charged to tax under the head ―Income from house property‖.

Meaning of the word ―Land appurtenant thereto‖

Section 22 defines that rental income includes Rental income from a property being building or land appurtenant thereto is charged to tax under the head ―Income from house property‖. Thus we have to understand the meaning of ―Land appurtenant thereto‖.

In case of Residential Buildings	land appurtenant to Building includes compound, play-ground, kitchen-garden, country yard etc.,
In case of Non-Residential Buildings	Land appurtenant to Building includes Car parking spaces, drying grounds, play-grounds, connecting roads in the factory etc.,

- Income from Building or land appurtenant thereto is taxable under this head.
- Income from vacant land is not taxable under this head and is taxable under the head Income from other sources.

Exempted House Property

1. One Palace of Ex-Ruler
2. Income from House Property owned by the Local Authority
3. Income from House Property owned by Approved Scientific Research Association
4. Income from House Property owned by Khadi and Village Industries Board
5. Income from House Property owned by Educational Institutions, Hospitals etc,
6. Income from House Property owned by a Registered Trade Union
7. Income from House Property owned by a Charitable Trust
8. Income from House Property owned by a Political Party
9. Income from House Property used for assessee‘s own business or profession
10. Income from one self-occupied house

Meaning of Rent [Section 23]

1. Municipal Rent/Municipal Value: It is the rent or value determined by the Local Authority for the purpose of levying municipal tax or house tax
2. Fair Rent: It is the reasonable expected rent which the property can fetch for a similar property in the same or similar locality with same facilities
3. Standard Rent: It is the maximum rent which a person can legally recover from his tenant under the Rent Control Act.
4. Actual Rent: It means the rent for which the property is let out during the year or the rent actually received by the assessee from the tenant

Annual Value [Section 23(1)]

Income from house property is computed on the basis of the Annual Value of the property. Hence it is very important to understand the term Annual value and determination of Annual Value of the House Property. In order to compute income from house property, house property shall be divided into following categories:

1. Houses which are let out throughout the year
2. Houses which are partly let out and partly vacant or vacant throughout the year.
3. House which is self occupied
4. Houses which are partly let out and partly self-occupied
5. More than one house which are self occupied
6. House property divided into different portions

The annual value of any property shall be deemed to be higher of:

a. The sum for which the property might reasonably be expected to let from year to year i.e. expected rent.
b. Actual rent received or receivable
c. Where the property is let and was vacant during the whole or any part of the previous year and owing to Such vacancy, the actual rent received or receivable is less than expected rent, and then the annual value shall be Actual rent received or receivable.

Annual value may be Gross Annual Value and Net Annual Value

UNIT II

Tax Planning in relation to Business income, Capital gains and other sources – Income Tax authorities – Tax deducted at source and advance payment of Tax.

Heads of Income - 3: Profit and Gains from Business or Profession

Business

Business means the purchase and sale or manufacture of a commodity with a view to make profit. Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade Commerce or manufacture.

Profession

Profession means the activities for earning livelihood which require intellectual skill or manual skill e.g., lawyer, Doctor, auditor, engineer and so on. Profession includes vacation.

Vacation

Vacation means activities which are performed in order to earn livelihood e.g., actor, dancer, artist and so on

Income chargeable to tax under this head [Section 28]

The following incomes are chargeable to income tax under this head

1. Profit and Gains of any business or profession
2. Any compensation received for termination or modification of the terms and conditions of a Any contract or agreement.
2. Income derived by any association for specific services to its members
3. Profit on sale of a licence under customs
4. Cash assistance received under export scheme
5. Repayment or refund of customs duty under export
6. Profit on transfer of the Duty Entitlement Pass Book Scheme under export and import policy
7. Interest Salary Commission or remuneration received by a partner of a Firm from such firm
8. Sum received under Key man Insurance policy, including sum allocated by way of Bonus
9. Sum received in cash or in kind under an agreement for not carrying out of any activity of business or not sharing any know-how, patents, copyrights, trademark, licence or franchise etc.

Important Rules regarding assessment of Profit and gains of business or profession

1. 1 Business or profession should be carried on by the assessee
2. The aggregate of income from all business or profession carried on by the assessee shall be charged to Tax under this head
3. The assessee should have carried on the business or profession for any time during the year
4. Tax is payable on the income of every business or profession whether legal or illegal

Computation of profits of business or profession sec 29

The profit and gains of business or profession are computed in accordance with the provisions contained in

Section 30 to 43D. The general commercial principles are as under:

1. Profit should be computed according to the method of accounting regularly employed by the assessee
2. Only those expenses and losses which are incurred during the relevant previous year.
3. These expenses and losses should be incidental to the operation of the business. (embezzlement of cash by an employee during the course of business is a loss incidental to the business)
4. Only expenses incurred in connection with the business of the assessee are allowed as deductions.

Expenses Expressly Allowed

1. Expenses in relation to Building [Section 30]

Condition	Deduction
The building should be used for the purpose of business or profession during the relevant previous year	Actual rent paid as tenant, Current Repairs, Land Revenue or Local Taxes or Municipal Taxes and Insurance Premium
If the building is partly used for business or profession and partly as dwelling house	The proportionate expenses relating to the business can be deducted
Any expenditure in the nature of Capital Expenditure	No deduction will be allowed

2. Expenses in relation to Plant and Machinery or Furniture [Section 31]

Condition	Deduction
The Plant and Machinery or Furniture should be used for the purpose of business or profession	Current Repairs, Insurance Premium and Hire Charges
If the Plant and Machinery or Furniture are partly used for business or profession	The proportionate expenses relating to the business can be deducted
Any expenditure in the nature of Capital Expenditure	No deduction will be allowed

3. Depreciation on Assets [Section 32]

Condition	Deduction
Asset may be *Tangible Asset* (Building, Machinery, Plant and Furniture) or *Intangible Asset* (Know-how, Patent, Copyright, Trademark, etc.,)	
The Assets should be owned wholly	Depreciation shall be allowed at the

Condition	Deduction
or partly by the assessee	rates specified in the Income-tax Rules 1962
The Assets should be used for the purpose of business or profession. If the assessee does not claim depreciation, it shall be deemed to have been claimed	
a. Depreciation in case of newly acquired assets	
If the asset is newly purchased or acquired during the previous year and put into use for the purpose of business or profession during the same previous year	If the asset is used for more than 180 days, full depreciation is allowed as deduction
b. In case of leasehold building is used for the purpose of business or profession and any capital expenditure is incurred in relation to the leasehold asset	If the asset is used for less than 180 days, 50% of the depreciation is allowed as deduction
c. Assets purchased under Hire Purchase/ Installment Scheme	Depreciation is allowed on such capital expenditure as if such structure is owned by the assessee
d. Assets of Power Sector unites engaged in the business of generation and distribution of power	Instalment system – Depreciation is allowed on the entire purchase price
e. Additional Depreciation for newly acquired Plant and Machinery	Hire Purchase system – Depreciation is allowed on the payment made toward cost of the assets
i) It is applicable for the assesses engaged in the business of manufacture or production of any article or generation and distribution of power and,	Deprecation is provided under Straight Line Method
ii) the plant and machinery should be acquired and installed after 31.03.2005	Additional Depreciation is allowed @ 20% of the actual cost of the machinery
	If the machinery is used less than 180 days 10% depreciation is allowed in the year of acquisition and the balance 10% is allowed in the immediately succeeding year.

4. Expenditure on Scientific Research [Section 35]

Condition	Deduction
1. Expenditure on In-House Research [Section 35(1) and 35(2)]	Both Revenue and Capital expenditure incurred on scientific research is allowed as a deduction

Condition	Deduction
	All revenue or capital expenditure incurred during 3 years immediately preceding for the date of commencement of business will be allowed as deduction Cost of the land is not allowed as deduction The assessee is not entitled to claim depreciation on the capital expenditure [Section 35(2)] as 100% deduction is allowed.
2. Expenditure on In-House Research for companies in Special Business [Section 35(2AB] In case of a company engaged in the business of Bio-Technology, or manufacture or production of any Chemical, drugs, pharmaceutical, electronic equipments, computers and telecommunication equipments etc.,	200% of expenditure incurred
3. Expenditure by way of contribution to Scientific research	
a. Contribution made to any research association, university, college or any other institution for *scientific research*	175% of contribution made
b. Contribution made to any research association, university, college or any other institution for *statistical research*	125% of contribution made
c. Contribution made to any company for scientific research	125% of contribution made
d. Contribution made to National Laboratory or University or IIT for scientific research	200% of contribution made

5. *Preliminary Expenses [Section 35D*]

Condition	Deduction
This section applies to Indian company or non-corporate resident assessee. Preliminary Expenses includes • Preparation of Feasibility Report, project report • Conducting market survey • Legal expenses for drafting any agreement for setting up of any business	Amount of Deduction is 5% of cost of project or actual expenditure It should be deducted in 5 equal

• Legal charges for drafting and cost of printing Memorandum and Articles of Association • Fees for registering company under Companies Act • Cost of issue of shares or debentures or underwriting commission or brokerage etc	annual instalments i.e., 1/5 th or 20% every year

6. Other Deductions [Section 36]

Expenditure	Deduction	Conditions
Insurance Premium on stock	Actual amount is deductible	Paid during the previous year
Insurance Premium on health of the employees	Actual amount is deductible	Paid by mode other than cash during the previous year
Bonus or commission paid to employees	Actual amount is deductible	only if it is payable otherwise as profit or dividend and should be paid before due date of filing the return of income
Interest on Borrowed Capital	Actual amount of interest paid is deductible	Money should be borrowed for the purpose of business/ profession If is borrowed from financial institution or a Term Loan from Banks, interest should be paid before due date of filing return of income. Interest on delayed payment is not deductible.
Contribution to any provident fund/ superannuation fund /pension fund	Actual amount paid is deductible In case of Pension Fund 10% of salary of the employee is allowed as deduction (Salary means Basic + DA if forms part of salary)	Payment should be made before the due date of filing return of income
Bad Debts		Debt must be incidental to the business Debt must be incurred during ordinary course of business It should be written off as irrecoverable in the books

		of the Assessee.
Securities Transaction Tax	Actual amount paid is deductible	Income from such transaction is included in the income of the business
Commodities Transaction Tax	Actual amount paid is deductible	Income from such transaction is included in the income of the business

7. Other General Expenditure [Section 37]

Conditions for allowability
1. The expenditure should be revenue expenditure 2. It should be incurred during the previous year 3. It should relates to the business or profession carried on by the assessee 4. It should have been expended wholly or exclusively for the purpose of such business or profession 5. It should not be covered under section 30-36 6. It should not be a capital expenditure 7. It should not be a personal expenditure 8. It should not be incurred for any purpose which is an offence or in contravention of any provisions of law

Allowable Expenditure under the instruction of CBDT
1. Deepavali and Muharat Expenses 2. Telephone deposit paid under Tatkal Telephone Deposit Scheme 3. Telephone Deposit under Own Your Telephone(OYT) Scheme 4. Insurance Premium paid for loss of profits. 5. Training Expenditure on Apprentices 6. Professional Tax paid 7. Annual listing fees paid to Stock Exchange 8. Amount paid to Registrar of Companies (ROC)

Allowable Expenditure as per Court Decisions	Head of Account	Case Law
1. Depreciation on account of enhanced cost of asset due to fluctuation in exchange rate is allowed	Depreciation	Maruthi Udyog Ltd.,
2. Amount paid by the company for Flag Day Fund on Government's Appeal is allowed	General Welfare Expenses	Kattabomman Transport Corporation Ltd.,
3. Contribution towards Export Promotion Fund incurred wholly and exclusively incurred for the purpose of business ins allowed	General Welfare Expenses	

4. Purchase of bus by the assessee and donating to the school where the children of its employees were studying	Employees welfare Expenses	Rajasthan Spinning and Weaving Mills Ltd.,
5. Key man Insurance Policy premium is allowed	Employees Welfare Expenses	Rajan Nanda Vs. CIT

Losses Allowable as deduction
1. Loss of stock in trade by fire and other natural calamities 2. Loss on account of robbery or theft provided it is in the course of business and incidental to the trade 3. Loss on Chits (the money received should be utilized in the business) 4. Loss on account of exchange rate fluctuations 5. Loss caused due to breach of contract for delivery of goods 6. Loss on account of embezzlement 7. Advance given to employees which is irrecoverable

Losses Not Allowable as deduction
1. Loss incurred before incorporation or before commencement of business 2. Penalty for infraction of Laws 3. Loss incurred due to damage, destruction of capital assets 4. Loss which is not incidental to the business 5. Loss incurred in closing down of business 6. Anticipated losses 7. Loss of sale of investments/Securities

8. Disallowances/ Inadmissible Expenses or Payments

Section	Expenses	Remarks
37	Advertisement in souvenir, Boucher, Pamphlet etc of the Political party	Amount paid for towards advertisement is fully disallowed
40(a)(i)	Interest, Royalty, Fees for Technical Services Payable • Outside India • In India to Non-resident On which • tax has not been deducted or • tax has been deducted but not paid to Government before the due date	The entire amount of interest, royalty, fees and such other sum is fully disallowed in the year in which tax has not been deducted or paid If the tax has been deducted and paid to the government in the subsequent year, deduction is allowed in the year in which such tax has been paid
40(a)(ia)	Interest, Commission or Brokerage, Rent, Royalty, Fees for technical services payable to any Resident on which	The entire amount of such expenditure is disallowed in the year in which tax has not been deducted or paid

	tax is deductible • tax has not been deducted or • tax has been deducted but not paid to Government before the due date	If the tax has been deducted and paid to the government in the subsequent year, 30% of such expenses is allowed in the year in which tax has paid
40(a)(iii)	Salary paid outside India or to Non-Resident without Tax Deducted at Source (TDS)	The entire amount of Salary is disallowed
40(a)(ic)	Fringe Benefit Tax	Fully Disallowed
40(a)(iia)	Wealth Tax	Fully Disallowed
40(a)(v)	Tax of the employee paid by the employer	Fully Disallowed
40(b)	Interest and Remuneration to Partners a. Payment of Interest to partners Conditions: ✓ Payment of interest to partners should be authorised by the Partnership Deed ✓ The maximum rate of interest shall be 12% p.a (simple interest) b. Payment of Remuneration to partners Any Salary, Bonus, Commission, remuneration paid by the Firm to a Partner is allowable subject to the following Conditions ✓ Payment should be authorised by the Partnership Deed ✓ It should be paid to a Working partner Working Partner is a partner who is actively engaged in conducting the affairs of the business or profession of the Firm.	Any payment which does not satisfy the conditions specified in section 40(b) is disallowed. Overall remuneration to the partners shall be within the limit prescribed by section 40(b) Provisions of Section 40(b) a. Maximum Permissible Remuneration On the First ` 3,00,000 - ` 1,50,000 or 90% of Book Profit whichever is higher On the balance of Book - 60% of Book Profit The Maximum Permissible Remuneration is derived on the basis of book profit of the Firm b. Computation of Book Profit 1. Find out the Net profit as per the Profit and Loss account of the Firm 2. Add all inadmissible or disallowed expenses 3. Add Interest on partner's capital and partners remuneration charged to profit and loss account 4. The result is the Book

		Profit
40(ba)	<u>Remuneration to the member of AOP and BOI</u>	Any interest, salary, bonus, commission or remuneration to a member of such association or body shall not be allowed as a deduction
40 A (2)	<u>Payment made to Relative</u>	Any payment to relative or to an associate concern shall be disallowed if it is considered to be excessive or unreasonable Relative to an individual means spouse, brother, sister or any lineal ascendant or descendant of the individual
40 A (3)	<u>Payment exceeding ` 20,000 in cash</u> • Any Expenditure in respective of which a payment or aggregate of payments made to a single person in a day is made exceeding ` 20,000 (10,000 with effect from 01.04.2018) otherwise than by way of Account Payee Cheque/Demand Draft or through electronic clearing system.	• Where the payment is made for plying, hiring or leasing goods carriages (Transporters), the limit of disallowance shall be ` 35,000 instead of ` 20,000 • Where the expenditure is allowed on due basis i.e., outstanding expenses and the payment is made in the subsequent period in cash, such expenditure will be disallowed in the year in which the payment is made. • If the payment is made in cash, the entire expenditure is disallowed <u>Exception to the above rule</u> (Rule 6DD) (Notification No.97/2008/ 10.10.2008) In the following cases even if the payment in cash exceeds ` 25000/ 35,000 (in case of transporters), it shall not be disallowed i. Payment made to Reserve Bank of India, State Bank of India including Cooperative Bank, Land

		Mortgage Bank, Primary Credit Society etc i. Payment made to Banks and Life Insurance Corporation of India. i. Payment made to Government v. Payment through Banking system i.e., Letter of Credit, Telephonic Transfer, Bill of Exchange, Electronic Transfer, Credit Card and Debit Card v. Payment made to cultivator, grower or producer of agricultural ,forest, animal husbandry, dairy, poultry or fish products and horticulture products i. Payments made to purchaser of goods in cottage industry without the aid of power i. Payment made in a place where banking facility is not available i. Payment on a day on which bank were closed due to holiday or strike x. Payment in respect of retirement benefit or gratuity to an employer or his legal heirs provided such sum does not exceeds ` 50,000 x. Payment through Authorised Dealer or Money Changer against purchase of Foreign Currency or Travellers Cheques.

9. Deduction on the basis of actual payment [Section 43B]

Deduction on Actual Payment
1. Tax, Duty, Cess or any Fees payable under any Law 2. Contribution made by the Employer by way of Contribution to Provident

Fund or Superannuation Fund or any other Welfare Fund 3. Bonus or commission payable to Employees 4. Interest payable on loan or Borrowing from Public Financial Institution or State Financial Corporation 5. Interest on any loan /advance from a Scheduled Bank or any cooperative Bank (with effect from 01.04.2018) 6. Any sum payable by an employer in lieu of earned leave • Deduction is allowed only if the payment is made either during the previous year or on or before the due date of filing of Return of Income • If the payment is made after the due date of filing Return of Income, the deduction is allowed in the year of payment

10. Profit chargeable to Tax or Deemed Business Income [Section 41]

Business Income under Section 41
1. If any amount allowed as deduction as a loss or expenses in an earlier year is recovered in a subsequent year, the amount so recovered shall be treated as deemed profit and chargeable to income-tax in the year in which it is recovered. 2. Sale of asset used for scientific research on which 100% depreciation is allowed in the year of purchase 3. Bad Debts allowed as a deduction in earlier year is recovered in subsequent year 4. If the business is discontinued in earlier year and any sum is recovered afterwards, it will be deemed to the income of the year in which the income is received. 5. Any amount withdrawn from Special reserved

11. Maintenance of Books of account [Section 44AA]

Maintenance of Accounts	
1. Books of Account includes Cash Book, Bank Book, Day Book, Journals, Ledgers whether kept in written form or electronic form 2. For the purpose of maintenance of books of accounts, the business or profession has been classified into the following categories i) Specified Professionals ii) Non-specified professional or Business 3. Specified professionals are the asseessee carrying on profession of Law, Medicine, Accountancy, Architecture, Engineering, Technical Consultancy, Interior Decoration, Authorised Representative, Film artists, Company Secretary 4. Books of accounts has to be maintained for a period of six years 5. If the books of accounts has not been maintained as per section 44 AA, a penalty of ` 25,000 is levied under section 271A of the Income-tax Act 1961 6. assesses maintaining books of accounts only can claim deductions and rebates under the Income-tax Act 1961	
Compulsory Maintenance of Accounts	
1. Specified Professionals	Gross receipts exceeds ` 1,50,000 in any one of the three years immediately preceding the previous year

2. Non specified Professionals or Business	Income exceeds ` 1,20,000 or total sales or gross exceeds ` 10,00,000 in any one of the three years immediately preceding the previous year

12. Compulsory Audit of Accounts or Tax Audit under section 44AB

Criteria for Tax Audit	
1. Assessees carrying on any business	If the Total Sales/Turnover/Gross Receipts exceeds ` 1 crore
2. Assessees carrying on any Profession	If Gross Receipts exceeds ` 50 Lakhs
3. Assessee carrying on any business referred to under section 44AD	If the assessee declares income lower than the limit prescribed under section 44AD (8% of Sales)
4. Assessee carrying on any profession referred to under section 44ADA	If the assessee declares income lower than the limit prescribed under section 44ADA (50% of Gross Receipts)

i. If the total turnover in case of business and Gross receipts in case of profession exceeds the limits prescribed under section 44AB (mention in the above table), it is obligatory for the assessee to get his accounts audited by an Accountant as explained in Section 288 of the Income-tax Act 1961 within the specified date.

ii. In case of the assesses specified in section 44AD and 44ADA, if the assessee declare an income below the limit prescribed in respective section, he shall get his accounts audited by a chartered accountant with the specified date.

iii. Accountant within the meaning of section 288 of the Income-tax Act 1961 means a ―Chartered Accountant‖ and Specified date means the due date of furnishing the Return of Income under section 139(1) of the Income-tax Act 1961 i.e., 30th September

iv. Assessee is liable to pay a penalty at 0.5% of Gross Turnover/Receipts or ` 150,000 whichever is less if he fails to get his accounts audited and to obtain Tax Audit Report

14. Presumptive Taxation (Section 44AD/ADA/AE)

Income from Specified Business under section 44AD		
Applicability (Eligible Assessees)	Eligible Business	Presumptive Income
Resident Individual Resident HUF Resident Partnership Firm	Any Business other than business of plying, hiring or leasing goods carriages (Transport) Total Turnover/Sales/ Gross Receipts does not exceed ` 2 crore (1 Crore for the AY 2016-17)	8% of Total Turnover or Higher sum declared by the assessee

Special provisions for computing profit and gains of eligible business

i. Income from such business shall be deemed to be 8% of total turnover or gross receipts
ii. This provisions are applicable only to eligible assesses
iii. This section is applicable to civil construction also. Civil Construction includes construction or repair of any building, bridge, dam or other structure or of any canal or road and works contract (electrical, plumbing etc.,)
iv. No deduction under sections 30 to 38 shall be allowed
v. It shall be deemed that the assessee had claimed the depreciation on the assets.
vi. If the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed aforesaid subject to the provision of section 40(b)
vii. The assessee shall not be required to pay advance tax
viii. The scheme is optional and if the assessee claims that the profit from eligible business is less than the deemed profit and exceed the maximum amount which is not chargeable to tax, he has to maintain proper books of account and get the books audited by a chartered accountant and the report must be furnished to assessing officer
ix. Deduction under section 80C to 80U shall be available to the assessee

Income from Specified Business under section 44ADA(w.e.f AY 2017-18)		
Applicability (Eligible assessees)	Eligible Business	Presumptive Income
Resident in India engaged in any profession	Any profession Gross Receipts from such profession does not exceed ` 50 Lakhs	50% of gross receipts or Higher sum declared by the assessee

Special provisions for computing profit and gains of eligible business

i. Income from such business shall be deemed to be 50% of gross receipts
ii. No deduction under sections 30 to 38 shall be allowed
iii. It shall be deemed that the assessee had claimed the depreciation on the assets.
iv. If the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed aforesaid subject to the provision of section 40(b)
v. The assessee shall not be required to pay advance tax
vi. The scheme is optional and if the assessee claims that the profit from eligible business is less than the deemed profit and exceed the maximum amount which is not chargeable to tax, he has to maintain proper books of account and get the books audited by a chartered accountant and the report must be furnished to assessing officer
vii. Deduction under section 80C to 80U shall be available to the assessee.

Income from Specified Business under section 44AE		
Applicability (Eligible Assessees)	Eligible Business	Presumptive Income
Resident in India	Engaged in the business of plying, hiring or leasing of goods carriages (trucks) owning not more than 10 goods carriages	*Higher* of the following limits shall be taken as income i ` 7500 p.m. per vehicle ii Actual income earned or higher sum declared by the assessee

Special provisions for computing profit and gains of eligible business

i. No deduction under sections 30 to 38 shall be allowed
ii. It shall be deemed that the assessee had claimed the depreciation on the assets.
iii. If the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed aforesaid subject to the provision of section 40(b)
iv. The assessee shall not be required to pay advance tax
v. The scheme is optional and if the assessee claims that the profit from eligible business is less than the deemed profit and exceed the maximum amount which is not chargeable to tax, he has to maintain proper books of account and get the books audited by a chartered accountant and the report must be furnished to assessing officer
vi. Deduction under section 80C to 80U shall be available to the assessee

15. Special provisions for commission Agents

Income of commission Agents		
1. Commission earned is less than ` 60, 000: If the commission amount does not exceed ` 60,000, the agents do not maintain detailed accounts of expenditure and an ad hoc deduction will be available.		
Agents	Deduction	Maximum Deduction
1. LIC Agents		
a. **First Year‘s Commission**	50% of Commission	` 20,000
b. Renewal Commission	15% of Commission	` 20,000
c. Where separate figures are not available for a and b	33.33% of total Commission	` 20,000
d. Bonus Commission	No deduction	Nil
2. Authorised Agents of Unit Trust of India	50% of Commission	Not specified
3. Authorised Agents for Specified Govt. Securities	50% of Commission	Not specified
4. Authorised Agents of Mutual Funds	50% of Commission	Not specified

CAPITAL GAINS

Basis of Charge

Any profits or gains arising from the *transfer* of a *capital asset* effected in the previous year, shall be chargeable to income-tax under the head ‗Capital Gains'. It shall be deemed to be the income of the previous year in which the transfer took place unless such gain is exempt u/s 54.

Meaning of Capital Asset

Capital Asset means property of any kind held by an assessee whether

- connected with his business, profession or not
- movable or immovable
- tangible or intangible
- fixed or floating

Capital Asset also includes Goodwill, Leasehold Rights, Jewellery, Shares Licence and business undertakings

Assets which are not considered as Capital Asset/ Assets not considered as capital assets

1) *Stock in trade*

2) *Personal effects* i.e. movable property (including wearing apparel and furniture), held for *personal use* by the assessee or any member of his family dependant on him. However, *following assets are treated as capital assets:*
   i. *Jewellery,* It includes ornaments made of gold, silver or platinum or any other precious metal, precious or semi-precious stones
   ii. Archaeological collections
   iii. Drawings
   iv. Paintings
   v. Sculptures or
   vi. Any work of art

3) Agricultural land in India which is not situated in Urban area i.e. *rural agricultural land* Rural agricultural land means an agricultural land in India
   - if situated in any area which is comprised within the jurisdiction of a municipality and its population should be *less than 10,000* or
   - Situated at least *8 km away* from the limits of municipality.

4) *Gold Deposits Bonds* issued under Gold Deposit Scheme, 1999.

5) 6 ½ % Gold Bonds 1977, 7% Gold Bonds 1980, National Defence Gold Bonds 1980 issued by Central Government

6) Special Bearer Bonds 1991

7) Deposit Certificates issued under Gold Monetization Scheme 2015

Stock- in Trade includes consumable stores and raw materials held for the purpose of business or profession.

Personal effects includes

a) any movable property for personal use
b) wearing apparel
c) furniture
d) Car or any other vehicles
e) Refrigerator
f) Television
g) Electrical appliances

Personal effects excludes

a) Jewellery
b) Archaeological collections
c) Drawings
d) paintings
e) sculptures
f) any art of work

Note: Jewellery means any ornaments made of Gold, Silver, Platinum or any other precious metal whether or not working in any wearing apparel.

Precious or semi-precious stones whether or not set in any furniture, utensil or any article or worked into any wearing apparel.

Gold and Silver coins or Bars used for pooja are Capital assets.

Agricultural land situated within jurisdiction of the municipal or cantonment board is a capital asset. Agricultural land situated within a distance of 8 kilometer from the local limits of the municipality or cantonment board is included in Capital asset.

Types of Capital Assets

Capital assets are divided into two categories	1. Short-term Capital Asset 2. Long-term Capital Asset
Short Term Capital Asset [Section 2(42A)] [STCA]	1. It means a capital asset held by an assessee for not more than 36 month{24 months with effect from 01.04.2018) immediately preceding the date of its transfer 2. In case of financial asset, It means a capital asset held by the assessee for not more than 12 months immediately preceding the date of its transfer [Financial Assets includes ➢ shares or security listed in a recognised stock exchange or ➢ a unit of Unit Trust of India or ➢ a unit of Equity Oriented Mutual Fund ➢ a Zero Coupon Bond) 3. In case of Unlisted Shares, It means capital asset held by the assessee for not more than 24 months immediately preceding the date of its transfer (w.e.f

	01.04.2017)
Long Term Capital Asset [Section 2(29A] [LTCA]	1. It means a capital assets held by the assessee for more than 36 months immediately preceding the date of transfer 2. In case of financial asset, It means a capital asset held by the assessee for more than 12 months immediately preceding the date of its transfer
Short Term Capital Gain [Section 2(42B)] [STCG]	Any Gain arising from transfer of short term capital assets is called Short Term Capital Gain
Long Term Capital Gain [Section 2(29B] [LTCG]	Any Gain arising from transfer of Long term capital assets is called Long Term Capital Gain
Short Term Capital Loss [STCL]	Any Loss arising from transfer of short term capital assets is called Short Term Capital Loss
Long Term Capital Loss [LTCL]	Any Loss arising from transfer of Long term capital assets is called Long Term Capital Loss

Transfer [Section 2(47)]

–Transfer‖ in relation to a Capital Asset includes

i. *Sale*, *exchange* or *relinquishment* of the asset
ii. *Extinguishment of any rights* therein
iii. *Compulsory acquisition* thereof under any law
iv. In a case where the asset is converted by the owner thereof *into stock in trade*, such conversion
v. The *maturity or redemption* of *zero coupon bonds*
vi. Any transaction involving the allowing of the possession of any immovable property in part performance of a contract referred in section 53A of the Transfer of Property Act' 1882
vii. Allotment under a house building scheme of society, company or other association

Transactions not regarded as Transfer [Section 47]

The following transactions are not regarded as transfer for the purpose of the Capital Gains tax.

i. Distribution of its assets by the company on *liquidation* not regarded as transfer in the hands of the company [Sec 46]
ii. Distribution of its assets on total or partial *partition of HUF*
iii. Transfer of Capital Asset under a *Gift, Will or an irrevocable trust*
iv. Transfer of an asset by a *holding company to subsidiary company* or vice versa provided the subsidiary company is a *wholly owned subsidiary* and the transferee company is an *Indian Company*
v. Transfer in a scheme of *amalgamation* of capital asset by the amalgamating company to the amalgamated company, if the amalgamated company is an *Indian Company*

vi. Transfer of shares held in an Indian Company by the amalgamating foreign company to the amalgamated foreign company provided at least 25% of the shareholders of amalgamating company continue to remain the shareholders of amalgamated company and such a transfer does not attract capital tax in the country in which such amalgamating company is incorporated.

vii. Transfer under scheme of amalgamation, capital asset by the banking company to the banking institution

viii. any transfer of a capital asset by the *demerged company* to the resulting company, if the resulting company is an *Indian company*;

ix. any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if the shareholders holding not less than 75% in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company and such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated

x. any transfer in a business reorganization, of a capital asset by the predecessor co- operative bank to the successor co-operative bank;

xi. any transfer by a shareholder, in business reorganization, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank.

xii. any *transfer or issue of shares* by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of *demerger* of the undertaking

xiii. any transfer by a shareholder, in a scheme of *amalgamation*, of a capital asset being a *share or shares* held by him in the amalgamating company, if the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and the amalgamated company is an Indian company

xiv. any transfer of a capital asset, being notified *bonds/GDRs of an Indian Company* or bonds/shares of a public sector company purchased in *foreign currency* made *outside India* by a *non-resident to another on-resident*;]

xv. any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution

xvi. any transfer by way of *conversion of bonds or debentures*, debenture-stock or deposit certificates in any form, of a company *into shares or debentures* of that company

xvii. any transfer of a capital asset, being land of a sick industrial company, made under a scheme prepared and sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) where such sick industrial company is being

managed by its workers' co-operative

xviii. Transfer of capital assets on *conversion of a firm into company* if a. *All assets/ liabilities* of firm become the assets/liabilities of the company

b. *All partners* become *shareholder* in the *ratio of their capital account*

c. Partner receives *only shares as consideration*

d. Partners have at least *50% voting power for at least 5 years*

xix. Transfer of capital assets by a *private company or a unlisted public company to LLP* or any transfer of shares held in the company by a shareholder as a result of conversion of the company if

a. *All assets/ liabilities* of company become the assets/liabilities of the LLP

b. *All shareholders* of the company *become partners of LLP* and their capital contribution and profit sharing ratio are in the same proportion as their shareholding

c. Shareholder receives *only share in profit and capital contribution in LLP*

d. Profit sharing ratio of shareholders shall *not be less than 50% for 5 years*

e. Total sales, turnover or gross receipts does not exceed ` *60 Lakhs* in *any* of the *3 preceding financial years*

xx. Transfer of Capital asset on conversion of *sole proprietary concern into a company*

a. *All assets/ liabilities* of sole-proprietary concern become the assets/liabilities of the company

b. Sole proprietor receives *only shares as consideration*

c. Sole proprietor have at least 50% voting power in the company for *at least 5 years*

xxi. Any transfer of capital asset in a transaction of *reverse mortgage scheme.*

xxii. As per Section 10(43), any loan amount received whether in lump sum or in installment under reverse mortgage scheme shall not be included in total income.

INCOME FROM OTHER SOURCES

This is the last and residuary head of income. Any income which is not taxable under any other head of income is come under this head. The following are the Income taxable under the head –Income from Other Sources‖ [Section 56]

1. Dividends
2. Winnings from Lotteries, Crossword Puzzles, Horse Races, Card Games, Gambling, Betting etc.
3. Income from sub-letting of a House Property
4. Casual Income and Non-Recurring Income

5. Family Pension
6. Director‘s Sitting Fees
7. Interest on Loans
8. Income from undisclosed Sources
9. Salary received by Members of Parliament, Member of Legislative Assembly
10. Examination fees
11. Interest from Unrecognised Provident Fund on Employees Contribution
12. Rent from a Vacant Land [Hire Charges]
13. Agricultural income from a land situated outside India
14. Interest on Income tax refunds
15. Guarantee Commission to Directors
16. Director‘s commission of underwriting shares
17. Gratuity received by Director
18. Any sum of money exceeding ` 50,000 as gift
19. Any advance money forfeited
20. Income by way of interest received on compensation or enhanced compensation
21. Income from royalty
22. Income from Bank Deposits and company deposits
23. Income from Insurance commission
24. Income from letting of Plant and Machinery ,furniture or any other asset
25. Interest on securities

Important incomes which come under Income from other sources are discussed below.

Dividend

In ordinary language dividend means the sum received by a shareholder of a company on the distribution of its profits, whether Out of taxable income or tax-free income.

Types of Dividend

Normal Dividend: Any dividend declared by a company at its annual general meeting shall be deemed to be the income of the previous year in which it is declared.

Deemed Dividend: Deemed dividend under section 2(22) is deemed to be the income of the previous year in which it is so distributed or paid.

Interim Dividend: An interim dividend is on which is declared by a company at any time prior to its annual general meeting for the year. Any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the members.

Place of accrual: Dividend paid by an Indian company outside India shall be deemed to accrue or arise in India. Dividend paid by a foreign company outside India is not deemed to accrue or arise in India

Arrear Dividend: If dividend for several years is declared in some later year and paid in lump-sum in the later year, the dividend shall be deemed to be the income of the previous year in which they are declared.

Indian Company Dividend: Any dividend including deemed dividend distributed by a domestic Company is exempt under section 10(34) (However the company paying dividend is liable to pay tax under section 115-O – Dividend distribution Tax)

Dividend from a foreign company: Dividend received from a foreign company is taxable and included in the income under this head

Interest on Securities

Meaning interest on securities

It includes

- ✓ Interest on security of the *Central or State Government*
- ✓ Interest on Debentures or other securities issued by a *Local authority*
- ✓ Interest on Debentures issued by a *company* (Indian & Foreign)
- ✓ Interest on Debentures or other securities issued by a *Statutory Corporations*

Meaning of security:

The word ‗Security' has not been defined in this Acts. Security means a document acknowledging the debt taken by the government or some other authority from the general public

Basis of Charge of Interest on securities:

Interest on securities is chargeable to tax on the basis of accounting. Method (Cash or Mercantile) followed by the assessed.

Cum-interest and ex-interest:

Normally interest on securities is due once in six months. When securities are bought and sold between the taw interest dates, the Transaction is either cum- interest or ex-interest. If the selling price of the securities includes interest element, it is called cum- interest If the selling price of the securities excludes interest element it is called ex-interest.

Kinds of Securities

1. Tax free Government Securities are those securities, the interest of which is fully exempt from tax under section 10(15) and issued by the Government

   Less-Tax Government Securities are those securities which are Issued either by the Central; Government or a State Government.
2. These are taxable securities but no tax is deduced at source. Grossing up is not necessary and the entire interest given shall be included in income
3. Tax-free Commercial Securities are those securities issued by Local Authority or Statutory Corporation or a Company. They are in the Form of Debentures or Bonds. Actually their interest in not tax-free and the tax due on these interest is paid by the company or local Authority or corporation concerned. The tax paid by the company is deemed to have been paid on behalf of the assessee and hence the amount of tax paid

shall be added to his interest income i.e. the interest due to the assessee is grossed up and shall be included in the income

4. Less-Tax Commercial Securities are those securities on which tax is deducted on the amount of interest at a percentage and the balance amount is paid to the security-holder. These are called Taxable Securities. If the gross amount of interest and rate of interest is given, gross amount is included in income. If net amount of interest is given, it has to be grossed up and included in income

Rules for grossing up

1. Interest on Government Securities: Interest is exempt and no tax will be deduced at sources. Hence no need to gross up
2. Interest on Less-Tax Government Securities: Interest is taxable and there is no TDS. Hence no need to Gross up
3. Interest on Tax-Free Commercial Securities: Interest is always grossed up whether interest rate is given or interest amount is given
4. Interest on Less-Tax Commercial Securities: Net interest is given it has to be grossed up. If the rate of interest is given no need to gross up.

Grossing Up

$$\text{Gross Interest} = \frac{\text{Net Interest}}{\text{Rate of TDS}} \times 100$$

Bond Washing Transactions

A Bond Washing transaction is a transaction of sale and subsequent repurchase by an assessee of some securities with a view to avoid tax.

Securities may be transferred by an assessee to a relative or a friend whose income is below taxable limit at the time of due date of interest and then repurchase the same securities, soon after the said date.

Generally interest on securities is payable half-yearly or yearly and these dates are fixed. To prevent this practice, Section 94(1) provides that where a security owner transfers at the time of due date of interest and re purchases them, the interest received by the transferee will be deemed as the income of the transferor, and it will be included in the total income of the transferor and not of the transferee.

Bank Interest or Interest on Fixed Deposits/Time Deposits:

Interest on Fixed Deposits/Time Deposits from any Bank/Cooperative Bank/Post Office is taxable. Tax is to be deducted from the interest if the interest amount exceeds 10,000 .Savings Bank account interest is taxable and deduction under section 80TTA can be claimed up to ` 10,000

Tax Deducted at Source [TDS]

The persons responsible for paying income by way of interest on securities shall at the time of making payment, deduct income-tax at the rate in force on the amount of interest payable

The rates are specified in the Finance Act every year

The person responsible for paying interest has to deposit the amount of tax deducted from the security-holder to the central government within the prescribed period and he has also to file TDS return with the prescribed period.

The person responsible for paying interest has to issue a certificate to the security-holder regarding the deduction of tax at source so that the security-holder may claim the credit in his individual assessment.

The present rate of TDS on interest is 10%

Interest on Securities exempt from tax

Section	Particulars
Section 10[20]	Interest on securities held by Local authority
Section 10[21]	Interest on securities held by Approved Scientific Research Association
Section 10[23AA]	Interest on securities held by Regimental Fund
Section 10[23B]	Interest on securities held by any institution established for development of Khadi or Village Industries
Section 10[24]	Interest on securities held by Registered Trade Union
Section 10[25]	Interest on securities held by Statutory Provident Fund, Recognised Provident Fund, Superannuation Fund or any Approved Gratuity Fund
Section 11	Interest on securities held by any Public Charitable and Religious Trust or Institution
Section 13	Interest on securities held by Political party registered with the Election Commission of India

Casual Income [Section 56(2)(ib)]

Casual Income includes

Winnings from

- ✓ Lotteries
- ✓ Crossword puzzles
- ✓ Races including Horse Races
- ✓ Card Games
- ✓ Betting
- ✓ Gambling

Taxability of Casual Income

All the above incomes shall be including in income under income from other sources No exemption is available. Gross amount is taxable

$$\text{Gross Amount} = \frac{\text{Net Amount}}{30} \times 100$$

Tax Deducted At Source from Casual income

Rate of TDS is 30% if the amount exceeds ` 10,000 in case of lotteries and winning from crossword puzzles and ` 5,000 in case of race winnings. No TDS in case of gambling and betting.

Income from letting on Hire of Plant, Machinery or Furniture [Section 56(2)(ii)]

Taxability:

- ✓ Rent received by letting on hire of plant, machinery or furniture owned by him to some other person shall be chargeable as income from other sources
- ✓ While calculating income, Depreciation, repairs, insurance, lighting expenses, office expenses incidental to such income is deductible

- ✓ If the business as a whole is let out, the income would be assessable as Income from other sources
- ✓ If the commercial assets are leased out, the income shall be included under the head income from business or profession.
- ✓ If the assessee let out a building along with plant, machinery or furniture which are inseparable, then it will be taxed under income from other sources

All the above incomes shall be including in income under income from other sources Gross amount is taxable.

$$\text{Gross Amount} = \frac{\text{Net Amount}}{30} \times 100$$

Rate of TDS is 30%

Family Pension

The family pension is to be included under the head income other sources. Taxable Family pension is calculated as below:

Family pension received

Less: Standard deduction

1/3rd of Pension or ` 15,000 whichever is less

Taxability of Gift on or after 01.04.2017	
Sum of money without consideration and the aggregate value exceeds ` 50,000	The aggregate value of the gift is taxable
Immovable Property without consideration and Stamp Duty Value of the property exceeds ` 50,000	Stamp duty value is taxable
Immovable property for a consideration which is less than the Stamp Duty Value of the property by an amount exceeding ` 50,000	Stamp Duty Value less consideration is taxable
Any property other than immovable property without consideration, and Fair Market Value Exceeds ` 50,000	Aggregate of Fair Market Value
Any property other than Immovable property for a consideration less than Fair Market Value by ` 50,000	Fair Market Value less Consideration

Exceptions

Gift received from the following persons are not taxable

i. From a Relative or
ii. On the occasion of the marriage of the Individual or
iii. Under a Will or by way of inheritance or
iv. On the death of the payer, or donor
v. From any Local Authority
vi. From any Fund /University/ Educational Institution/Hospital
vii. From any Trust or Institution registered u/s 12A or 12AA

Relative Means
1. Spouse of the Individual
2. Brother or Sister of the Individual
3. Brother or Sister of the spouse of the Individual
4. Brother or Sister of either of the parents of the Individual
5. Any Lineal Ascendant or Descendant of the Individual
6. Any Lineal Ascendant or Descendant of the spouse of the Individual
7. Spouse of the person referred in clause (2) to (6) above

Deductions available from Income from other sources under section 57
1. Commission or remuneration paid for the purpose of realising dividends or interest on securities
2. Repairs, Insurance, Depreciation of Building, Plant or Machinery or Furniture
3. 33.33% of Family Pension or ` 15,000 whichever is less
4. Any other expenditure not being capital expenditure wholly or exclusively expended to earn such income

Inadmissible expenses under section 58
1. Personal expenses
2. Interest, Salary paid outside India without deduction of tax
3. Wealth Tax
4. Any expenditure paid with tax deducted at source
5. Interest on Interest is not allowable

INCOME-TAX AUTHORITIES (SECTION 116)

The Income-tax Act has constituted the following classes of Income-tax authorities to ensure effective administration and discharge of executive and administrative functions:
1. The Central Board of Direct Taxes constituted under the Central Board of Revenue Act, 1963,
2. Directors-General of Income-tax or Chief Commissioners of Income-tax,
3. Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),
4. Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals),
5. Joint Directors of Income-tax and Joint Commissioners of Income-tax,
6. Deputy Directors of Income-tax or Deputy Commissioners of Income-tax,
7. Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,
8. Income-tax Officers,
9. Tax Recovery Officers,
10. Inspectors of Income-tax.

According to section 2(28C) ―Joint Commissioner‖ means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under section 117(1).

According to section 2(28D) ―Joint Director‖ means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax under section 117(1).

According to section 2(9A) ―Assistant Commissioner‖ means a person appointed to be an Assistant Commissioner of Income-tax or a Deputy Commissioner of Income-tax under section 117(1).

Appointment of Income-tax Authorities (Section 117)

The Central Government may appoint such persons as it thinks fit to be Income-tax authorities. However, the Central Government may authorize the Board, or any Director-General, Chief Commissioner, Director or Commissioner to appoint Income-tax authorities below the rank of an Assistant Commissioner/ Deputy Commissioner. An Income-tax authority authorised by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions. All these appointments can be made subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts.

Central Board of Direct Taxes (CBDT)

The CBDT was constituted under the Central Boards of Revenue Act 1963. The Board works under the Ministry of Finance. The CBDT has the power of administration, supervision and control in the area of direct taxes levied by the Central Government.

Powers of CBDT

Some of the important powers and functions assigned to the Board under the Income-tax Act are as under:

1. To declare any institution, association or body to be a company [Section 2(17)].
2. To declare a company having no share capital to be a company in which the public is substantially interested [Section 2(18)].
3. To direct that income from property held under trust will not be included in the Total Income of the person in receipt of such income [Section 11(1)(c)].
4. To notify any profession under which it will be compulsory to maintain accounts and to make rules regarding maintenance of accounts [Section 44AA].
5. To prescribe the field in which the person may have specialised knowledge and experience to be called a ‗technician' [Section 80RRA].
6. To make rules and specify the permanent physical disability for purpose of deduction u/s 80U.

7. To exercise control over Income-tax authorities by issuing specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in the said notification [Section 118].
8. To issue orders, instructions and directions to subordinate authorities as it may deem fit for the proper administration of this Act [Section 119]. However, in the following two cases, the Board cannot issue orders, instructions or directions to subordinate authorities:
   a. The Board cannot require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
   b. The Board cannot interfere with the discretion of the Commissioner (Appeals) in the exercise of appellate functions. However the Board can issue administrative instructions.
9. To give directions to Income-tax authorities regarding the exercise of their powers and functions [Section 120].
10. To specify the income-tax authorities who are empowered to issue summons for search and seizure [Section 132].
11. To require any authority, body or officer, under any law to disclose information regarding any assessee [Section 138].
12. To transfer or to authorise the CIT to transfer any appeal which is pending before the First Appellate Authority under certain circumstances [Section 246].
13. To prescribe educational qualifications for a person to qualify to be an authorised representative [Section 288].
14. To condone delay in obtaining approval of the Board, wherever such approval is required [Section 293B].
15. To make rules, subject to the control of the Central Government for the whole or any part of India, for carrying out the purposes of the Act [Section 295].

Besides the above powers the Board has the following special powers given by section 119(2)(a), (b) and (c).

(1) Power to issue orders in certain cases by way of relaxation or otherwise [Section II9(2)(a)

The Board may, if it considers it necessary or expedient so to do for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time, general or special order in respect of any class of income or class of cases subject to the following:

a. The above order may be by way of relaxation of any of the provisions of sections 139, 143, 144, 147, 148, 154, 155, 201(1A), 210, 211, 234A, 234B, 234C, 271 and 273 or otherwise;
b. The above order may set forth directions or instruction as to the guidelines, principles or proceedings to be followed by other income-tax authorities in the work relating to (i) assessment or (ii) collection of revenue or (iii) the initiation of proceedings for the imposition of penalties. However, the above direction and instructions shall not be prejudicial to the assessee;

c. The Board may, if it is of opinion that it is necessary in the public interest, get such order published and circulated in the prescribed manner for general information

(2) Power to extend time limit to admit an application or claim [Section 119(2)(b)

The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income -tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

(3) Power to relax any requirement of Chapter IV or Chapter VIA [Section 119(2)(c)

The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV (relating to computation of income) or Chapter VIA (relating to deductions u/s 80CCC to 80U), where the assessee has failed to comply with any requirement specified in such provision for claiming deduction there under, subject to the following conditions, namely:

1. The default in complying with such requirement was due to circumstances beyond the control of the assessee; and
2. The assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed:

The Central Government shall cause every order issued under this clause to be laid before each House of Parliament.

Jurisdiction of Income-tax authorities (Section 120)

1. Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on or, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue.
2. The Board may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.
3. In issuing the directions or orders, the Board or other income-tax authority authorised by it may have regard to anyone or more of the following criteria, namely:
   a. Territorial area;
   b. Persons or classes of persons;
   c. Incomes or classes of incomes; and
   d. Cases or classes of cases.

4. The Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein:
   a. Authorise any Director General or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;
   b. Empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by a Joint Commissioner.
5. The Board may require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or classes of cases.
6.

Change of Incumbent of an Office [Section 129]

Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

Powers of Various Income-tax Authorities

Powers of Director-General/Director of Income-tax The Director-General/Director of Income-tax enjoys the following powers under the different provisions of the Income-tax Act:

1. To appoint an Income-tax authority below the rank of Assistant Commissioner/ Deputy Commissioner, if authorised by the Board [Section 117].
2. To direct the Joint Commissioner to function and assume the powers of Assessing Officer, if so authorised by the Board [Section 120].
3. To transfer cases from one or more Assessing Officers subordinate to him to any other Assessing Officer who is also subordinate to him [Section 127].
4. To make enquiry, if he has reasons to suspect that any income has been concealed or is likely to be concealed by any person or class of persons within his jurisdiction [Section 131(1A)].
5. To authorise any Joint Director/Joint Commissioner, Deputy Director/Deputy Commissioner/Assistant Director/Assistant Commissioner or Assessing Officer to enter and search any building, place, vessel, vehicle or aircraft where he has reasons to suspect the availability of books of accounts, documents, and undisclosed money, bullion, jewellery or other valuables and seize the same [Section 132(1)].
6. To requisition books of accounts etc. [Section 132A].

7. Power of survey [Section 133A].
8. Power to collect information, which is useful/relevant for the purpose of this Act, by entering any building or place within its jurisdiction or the building/place of any person within his jurisdiction.
9. To make enquiry under the Income-tax Act. For this purpose he has all the powers which are' vested in the Assessing Officer [Section 135].

Powers of Commissioner/Chief Commissioner

All the powers of the Director of Income-tax are being enjoyed by the Commissioner/Chief Commissioner of Income-tax also. These are:

1. To appoint an Income-tax authority below the rank of Assistant Commissioner/ Deputy Commissioner, if authorised by the Board [Section 117).
2. To direct the Joint Commissioner to function and assume the powers of Assessing Officer, if so authorised by the Board [Section 120].
3. To transfer cases from one or more Assessing Officers subordinate to him to any other Assessing Officer who is also subordinate to him [Section 127].
4. To make enquiry, if he has reasons to suspect that any income has been concealed or is likely to be concealed by any person or class of persons within his jurisdiction [Section 131(1A)].
5. To authorise any Joint Director/Joint Commissioner/Deputy Director/Deputy Commissioner/Assistant Director/Assistant Commissioner or Assessing Officer to enter and search any building, place, vessel, vehicle or aircraft where he has reasons to suspect the availability of books of accounts, documents, and undisclosed money, bullion, jewellery or other valuables and seize the same [Section 132(1)].
6. To requisition books of accounts etc. [Section 132A].
7. Power of survey [Section 133A].
8. Power to collect information, which is useful/relevant for the purpose of this Act, by entering any building or place within its jurisdiction or the building/place of any person within his jurisdiction.
9. To make enquiry under the Income-tax Act. For this purpose he has all the powers, which are vested in the Assessing Officer [Section 135].

Besides the above powers, the Chief Commissioner/Commissioner enjoys the following additional powers:

1. Power regarding discovery, production of evidence, etc. [Section 131].
2. To sanction re-opening of assessments after the expiry of four years [Section 151(1)].
3. To approve withholding of refund in certain cases [Section 241].
4. To set off the refund against arrears of tax [Section 241].
5. To direct the Assessing Officer to prefer appeal to the Tribunal against the order of First Appellate Authority [Section 253(2)].
6. Request the Tribunal to file Reference to High Court [Section 256].
7. To revise any order passed by the Assessing Officer, which is prejudicial to revenue [Section 263].

8. To revise any order passed by a subordinate authority on an application by the assessee or suomotu when the revision is in favour of the assessee [Section 264].

Powers of Commissioner (Appeals)

As already discussed under the Chapter on ‗Appeals', the first Appellate Authority is Commissioner (Appeals). He is vested with the following powers:

1. Power regarding discovery, production of evidence etc. [Section 131].
2. Power to call for information [Section 133]: The Commissioner (Appeals) may require various persons to submit certain information.
3. Power to inspect register of companies [Section 134].
4. Power to set off any refund against arrears of tax.
5. To dispose of an appeal [Section 251]. In disposing of any appeal he may confirm, reduce, enhance or annul the assessment.
6. Power to impose a penalty [Section 271]. He is also authorised to impose a penalty for concealment of information or for not producing the books of accounts or other documents.

Powers of Joint Commissioner of Income-tax

The Joint Commissioner of Income-tax enjoys the following powers under the Income-tax Act:

1. Power regarding discovery, production of evidence, etc. [Section 131].
2. To make an enquiry, if he has reasons to suspect that any income has been concealed or is likely to be concealed by any person or class of persons under his jurisdiction [Section 131A].
3. Power of search and seizure, if authorised [Section 132].
4. Power to call for information [Section 133].
5. Power of survey [Section 133A].
6. Power to collect certain information [Section 133B].
7. Power to inspect register of companies [Section 134].
8. Power to make an enquiry [Section 135].
9. To sanction reopening of assessment after the expiry of 4 years, if the assessment is made under any section other than sections 143(3) and 147.

Jurisdiction Powers of the Assessing Officer

‗Assessing Officer' means the Assistant Commissioner/the Deputy Commissioner or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or (2) of Section 120 or any other provision of this Act, and it also includes Joint Commissioner/ Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act.

Jurisdiction of Assessing Officers (Section /24):

Where the Assessing Officer has been vested with jurisdiction over any area, within the limits of such areas he will have jurisdiction,

1. In respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situated

within the area, or where his business or profession is carried on at more places than one, if the principal place of his business or profession is situated within the area, and

2. In respect of any other persons residing within the area. Powers of Assessing Officer: The Assessing Officer is a very important functionary under the Income-tax Act. He has a very important role to play in the administration of the Income-tax laws. He is the first authority with whom the assessee has to come into contact with. He issues the notice to the assessee to file a return of income if he has not done so within the prescribed time. He initiates the assessment proceeding against the assessee and issues a notice of demand, if any tax is payable by the assessee. The assessment order passed by him is final unless an appeal is preferred against it by the assessee or the Commissioner of Income-tax decides to revise the order on the ground that it is erroneous in so far as it is prejudicial to the revenue. He has been vested with various powers under different provisions of the Act.

The important powers are mentioned below:

1. To determine the proportion of expenses for allowing deduction in respect of premises used partly for the purpose of business or profession (Section 38].
2. To grant relief u/s 89(1) where arrears of salary have been received by an assessee [Section 89].
3. Power regarding discovery, production of evidence, etc. [Section 131].
4. Power of search and seizure, if authorised [Section 132].
5. Power to requisition books of accounts [Section 132A].
6. To apply the assets seized and retained u/s 132 in satisfaction of the existing liabilities of the assessee under Direct Taxes Act [Section 132B].
7. Powers to call for information [Section 133].
8. Power to collect certain information [Section 133B].
9. Powers to inspect register of companies [Section 134].
10. Power to allot permanent account number [Section 139A].
11. Power to impose penalty for non-payment of self-assessment tax [Section 140A].
12. Power to direct an assessee to get his accounts audited [Section 142].
13. Power to make assessment [Sections 143, 144].
14. Power to reassess income which has escaped assessment [Section 147].
15. Power to rectify mistakes apparent from the records, either on his own or on an application made by the assessee [Section 154].
16. Power to grant a certificate to an assessee to receive a payment without deduction of tax at source or deduction of tax at source at a lower rate than prescribed [Sections 194, 195, 197].
17. Power to impose penalty for default in payment of a tax [Section 221].
18. Power to grant refund [Sections 237, 240].
19. Power to withhold refund in certain cases [Section 241].

20. Power to adjust the refund against any demand of tax etc. outstanding against the assessee [Section 245].

Inspectors of Income-tax

The Income-tax inspectors are appointed by the Commissioner of Income-tax and are required to perform such duties/ functions as may be assigned to them from time to time either by the CIT or by the authority under whom they had been appointed to work. Certain important powers of Income tax Authorities discussed in detail:

1. Power regarding discovery, production of evidence, etc. (Section 131):
   a) Same power as of Court: Section 131(1): The Assessing Officer, Joint Commissioner, Commissioner (Appeals), Commissioner and Chief Commissioner shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, (when trying a suit) in respect of the following matters:

i. Discovery and inspection;
ii. Enforcing the attendance of any person including any officer of a Banking Company and examining him on oath;
iii. Compelling the production of books of accounts and other documents; and
iv. Issuing commissions.
   a) Power can be exercised whether any proceedings are pending or not [Section 131(1A)]: If the Director General or Director or Joint Director or Deputy Director or Assistant Director or the Authorised Officer referred to in section 132(1), before he takes action regarding search and seizure, has reason to suspect that any income has been concealed or is likely to be concealed by any person within his jurisdiction, then for the purpose of making an enquiry or investigation relating thereto, he will be competent to exercise the powers mentioned in section 131(1) above, whether any proceedings in respect of such person or class of persons are pending before him or any income-tax authority or not.
   b) Power to impound and retain books of accounts and documents [Section 131(3)]: The officers mentioned in sections 131(1) and (1A) above, may impound and retain in its custody for such period as it thinks fit any books of accounts or other documents produced before it in any proceedings under this Act.

However, an Assessing Officer or an Assistant Director/Deputy Director shall not impound any books of accounts or documents without recording his reasons for doing so. Further, he cannot retain in his custody such books of accounts and documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General or Commissioner/Director.

2. Search and seizure (Section 132).

3. Power to requisition books of accounts, etc. (Section 132A).

4. Power to call for information (Section 133): The Assessing Officer, the Joint Commissioner or the Commissioner (Appeals) may, for the purpose of this Act,-
   i) Require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;
   ii) Require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family;
   iii) Require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses;
   iv) Require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head ―Salaries‖ amounting to more than one thousand rupees, or such higher amount as may be prescribed, together with particulars of all such payments made;
   v) Require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts;
   vi) Require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Joint Commissioner or the Commissioner (Appeals) giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Joint Commissioner or the Commissioner (Appeals) will be useful for, or relevant to, any inquiry or proceeding under this Act:

However, that the powers referred to in clause (6), may also be exercised by the Director-General, the Chief Commissioner, the Director and the Commissioner:

However, further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Director or Commissioner without the prior approval of the Director or, as the case may be, the Commissioner.

5. Power of Survey (Section 133A): An Income-tax authority may enter:
   i) Any place within the limits of the area assigned to him; or
   ii) Any place occupied by any person in respect of whom he exercises jurisdiction; or
   iii) Any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of

any person occupying such place, at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession:

a. To afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,
b. To afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and
c. To furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

A place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

The income-tax authority may conduct the survey only during the hours at which the place of business or profession is open for the conduct of such business or profession and in case of other places only after sunrise and before sunset.

Powers of Income-tax authority in conducting the survey:

The income-tax authority conducting the survey may:

i) Place marks of identification on the books of accounts or other documents inspected by him and may take extracts or copies there from;
ii) Impound and retain in his custody books of account or other documents inspected by him after recording his reasons for so doing. However, such books of account or other documents shall not be retained for more than ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner of Income-tax or Director-General;
iii) Make an inventory of any cash, stock or other valuable article or thing checked or verified by him;
iv) Record the statement of any person which may be useful for, or relevant to, any proceedings under the Income-tax Act;
v) The income-tax authorities would also have the power to collect information and record the statements of any of the persons concerned at any time after any function, ceremony or event even before the stage of commencement of assessment proceedings for the following year for which the information may be relevant, if they are of the opinion that having due regard to the nature, scale and extent of the expenditure incurred, it is necessary to do so.

Restriction on the Income-tax Authority

An income-tax authority conducting a survey shall on no account, remove or cause to be removed from the place wherein he has entered, any cash, stock or other valuable article or thing. Even the books of account and documents were not allowed to be removed from the place surveyed. The place where entry can be made under this section must not be a place where the assessee does not carry on business. Business on residential premises of third parties including a chartered accountant, a pleader or income-tax practitioner of whom the assessee may be a client are not places which could be entered into for the purpose of section 133A. [Circular No. 7D, dated 3rd May 1967].

6. Power to collect certain information (Section 133B): An income-tax authority may, for the purpose of collecting any information which may be useful for, or relevant to the purposes of Income-tax Act, enter:

   a. any building or place within the limits of the area assigned to such authority; or
   b. any building or place occupied by any person in respect of whom he exercises jurisdiction, at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession to furnish such information as may be prescribed.

The income-tax authority may enter any place of business or profession only during the hours at which such place is open for the conduct of business or profession.

The income-tax authority shall, on no account remove or cause to be removed from the building or place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing.

7. Power to inspect registers of companies (Section 134): The Assessing Officer, the Joint Commissioner or the Commissioner (Appeals), or any person subordinate to him authorised in writing in this behalf by the Assessing Officer, the Joint Commissioner or the Commissioner (Appeals), may inspect, and if necessary take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgages of any company or of any entry in such register.

8. Other provisions (Sections 135 and 136): The Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner are competent to make any enquiry under section 135 and for all purposes they shall have the powers vested in an Assessing Officer in relation to the making of enquiries.

All the proceedings before Income-tax authorities are judicial proceedings for purposes of section 196 of the Indian Penal Code and fall within the meaning of sections 193 and 228 of the Code. An income-tax authority shall be deemed to be a Civil Court for the purposes of section 195 of the Criminal Procedure Code. (Section 136)

COLLECTION AND RECOVERY OF TAX

(a) Notice of Demand (Section 156) (Rules 15, 38, Forms 7, 28)

When any tax, interest penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

(b) Intimation of loss (Section 157)

When in the course of the assessment of the total income of any assessee, it is established that a loss has taken place which the assessee is entitled to have carried forward and set off against the income in subsequent years, the Assessing Officer shall notify to the assessee by an order in writing the amount of the loss as computed by him for the purposes of carry forward and set off.

(c) Assessee in Default

The amount specified in the notice of demand shall be paid within 30 days of the service of the notice at the place and to the person mentioned in the notice. If the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of 30 days is allowed he may, with the prior approval of the Joint Commissioner reduce the period as he thinks fit (Section 220).

If the amount specified in the notice of demand is not paid within the period mentioned in the notice, the assessee shall be liable to pay simple interest at one and one-fourth per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the 30 days or shorter period, as allowed, and ending with the date of payment of the tax. If the assessee is not in a position to pay the amount in the prescribed time, he may submit an application to the Assessing Officer before the expiry of the due date of the payment. On receipt of such application, the Assessing Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose. If the amount is not paid as mentioned above, the assessee shall be deemed to be in default and shall be liable to pay in addition to the amount of the arrears and the amount of interest, by way of penalty such amount as the Assessing Officer may direct. In the case of continuing default, he shall be liable to pay such further amount as the Assessing Officer may, from time to time, direct. However, the total amount of penalty shall not exceed the amount of tax in arrears.

Where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee and shall proceed to recover from such assessee the amount specified in the certificate (being the statement referred to above) by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule.

(A)	(i)	attachment and sale of the assessee‘s movable or immovable property;
	(ii)	arrest of the assessee and his detention in prison; and

	(iii)	appointing a receiver for the management of the assessee's movable and immovable properties (Section 222).

(B) The Assessing Officer may also recover the tax by any one or more of the following modes of recovery:

	(i)	attachment of salary;
	(ii)	garnishee order;
	(iii)	from a court;
	(iv)	sale of movable property (Section 226);

(C) Through State Government (Section 227);
(D) In pursuance of agreement with foreign countries (Section 228A);
(E) By suit or under other law (Section 232).
Note: For details please refer to the relevant sections of the Act.

PAYMENT OF INCOME-TAX

The Income-tax Act provides for collection and recovery of income-tax in the following ways, namely,

(i) Deduction of tax at source in respect of income by way of salaries, interest on securities, interest other than interest on securities, winnings from lotteries and crossword puzzles, winnings from horse-race, insurance commission, dividends, payment to contractors or subcontractors and payments to non- residents;
(ii) Advance payment of income-tax before the assessment by the assessee himself;
(iii) Direct payment of income-tax by the assessee on self-assessment; and
(iv) After the assessment is made by the Assessing Officer.

The provisions relating to tax deduction at source and payment of tax in advance of assessment are being discussed below:

TAX DEDUCTED AT SOURCE

To avoid cases of tax evasion, the Income-tax Act has made provisions to collect tax at source on accrual of income. Cases included in the scheme are, generally, those where income can be computed at the time of accrual of income. Under this scheme, persons responsible for making payment of income covered by the scheme are responsible to deduct tax at source and deposit the same to the Government's treasury within the stipulated time. The recipient of income–though he gets only the net amount (after deduction tax at source) – is liable to tax on the gross amount and the amount deducted at source is adjusted against his final tax liability. Sections 192 to 206 of the Income-tax Act lay down the provisions relating to deduction of tax at source. The provisions in respect of different incomes are as follows:

(a) Deduction of Tax at Source

Sections 192 to 206 of the Income-tax Act lay down the provisions relating to deduction of tax at source. The provisions in respect of different incomes are as follows:

(1) Salary (Section 192)

(i) Any person responsible for paying any income (employer) chargeable under the head ―Salaries‖ shall, at the time of payment, deduct income-tax on the amount payable at the rates applicable to the estimated income of the assessee (employee) under this head for that financial year.

It is not the total income that is subject to deduction of tax at source but the estimated income under the head ―Salaries‖ that is important. W.e.f. August 1, 1998, an assessee having an income under the head ‗salaries' may furnish in the prescribed manner giving the details of the losses under the head ‗Income from House Property' to the person responsible for making the payment who shall taking into account such loss for the purposes of computing the tax deductible from salaries, which may be reduced in such a case.

Only where the loss under the head ―Income from House Property‖ has been taken into account TDS deductible from the head salaries may be reduced due to such loss taken into account. For this purpose the salary shall be computed in the same manner as discussed under the head ‗Salaries'. From such salary the following deductions shall be made:

(a) Amount deductible Sections 80C, 80D, 80DD and 80DDB.
(b) Deduction under Section 80G, in respect of donations made to the National Defence Fund, Jawahar Lal Nehru Memorial Fund, the Prime Minister's Drought Relief Fund etc. subject to conditions laid down under Section 80G;
(c) Deduction under Section 80GG in respect of rent paid;
(d) Deduction under Section 80RRA in respect of remuneration received in foreign currency;
(e) Deduction under Section 80U on production of a certificate by the employee from the Assessing Officer authorising such deduction. Certificate need not be produced by individuals who have already produced a certificate under the old provision applicable upto the assessment year 1991-92.

(ii) The employer may, at the time of making any deduction, increase or reduce the amount to be deducted for the purpose of adjusting any excess or deficiency arising out of any previous deductions or failure to deduct during the financial year.
(iii) The trustees of a recognised provident fund or an approved superannuation fund shall deduct the tax at the time of the accumulated balance due to an employee is paid provided it is not exempted.

No tax will be required to be deducted at source in case the Gross Total income does not exceeds

– ` 2,00,000 in case of individual below 60 years of age.

– ` 2,50,000 in case of individual having the age of 60 years but below 80 years

– ` 5,00,000 in case of individual having the age of 80 years and above.

Where the salary is payable to an assessee outside India in foreign currency its value in rupees shall be the telegraphic transfer buying rate of such currency as on the date on which the tax is required to be deducted at source. ‗Telegraphic transfer buying rate' means the rate of exchange adopted by the State Bank of India for buying such currency as made available to the bank through a telegraphic transfer.

Every employer shall file a quarterly return in Form No. 24Q within 15 days from end of quarter and for the quarter ending on 31st March will be submitted on 31st May following the close of the relevant financial year showing:

a) The name and address of every employee who is drawing such amount as may be prescribed;
b) The amount of income so received by or so due to each such person; and
c) The amount of tax deducted and deposited from the income of such person.

The employer shall issue a certificate of deduction of tax to the employee in Form No. 16.

Also, a person responsible for paying any income chargeable under the head ―Salaries‖ is required to furnish, to the person to whom such payment is made, a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof in such form and manner as may be prescribed.

(2) Interest on Securities (Section 193)

The person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier deduct income-tax at the rates in force on the amount of the interest payable.

Credit of any income by way of interest on securities to any account, whether called -Interest payable account‖ or ―Suspense account‖ or by any other name in the books of account of the person liable to pay such income, is, for the purposes of Section 193, deemed to be credit of such income to the payee and attracts applicability of the provisions of Section 193. However, tax shall not be deducted from the interest on the following securities:

(i) 4-1/4% National Defence Bonds, 1972 held by a resident individual.

(ii) 4-1/4% National Defence Loan, 1968 and 4-3/4% National Defence Loan, 1972 and National Development Bonds.

(iii) 7 year National Savings Certificates IV Issue.

(iv) Debentures issued by Co-operative Society (including Co-operative Land Mortgage Banks or Co- operative Land Development Banks) or any other institution or authority as the Central Government may specify in the Official Gazette.

(v) Gold bonds provided the assessee is a resident individual and the nominal value of the bonds did not exceed ` 10,000 at any time during the period to which the interest relates.

(vi) Securities of the Central Government or State Government.

(vii) Any interest payable to an individual or a Hindu undivided family, who is resident in India, on any debenture issued by a company in which the public are substantially interested, if

(a) The amount of interest or, as the case may be, the aggregate amount of such interest paid or likely to be paid on such debenture during the financial year by the company to such individual or Hindu undivided family does not exceed five thousand rupees; and

(b) Such interest is paid by the company by an account payee cheque.

(viii) Interest on such debentures as are issued by a statutory corporation or a Government company.

(ix) Interest payable to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, in respect of any securities owned by it or in which it has full beneficial interest; or

(x) Any interest payable to the General Insurance Corporation of India (hereafter in this clause referred to as the Corporation) or to any of the four companies (hereafter in this clause referred to as such company), formed by virtue of the schemes framed under Sub-section (1) of Section 16 of the General Insurance Business (Nationalization) Act, 1972 (57 of 1972), in respect of any securities owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest; or

(xi) Any interest payable on any other insurer in respect of any securities owned by it or in which it has full beneficial interest.‖

TDS can be made at the time of payment or at the time of credit to the account of the payee or transfer to interest payable amount or suspense account, whichever comes earlier. The identity of the person in whose hand it is includible have to be identified. Case law: [IDBI v. ITO (2006) 10 SOT 497/104 TTD 230 (Mum.)].

Rate of TDS:

The rate of TDS on Interest on securities is 10%. No education cess and SHEC shall be added to the rate. The rate of TDS shall be 20% if PAN is not quoted by the payee.

(3) Dividends (Section 194)

The principal officer of an Indian company or a company which has made prescribed arrangements for the declaration and payments of dividends within India shall deduct, from the amount of dividend [Dividend under Section 2(22)(a) to (d) payable on or after 1.6.2002] or deemed dividend under Section 2(22)(e), before making any payment in cash or before issuing cheque, income-tax at the prescribed rates.

No such deduction shall be made in the case of shareholder (being an individual, who is resident in India), of a company in which the public are substantially interested, if:

(a) the dividend is paid by such company by an account payee cheque; and

(b) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder does not exceed rupees two thousand five hundred.

No such deduction shall be made in respect of any dividends referred to in Section 115-O except where the dividend is covered under section 2(22)(e). The provisions of Section 194 were amended by the Finance (No. 2) Act 1991 with effect from 1.10.1991 to provide specifically that no TDS shall be deducted on the distribution or payment of dividends to the shareholders who are resident in India.

(4) Interest other than Interest on Securities (Section 194A)

Any person not being an individual or a H.U.F. who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities amounting to more than rupees 5,000 or ` 10,000 as the case may be, shall, at the time of crediting to the payee or at the time of payment or the interest, deduct tax at the prescribed rates.

Rate of Tax:

(i) 10% plus education cess. No surcharge, education cess or SHEC shall be added from 1st October, 2009.

(ii) When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.

However, the tax shall not be deducted in the following cases:

(i) Where the payee is a banking Company, a co-operative society engaged in carrying on the business of banking or any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf , and the aggregate amount of interest credited or paid during the financial year does not exceed ` 10,000.

(ii) Where the payee is other than the (i) above and the aggregate amount of interest paid or credited does not exceed ` 5,000.

(iii) Where the interest credited or paid to a banking company, a co-operative society doing banking business, Financial Corporation established by a Central or State Act, the Life Insurance Corporation of India, the Unit Trust of India, any company or co-operative society carrying on the insurance business and any other institution which the Central Government may notify in this behalf.

(iv) Interest credited or paid by a firm to its partners.

(v) Interest credited or paid by a co-operative society to its members or to any other co-operative society.

(vi) Where interest credited or paid in respect of deposits under any scheme framed by Central Government.

(vii) Interest credited or paid in respect of deposits other than time deposits with a banking company to which the Banking Regulation Act, 1949 applies.

(viii) Income credited or paid in respect of deposits with a primary agricultural credit society or cooperative society engaged in

carrying on the business of banking including a cooperative land mortgage bank or a cooperative land development bank.

(ix) Income credited or paid by the Central Government under Income Tax Act, 1961 or Indian Income Tax Act, 1922 or the Estate Duty Act, 1953 or the Wealth Tax Act, 1957 or the Gift Tax Act or the Super Profits Tax Act, 1963 or the Companies (Profits) Surtax Tax Act, 1964 or the Interest Tax Act, 1974.

(x) Income which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company in relation to a zero coupon bond issued on or after the 1st day of June 2005 by such company or fund or public sector company.

(xi) To such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees.

The responsible person may, at the time of making any deduction increase or reduce the amount to be deducted for the purpose of adjusting any excess or deficiency arising out of any previous deductions or failure to deduct during the financial year. The responsible person shall file a shall file quarterly return in Form No. 26Q with in 15 days from end of quarter and for the quarter ending on 31st March will be submitted by 15th May following the close of the financial year showing the names and addresses of the person and the amount paid or credited to each of such person.

With effect from 1.6.2002, individuals and HUF covered under Section 44AB(a) and (b) i.e. whose gross turnover of the business in the immediately preceding financial year exceeds ` 1 crore (or receipts from the profession ` 25 Lakh), are also required to deduct tax at source. Cheque discounted charges are different from interest payments and provisions of Section 194A are not attracted. ITO v. A.S. Babu Sah (2003) 86 ITD 283 (Mad.)

(5) Winnings from Lotteries or Crossword Puzzles (Section 194B)

The person responsible for paying to any person any income by way of winnings from lotteries or crossword puzzles or card game and other game of any sort, an amount exceeding ` 10,000 shall deduct tax at the prescribed rates at the time of such payment and a statement in Form No. 26 has to be filed by the end of the month of June falling in the financial year immediately following the previous year. No such deduction shall be made from any such payment before 1.6.1972.

Rate of Tax:

The prescribed rate is 30%. No surcharge,education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.

Important Points

(i) When the prize is given partly in cash and partly in kind, income-tax will be deducted from cash prize with reference to the aggregate amount of the cash prize and the value of the prize in kind.

(ii) No income-tax will be deducted from the prize given only in kind.

(iii) When the prize is given in instalments, the tax will be deducted only at the time of actual payment of each instalment.

(iv) Income-tax is not deductible from the income by way of bonus or commission paid to lottery agent or sellers of lottery tickets on the sales made by them.

Prizes won by lottery agent under ―Lucky dip draws‖ are lotteries for the purposes of deduction of tax at source (Circular dated 11-2-1980).

(6) Winnings from Horse Races (Section 194BB)

Income-tax has to be deducted at source from any income by way of winnings from horse races at such rate as may be prescribed by the annual Finance Act. Deduction of tax at source will be made only in cases where the income by way of winnings from horse races to be paid to a person exceeds `

5,000. The obligation to deduct tax at source will apply only where such winnings are paid by a book maker or a person to whom a licence has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course.

Rate of Tax:

The prescribed rate is 30%. No surcharge,education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 30%.

(7) Payment to Resident Contractor or Sub-contractor (Section 194C)

Any person responsible for paying to any of the contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Rate of Tax:

(i) 1% where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) 2% where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein.

– No surcharge, education cess or SHEC shall be added from 1st October, 2009.

– When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.

No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the contractor

No deduction shall be made from the amount of any sum credited or paid to, the contractor, if such sum does not exceed ` 30,000

Provided that where the aggregate of the amounts credited or paid during the financial year exceeds ` 75,000 the person responsible for paying shall be liable to deduct income-tax.

No deduction shall be made from any sum paid or credited during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.

Explanation. – For the purposes of this section, –

(i) Any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person, –
   (A) does not covered above and
   (B) is liable to audit of accounts under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;
   shall be liable to deduct income tax from such sum paid or credited.
(ii) ―contract‖ shall include sub-contract;
(iii) ―work‖ shall include –
   (a) Advertising;
   (b) Broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
   (c) Carriage of goods or passengers by any mode of transport other than by railways;
   (d) Catering;
   (e) Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

(8) Insurance Commission (Section 194D)

Any person responsible for paying to a resident any income by way of commission or otherwise for soliciting or procuring insurance business (including continuance or renewal of policies) shall, at the time of crediting the account of the payee or at the time of payment thereof, whichever is earlier. No deduction shall be made from the amount of any sum credited or paid to, if such sum does not exceed ` 20,000.

Rate of Tax:
The prescribed rate is 10%. No surcharge, education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.

(9) Payment in respect of Deposits under National Savings Scheme etc. (Section 194EE)

The person responsible for paying to any person any amount referred to in Section 80CCA(2)(a) shall, at the time of payment thereof, deduct income-tax at the rate of 20%. No deduction shall, however, be made under Section 194EE where the amount of such payment or the aggregate of such payment to the payee during the financial year is less than ` 2,500. Further, nothing contained in Section 194EE shall apply to the payment of the said amount to the heirs of the assessee.

Rate of Tax:

The prescribed rate is 20%. No surcharge, education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.

(10) Commission, etc. on sale of lottery tickets (Section 194G)

Any person paying any income by way of commission, remuneration or prize (by whatever name called) on lottery tickets on amounts exceeding ` 1,000 shall deduct income-tax at the rate of 10%.No surcharge, education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.irrespective of the fact whether the payment is made in cash or by the issue of a cheque or draft or by any other mode. The provisions of Section 194G have been extended to any account, whether called _suspense account' or by any other name in the books of account of the person liable to pay.

(11) Commission or Brokerage (Section 194H)

Any person, not being an individual or a Hindu Undivided Family, who is responsible for paying, or after 1st day of June, 2001, to a resident any income by way of commission (not being insurance commission referred to in Section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 10% No surcharge, education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.

Provided that no deductions shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed ` 5,000.

Individuals and HUF covered under Section 44AB(a) and (b) i.e. whose gross turnover of the business in the immediately preceding financial year exceeds ` 1 crore (or receipts from the profession ` 25,00,000), are also required to deduct tax at source.

(12) Rent (Section 194-I)

A new Section 194-I in the Income-tax Act relating to deduction of Income-tax at source has been inserted by the Finance Act, 1994. Any person other than an individual or a HUF who is responsible for paying to a resident any income by way of rent is required to deduct tax from rent if such rent is in excess of ` 1,80,000 per financial year. Tax is to be deducted @ 2% for use of any machinery or plant or equipment; and @ 10% for the use of any land or building (including factory building) or furniture or fittings No surcharge, education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.

Explanation: For the purpose of this section:

(i) ―rent‖ means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee.

(ii) where any income is credited to any account, whether called ―suspense account‖ or by other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

Individuals and HUF covered under Section 44AB(a) and (b) i.e. whose gross turnover of the business in the immediately preceding financial year exceeds ` 1 crore (or receipts from the profession ` 25,00,000), are also required to deduct tax at source.

Payment made to C&F agent are regarded as payment made for carrying out work under Section 194C instead of treating it as rent – *National Panasonic India* (*P*) *Ltd.* v. *CIT* (*TDS*) (2005) 35 OT 16 Del. Payment for advertisement for boarding site is dealt under Section 194C. - *ITO* v. *Roshan Publcity* (*P.*) *Ltd.* (2005) 45 OT 105 Mum. Landing and Parking Fee received by Airport Authorities is treated as rent as was decided in the case *United Airlines* v. *CIT* (2006) 152 Taxman 516 Del.

(13) Payment on transfer of certain immovable property other than agricultural land (Section 194-IA)

Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon.

No deduction shall be made where the consideration for the transfer of an immovable property is less than 50 lakh rupees.

(a) "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(b) "immovable property" means any land (other than agricultural land) or any building or part of a building.

The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Procedure to be followed for Depositing of Tax

This section is applicable on 1st June 2013, there was a confusion regarding the depositing the tax and claim of such tax deposited. Whether the deductor would have to apply for a TAN and how and when the tax is to be deposited.

As per section 194-IA, every person (even individuals) making a payment for consideration of an immovable property, not including agricultural land, will withhold tax @ 1% of the transaction amount. As per notification no. 39/2013 dated 31 May 2013 the following things have been made clear:

1. Depositing of withholding tax.

2. Issuance of certificates for such tax

3. Filing a return of withholding tax. The following procedure is followed:

The amount deducted under section 194-IA shall be deposited with the Central Government within 7 days from the end of the month in which the amount was deducted. For example, if amount is deducted on 15th June, then amount shall be paid to the credit of Central Government by 7th July. TDS payment made u/s 194-IA is to be necessarily accompanied by a challan-cum-statement in Form No. 26QB.

The amount shall be deposited electronically within the time specified above with the RBI or the SBI or any other authorized bank. Deductor is liable to furnish the certificate of the tax deducted at source in Form No. 16B to the deductee within 15 days from the due date of furnishing Form No. 26QB. TDS deductor shall provide a certificated under Form 16B which is to be generated online from the web portal.

(14) Professional and technical fees (Section 194J)

Any person other than an individual or a HUF is required to deduct tax @ 10% on professional or technical fees or on any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company; or royalty, or any sum referred to in clause (va) of section 28 at the time of payment or credit whichever is earlier if the aggregate of such fees given to a person is likely to be more than ` 30,000 in a previous year. No surcharge, education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.

(15) Payment of compensation on acquisition of capital asset (Section 194LA)

This section has been inserted by Finance (No. 2) Act, 2004 w.e.f. 1.10.2004. It applies to any person responsible for paying to a resident any sum being in the nature of compensation or enhanced compensation or consideration or enhanced consideration on account of compulsory acquisition of any asset under any law for the time being in force. Such person, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode whichever is earlier, shall deduct an amount equal to 10% and no surcharge, education cess or SHEC shall be added from 1st October 2009. When the payee does not furnish his PAN to deductor, tax will be deducted with effect from 1st April 2010 @ 20%.of such sum as income tax on income comprised therein. However, no deduction shall be made where the amount of such payment or aggregate of such payments during the financial year does not exceed ` 2 lakh.

(16) Income by way of interest from infrastructure debt fund (Section 194LB)

Where any income by way of interest is payable to a non-resident, not being a company, or to a foreign company, by an infrastructure debt fund referred to in clause (47) of section 10, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon @5%.

(17) Income by way of interest from Indian company engaged in certain business (Section 194LC)

Where any income by way of interest is payable to a non-resident, not being a company or to a foreign company by a specified company, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon @ 5%.

(2) The interest shall be the income by way of interest payable by the specified company,-

(i) in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 in foreign currency, from a source outside India, –

(a) under a loan agreement; or

(b) by way of issue of long-term infrastructure bonds, as approved by the Central Government in this behalf; and

(ii) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf; having regard to the terms of the loan or the bond and its repayment.

(a) "foreign currency" shall have the meaning assigned to it in clause (m) of section 2 of the Foreign

Exchange Management Act, 1999(42 of 1999); (b) "specified company" means an Indian company.

(18) Income by way of interest on certain bonds and Government securities (Section 194LD)

Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @5%.

The income by way of interest shall be the interest payable on or after the 1st day of June, 2013 but before the 1st day of June, 2015 in respect of investment made by the payee in – (i) a rupee denominated bond of an Indian company ; or

(ii) a Government security:

However, the rate of interest in respect of bond referred to in clause (i) shall not exceed the rate as may be notified by the Central Government.

(a) "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) "Government security" shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(c) "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular, No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

(19) Payments of other sums to Non-residents (Section 195)

Any person responsible for paying to a non-resident or foreign company any interest or any other sum chargeable to income-tax in India, not being salaries, shall at the time of payment, deduct tax at the rates in force. However, no such deduction shall be made in respect of any dividends referred to in Section 115-O.

In the case of interest payable by the government or a public sector bank or a public financial institution within the meaning of Section 10(23D), deduction of tax shall be made only at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode. Credit of any amount to _Suspense Account' or any other account in the books of account of the person liable to pay such income is also deemed to be _credit' of the income to the account of the payee and makes the provisions of this section applicable to such cases.

If the person responsible for such payments, feels that the whole amount would not be income chargeable in the case of recipient he may make an application to the Assessing Officer to determine the chargeable portion and he shall deduct tax on the sum so determined. Further, the assessee may apply to the Assessing Officer to grant a certificate for either no deduction of tax at source or deduction at a lower rate. If the Assessing Officer is satisfied, he can issue a certificate accordingly and the certificate shall remain in force till the expiry of the period specified therein or its cancellation by the Assessing officer whichever is earlier.

As a result of amendment made by the Finance (No. 2) Act, 1991 with effect from 1.10.1991 in Section 195, reference to the word ‗dividend' has been omitted. Payment made by Indian company to U.S. Company for use of its data base is not subjected to TDS under Section 195 of the Income Tax Act. - WIPRO Ltd. v. I.T.O. (2005) 94 ITD 9 (Bang.)].

(20) Other Provisions

Section 196 provides that no deduction of tax shall be made (notwithstanding anything contained in the foregoing provisions of Chapter XVII) by any person from any sums payable to :

(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income; or

(iv) a Mutual Fund specified under Section 10(23D);

where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.

Where in the case of any income of any person, the Assessing Officer is satisfied that the total income of the person justifies the deduction of income-tax at any lower rate or no deduction of income-tax, he shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate. Where such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in the certificate or deduct no tax, as the case may be (Section 197).

With effect from 1st January 2013, no tax shall be deducted on the following payments where such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank;

(i) bank guarantee commission;

(ii) cash management service charges;

(iii) depository charges on maintenance of DEMAT accounts; (iv) charges for warehousing services for commodities;

(v) underwriting service charges;

(vi) clearing charges (MICR charges);

(vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank.

Section 196A provides that any person responsible for paying to a non-resident, except a company, or to a foreign company, any income in respect of units of a mutual fund specified u/s 10(23D) or of the Unit Trust of India shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in case, whichever is earlier, deduct income tax thereon @ 20%. However, no such deduction shall be made under this section if such income is credited or paid on or after the 1st day of April, 2003.

However, no deduction of tax shall be made from any income payable in respect of units of the Unit Trust of India to a non-resident Indian or a non-resident Hindu undivided family, where the units have been acquired from the Unit Trust of India out of the funds in a Non-resident (External) Account maintained with any bank in India or by remittance of funds in foreign currency, in accordance, in either case, with the provisions of the Foreign Exchange Management Act, 1999 and the rules made thereunder.

(21) Income from units

According to Section 196B the person responsible for making the payment in respect of units referred to in Section 115AB or by way of long-term capital gains arising from the transfer of such units is payable to an offshore fund shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten percent.

(22) Income from foreign currency bonds or shares of Indian Company

With effect from June 1, 1992, Section 196C has been inserted to provide for a deduction of income-tax at the rate of ten percent from the interest income or dividend income in respect of bonds or shares referred to in Section 115AC or by way of long-term capital gains arising from the transfer of such bond or share capital to a non-resident. However, no such deduction shall be made in respect of any dividends referred to in Section 115-O.

The person responsible for making such payment shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode whichever is earlier, deduct the income-tax thereon @ 10%.

(23) Income of Foreign Institutional Investors from securities

According to Section 196D, where any income in respect of securities referred to in clause (a) of Sub-section (1) of Section 115AD is payable to a Foreign Institutional Investor, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof, whichever is earlier, deduct income-

tax at the rate of twenty per cent. However, no such deduction shall be made in respect of any dividends referred to in Section 115-O.

Also no deduction of tax shall be made from any income by way of capital gains arising from the transfer of securities referred to in Section 115AD payable to a Foreign Institutional Investor.

(24) No deduction to be made in certain cases

Section 197A provides that no deduction of tax at source is to be made from (i) interest on securities, (ii) dividends, and (iii) payments in respect of deposits under NSS, etc. if the following conditions are satisfied:
(i) The recipient of such income is an individual and resident in India.

(ii) Such person furnishes a declaration in writing in duplicate, in the prescribed form and verified in the prescribed manner, to the payer of such income to the effect that the tax on his estimated total income of the previous year in which such income is to be included for computing his total income will be nil.

Sub-section 197A(1A) has been inserted with effect from June 1, 1992. This sub-section provides that in case of interest other than interest on securities, a declaration referred to above can be furnished by any person (other than a company or a firm).

The payer of the aforesaid income will deliver to Chief Commissioner or Commissioner of Income-tax one copy of the declaration (received from the recipient of income) on or before the 7th day of the month next following the month in which the declaration is furnished. If he fails to do so he will be liable to a penalty of an amount which shall not be less then one hundred rupees but which may extend to two hundred rupees for every day during which the default continues.

(25) Tax deducted is income received (Section 198)

The tax deducted at source is deemed to be the income received, by the assessee for the purpose of computing his income.

(26) Certificate of tax deducted (Section 203)

The person who deducts tax has to issue a certificate in the prescribed form to the person from whose payments deduction has been made, showing therein the particulars of payment, the date of tax deducted at source and the date of its credit to the Central Government. It is on the basis of this certificate that the payee can claim credit for tax paid on his behalf and can claim refund, if any, due to him on the basis of tax liability for the relevant year.

(27) Consequence in the event of default (Section 201)

Where any person, including the principal officer of a company,

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

However, any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident

(i) has furnished his return of income under section 139;
(ii) has taken into account such sum for computing income in such return of income; and
(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in form 26A.

No penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

If a person responsible for deduction of tax at source fails to deduct the appropriate tax or, after making the due deduction fails to deposit it into the Government treasury, he shall be deemed to be an assessee in default and shall be liable to:

(i) Payment of the whole or any part of the tax as due
(ii) Interest at the rate of 1 per cent per month or part of the month on the tax from the date on which such tax was deductible to the date on which such tax is deducted; and
(iii) Interest at the rate of 1½ per cent per month or part of the month on the tax from the date on which such tax was deducted to the date on which such tax is actually paid;

However, in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default, the interest shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

(iv) Penalty which may be as high as the amount of the tax in default, however, no penalty shall be charged under Section 221 from such person unless the Assessing Officer is satisfied that such person has, without good and sufficient reasons, failed to deduct and pay the tax; and
(v) Prosecution - where the amount of tax which the responsible person has failed to deduct or pay exceeds ` 1,00,000 he shall be punishable with rigorous imprisonment for a term not less than 6 months but which may be extended to 7 years and with fine. In any other case, he shall be punished with a rigorous imprisonment of a term of not less than 3 months but which may be extended to 3 years and with fine.

Where the amount of tax has not been deposited after it is deducted, the amount of tax together with the interest shall be a charge upon all the assets of the person. The following table will give the list of forms of certificates to be issued and necessary form to be filed with Assessing Officer by the persons deducting the tax at source.

	Categories of payment	*Form No. of Certificate*	*Form No. of return to be filed with Assessing Officer*
	(1)	(2)	(3)
(a)	Salaries	12BA, 16, 16AA	24Q
(b)	Interest on Securities (Government)	16A	26Q
(c)	Interest on Securities (others)	16A	26Q
(d)	Interest other than Interest on Securities	16A	26Q
(e)	Dividends	16A	26Q
(f)	Winnings from Lotteries/Crossword puzzles	16A	26Q
(g)	Winnings from Horse Races	16A	26Q
(h)	Payments to contractors/Sub-contractors	16A	26Q
(i)	Insurance commission	16A	26Q
(j)	Non-resident sportsmen or sports association	16A	26Q
(k)	National Savings Scheme etc.	16A	26Q
(l)	Income on repurchase of units by mutual funds or UTI	16A	26Q
(m)	Commission, Remuneration or Reward on sale of lottery tickets	16A	26Q
(n)	Payment to non-resident	16A	27Q
(o)	Foreign company being unit holders of mutual fund	16A	27Q
(p)	Units held by offshore fund and income from foreign currency bonds	16A	27Q
(q)	Rent	16A	26Q
(r)	Commission (not being insurance commission) or brokerage	16A	26Q
(s)	Fee for professional or technical services	16A	26Q

E-TDS Return

E-TDS return is a prepared in the form Nos. 24Q, 26Q or 27Q in electronic media as per prescribed data structure either in a floppy or in a CD-ROM. The floppy or CD-ROM prepared should be accompanied by Form No. 27A should be signed and verified in the prescribed manner. As per Section 206 of the Income Tax Act Corporate and Government deductors are compulsorily required to file their TDS return through electronic media. However, for other deductros filing of e-TDS return is optional and e-TDS return should be filed under Section 206 of the Income Tax Act in

accordance with a scheme dated 26th August, 2003 for electronic filing of TDS return vide CBDT Circular No.8 dated 19.09.2003. The CBDT has appointed the Director General of Income Tax (Systems) as e-filing administrator for the purpose of electronic filing of returns of TDS Scheme, 2003. CBDT has also appointed National Securities Depository Limited (NSDL) as e-TDS intermediary. E-TDS return can be filed at any of the TIN-FC opened by the e-TDS intermediary for this purpose. The due date for filing quarterly TDS return both electronic and conventional form remains the same.

E-Filing of quarterly statement of TDS is mandatory for the deductors where;

– The deductor is an office of the Government

– The deductor is the principal officer of a company

– The deductor is a person required to get his accounts audited under section 44AB in the immediately preceding financial year or

– The number of deductees records in a quarterly statement for any quarter of the financial year are twenty or more,

Other than the above, any other deductor may also opt to furnish the statement electronically.

ADVANCE PAYMENT OF TAX

Advance tax, as the name itself suggests, is a tax that is paid in advance. Advance payment of tax is another method of collection of tax by the Central Government in the form of pre-paid taxes. Such advance tax is in addition to deduction of tax at source or collection of tax at source. Scheme of advance payment of tax is also known as ‗Pay as you Earn' scheme *i.e.,* the assessee is required to pay tax during the course of earning of income in the previous year itself, though such income is chargeable to tax during the assessment year. Advance tax is payable on current income in installments during the previous year. But now the question arises who should pay advance tax? The liability for payment of advance tax is given in section 207 of the Act.

Liability for Payment of Advance Tax

As per the various provisions of advance tax (sections 208 to 219), tax shall be payable in advance during the financial year in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year. Such total income shall be referred to as ―Current income‖ in this Chapter. We know that income earned during the financial year 2016-17 shall be charged to tax in the assessment year 2017-18. But the assessee is required to pay tax, in advance, on the taxable income of financial year 2016-17 during the financial year 2016-17 itself.

As per section 208, every person whose estimated tax liability for the year is ` 10,000 or more, shall pay his tax in advance, in the form of

‗advance tax‖. In this part you can gain knowledge on various provisions relating to payment of advance tax by a taxpayer.

Person not liable to pay advance tax

As discussed above, every person whose estimated tax liability for the year is ` 10,000 or more is liable to pay advance tax. However, a resident senior citizen (i.e., an individual of the age of 60 years or above during the relevant financial year) not having any income from business or profession is not liable to pay advance tax.

Calculation of Advance Tax (Section 209)

Computation and Payment of Advance Tax where the calculation is made by the assessee himself (Section 209). The amount of advance tax payable by an assessee in the financial year on his own accord shall be computed as follows:

Step I : Estimate the current income of the financial year for which the advance tax is payable.

Step II : Compute tax on such estimated current income at the rate(s) of tax given under Part III of the First Schedule of the relevant Finance Act.

Step III : From tax so computed, deduct the rebate, if any, likely to be allowed under sections 88, 88B and 88C.

Step IV : On the net tax computed at Step III, add surcharge as applicable and allow relief, if any, under section 89.

Step V : Deduct the tax deductible or collectable at source during the financial year from any income (as computed before allowing deduction admissible under the Act) which has been taken into account in computing the current income.

Step VI : The balance amount is the advance tax payable provided it is ` 5,000 or more. However, it will be payable in certain installments.

Estimated current income means estimate of income likely to be earned during the current previous year under five heads of income. Thereafter, set off brought forward losses. From such estimated gross total income deductions likely to be claimed under sections 80CCC to 80U will be deducted.

What Constitutes Current Income? Current income will include all items of income. It includes capital gains (both long--term and short-term), winnings from lotteries, crossword puzzles, etc. For computation of advance tax on the current non-agricultural income, even agricultural income will be included for rate purposes, wherever as per provisions of the Income-tax Act, it is required to be so included

Due dates for payment of advance tax

Advance tax is to be paid in different instalments. The due dates for payment of different instalments of advance tax are as follows:

Status	By 15th June	By 15th Sept.	By 15th Dec.	By 15th March
All assessees (other than the eligible assessee as referred to in Section 44AD or section 44ADA)	Up to 15% of advance tax	Up to 45% of advance tax	Up to 75% of advance tax	Up to 100% of advance tax
Taxpayers who opted for presumptive taxation scheme of section 44AD or section 44ADA	Nil	Nil	Nil	Upto 100% of Advance tax

Note 1: Any tax paid till 31st March will be treated as advance tax.

Note 2: If the last day for payment of any instalment of advance tax is a day on which the banks are closed, then the taxpayer should pay the advance tax on the immediately following working day [Circular No. 676, dated 14-1-1994].

Mode of payment of advance tax

As per Rule 125 of the Income-tax Rules, 1962 a corporate taxpayer (i.e., a company) shall pay taxes through the electronic payment mode using the internet banking facility of the authorised banks. Taxpayers other than a company, who are required to get their accounts audited, shall pay taxes through the electronic payment mode using the internet banking facility of the authorised banks. Any other taxpayer can pay tax either by electronic mode or by physical mode i.e. by depositing the challan at the receiving bank.

Payment of advance tax

Advance tax can be paid by the taxpayer either on his own account or in pursuance of an order of the Assessing Officer. The taxpayer who is liable to pay advance tax is required to estimate his current income and pay advance tax on his own account. In such a case, he is not required to submit any estimate or statement of income to the tax authorities.

After making payment of first or second or third instalment of advance tax (as the case may be), if there is a change in the tax liability, then the taxpayer can revise the quantum of advance tax in the remaining instalment(s) and pay the tax as per revised estimates. Tax can be computed on the current income (estimated by the taxpayer) at the rates in force during the financial year. From the tax so computed, tax deducted or collected at source will be deducted and the balance tax payable will be used to compute the advance tax liability. Also, relief of tax allowed under section 90 or section 90A or any deduction under section 91 or any tax credit allowed to be set off as per section 115JAA or section 115JD shall also be deducted while computing the advance tax liability.

Payment of advance tax in pursuance of an order of the Assessing Officer

If taxpayer fails to pay advance tax (or advance tax paid is lower than the required amount) and he has already been assessed by way of regular assessment in respect of the total income of any previous year, then the Assessing Officer may pass an order under section 210(3) requiring him to pay advance tax on his current year‘s income (specifying the amount of instalments in which tax should be paid). Such an order may be passed during the financial year, but not later than the last day of February.

On receipt of the notice from the Assessing Officer to pay advance tax, if the taxpayer‘s estimate is lower than the estimate of the Assessing Officer, then the taxpayer can submit his own estimate of current income/advance tax and pay tax accordingly. In such a case, he has to send intimation in Form No. 28A to the Assessing Officer.

Alternatively, if the advance tax on current income as per own estimate of the taxpayer is likely to be higher than the amount estimated by the Assessing Officer, the taxpayer shall pay such higher amount as advance tax in accordance with his own calculation. In such a case, no intimation to the Assessing Officer is required.

The Assessing Officer can revise his order issued to the taxpayer to pay advance tax (as discussed above) under section 210(4). Such revision can be done, if subsequent to the passing of an order to pay advance tax but before 1st March of the relevant financial year a return of income in respect of any later year has been furnished by the taxpayer or any assessment for any later year has been completed at a higher figure. On receipt of such order, the procedure to be followed by the taxpayer will be same as discussed earlier.

UNIT III
WEALTH TAX

Wealth Tax in India is levied under Wealth Tax Act, 1957 on the net wealth of assessee and it extends to whole of India including the State of Jammu and Kashmir. The calculation of net wealth is to be done as per provisions of Wealth Tax Act, 1957. Wealth tax is a direct tax and is to be paid year after year on the same property on its market value, whether or not such property yields any income.

CHARGEABILITY

Chargeability to Wealth tax depends upon the nationality and residential status of the assessee same as the residential status for the purpose of the Income Tax Act. The Wealth Tax is charged for every assessment year in respect of the net wealth of the corresponding valuation date of every individual, Hindu Undivided Family, and company, @1% of the amount by which net wealth exceeds ` 30 lakh. By virtue of section 45 of Wealth Tax Act, 1957, no wealth tax is chargeable in respect of net wealth of the following persons:

1. Any company registered under Section 25 of the Companies Act, 1956;
2. Any cooperative society;,
3. Any social club;
4. Any political party within the meaning of explanation to Section 13Aofthe Income-tax Act; and
5. Any mutual fund within the meaning of Section 10(23D) of the Income-tax Act.
6. The Reserve Bank of India incorporated under the Reserve Bank of India Act, 1934.

DEFINITIONS

(i) Individual

1. As per section 3, the term individual includes –

(a) a natural person or human being;
(b) Hindu Deity or Mutawalli of a Wakf as a juristic individual;
(c) group of individuals, being trustees of a trust [Trustees of Gordhandas Govind Ram Family Charity Trust v. C.I.T. (1973) 88 ITR 47 (S.C.)];
(d) holder of an impartible estate;
(e) group of individuals like Mappilla Tarwards. [W.T.O. v. C.K. Mammed Kayi (1981) 129 ITR 307 (S.C.)].
(f) AOP, where the shares of the members are indeterminate or unknown.

(ii) Hindu Undivided Family

The expression Hindu Undivided family (HUF) has not been defined in the act and the expression Hindu Undivided Family must be construed in the sense in which it is understood under the Hindu Law [Surjit Lal Chhabda v. CIT 101 ITR 776 (SC)]. For the purpose of levy of wealth tax Act, Jain and Sikhs families are also covered under the term HUF [CWT v. Champa Kumari Singhi (1972) 83 ITR 720 (SC)].

(iii) Company

The term ‗company' is defined in Section 2(h) of the Wealth-tax Act, 1957. According to this section the term ‗company' means the same as is defined in Section 2(17) of the Income-tax Act, 1961 which is given hereunder: Company means:

(i) any Indian company, or

(ii) any body corporate incorporated by or under the laws of a country outside India, or

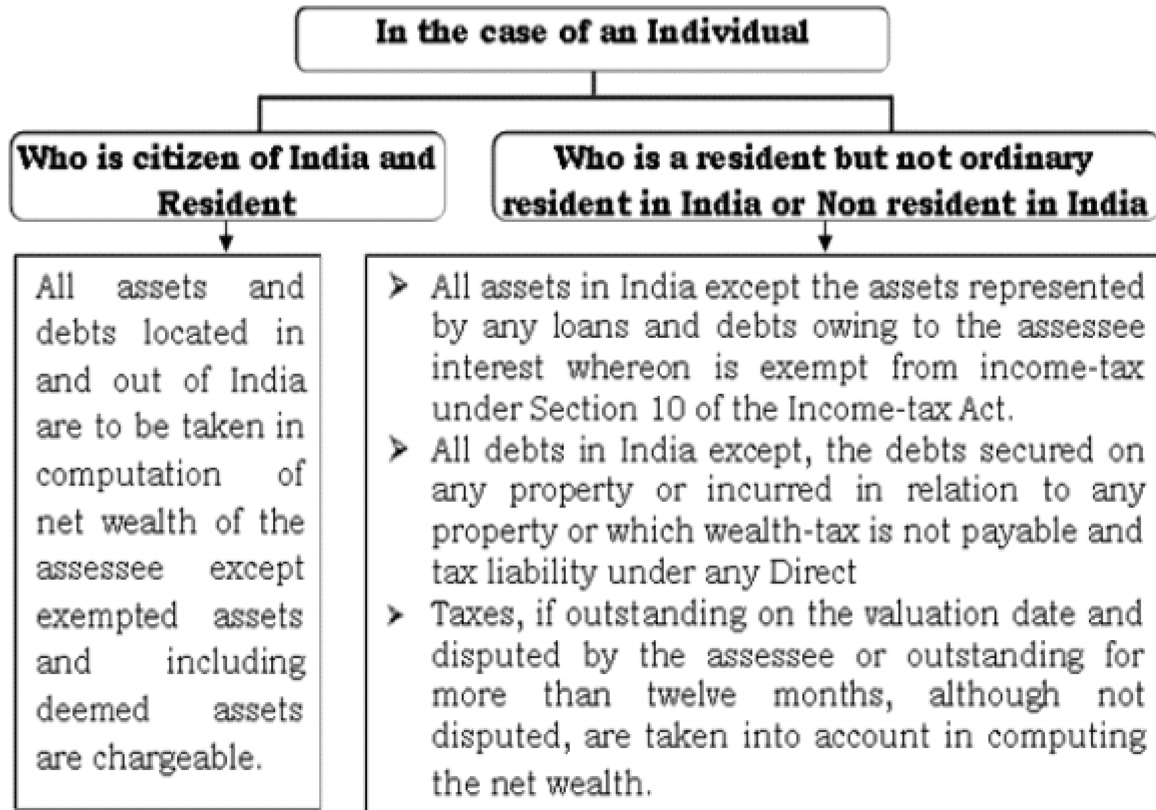
(iii) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922, or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or

(iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a Company:

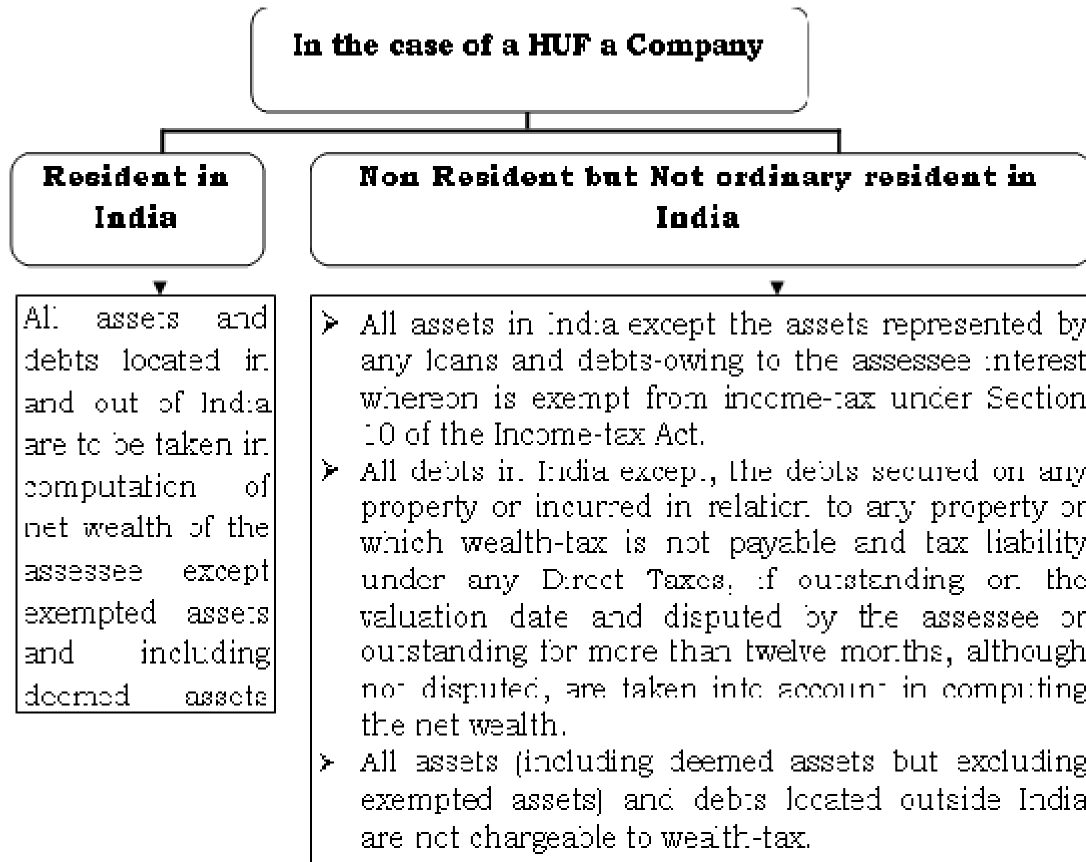
Provided that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years whether commencing before the 1st day of April, 1971 or on or after that date as may be specified in the declaration.

INCIDENCE OF WEALTH-TAX

The liability to wealth-tax depends upon the citizenship and residential status of an individual and in case of a Hindu undivided family upon its residential status alone. An individual or Hindu undivided family may be resident, not ordinarily resident or non-resident in India during the previous year ending on the valuation date. The residential status of an assessee is determined in the same manner as for income-tax purposes under the Income-tax Act. According to Section 6 of the Wealth-tax Act, 1957, the incidence to wealth-tax is as follows:



By virtue of explanation 1A to Section 6 of the Wealth-tax Act the credit balance in a Non-resident (External) Account (interest thereon being exempt under Section 10 of the Income-tax Act), is not taxable in the case of ―a person resident outside India‖ within the meaning of the Foreign Exchange Management Act, 1999.



VALUATION DATE [SECTION 2(q)]

Wealth-tax is levied on the net-wealth of a person as on a particular date, this date is known as the valuation date. The valuation date for wealth-tax purposes is the last day of the previous year as defined in section 3 of Income Tax Act, 1961.

Moreover, valuation date is a continuous period starting at the first moment and ending at the last moment of a certain day (i.e. March 31 of the relevant previous year). Hence the net wealth tax shall be taken at the last moment of the valuation date [Banarasi Dass v. CWT (1970) 76 ITR (All)].

TAX RATES

With effect from the assessment year 2010-11 onwards, as per the amended Section 3, wealth-tax shall be charged in respect of the net wealth on the corresponding valuation date of every individual, Hindu Undivided Family and company at the rate of one per cent of the amount by which the net wealth exceeds thirty lakh rupees.

NET WEALTH [section 2(m)]

The concept of _net-wealth‘ is very important for wealth-tax purposes because net wealth is the tax base. According to Section 2(m) ―net-wealth‖

means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date which have been incurred in relation to the said assets.

Computation of Net-Wealth

Net wealth shall be computed in the following manner:

Value of Assets u/s 2(ea) belong to the assessee as on valuation date	XXX
Add: Deemed assets under section 4	XXX
Less: Assets exempt u/s 5	XXX
Gross wealth	XXX
Less: Debts incurred in relation to the assets included in the net wealth	XXX
Net Wealth	XXX

While computing ―net-wealth‖, the following assets are not includible in the net-wealth of an assessee:

(i) Assets exempt under Section 5(1).

(ii) Under Section 6, in case of an individual who is not a citizen of India or who is citizen of India but a non- resident or not ordinarily resident in India during the previous year and Hindu undivided family not resident or not ordinarily resident in India or a company not resident in India, the assets and debts situated outside India and loans and investments in India from foreign sources, interest on which is exempt from income-tax under Section 10 of the Income-tax Act.

(iii) Assets lost, destroyed or stolen on or before the valuation date.

According to Section 2(ea) read with Section 2(m) of the Wealth-tax Act, the asset, to be chargeable to wealth- tax, must ―belong‖ to the assessee on the relevant valuation date as the liability to wealth-tax arises out of ownership of the asset and not otherwise. In this connection, ownership includes deemed ownership.

The following persons having beneficial enjoyment of property are deemed as owner of immovable properties for the purpose of Section 2(m) of the Wealth-tax Act:

- a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be.
- A person who has taken possession of any building under an agreement to sell (which is not registered) with the vendor and paid consideration or is willing to perform his part of contract [Section 53A of the Transfer of Property Act].
- A person who acquires any right (excluding any rights by way of a lease from month to month or for a period not exceeding one year) with respect to any building by virtue of any transaction as is referred in Section 269UA(f) of the Income-tax Act.

According to Section 2(m), all the assets owned by the assessee have to be taken into consideration, irrespective of the source from which he has

acquired them. For instance, property received by him as a donee (from the donor) or as a devisee (according to the Will of a deceased testator), or as intestate heir of the deceased is to be reckoned. Likewise, property acquired with the help of borrowed money or with the assistance of some other person(s) has to be taken into account. It was on this principle that the Supreme Court rejected the contention of the Calcutta Electric Supply Corporation, that the service lines constructed at the cost of consumers, and not from its own funds, were not owned by it.

It was held in this case that the only relevant thing for the purposes of the Wealth-tax Act was that the assessee should be the owner of the assets in question on the relevant valuation date. Since the balance sheet showed the service connections in question as _assets‘, value thereof was not deductible in determining the net value of _assets‘. Mere possibility of confiscation does not impair ownership of the assessee in the articles seized. Hence, the value of the assets seized on the valuation date shall be included in the net-wealth. [Jayantilal Amritlal v. CWT (1982) 135 ITR 742 (Guj.)]. This is subject of course to the condition that the asset in question is one of the six specific assets mentioned in the exhaustive definition of _assets‘ given in Section 2(ea).

ASSETS [SECTION 2(ea)]

The Finance Act, 1992 has amended the term assets with effect from the assessment year 1993-94 onwards. Accordingly, as per Section 2(ea) ―assets‖ in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means:

(i) House
(ii) Motor Cars (other than those used by the assessee in the business of running them on hire or as stock- in-trade);
(iii) Jewellery
(iv) Yachts, boats and aircrafts (other than those used by the assessee for commercial purposes);
(v) Urban land;
(vi) Cash in hand, in excess of fifty thousand rupees, of individuals and Hindu undivided families and in the case of other persons any amount not recorded in the books of account.

(i) House:

1. The house means any building or land appurtenant thereto used for-
   - residential or commercial purposes
   - maintaining a guest house or
   - a farm house.

2. The house must be situated within twenty-five kilometers from local limits of any municipality/ Municipality Corporation or by any other name or a Cantonment Board.

3. The house will not include-

   - a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is

in whole-time employment, having a gross annual salary of less than ten lakh rupees;

- any house for residential or commercial purposes which forms part of stock-in-trade;
- any house which the assessee may occupy for the purposes of any business or profession carried on by him;
- any residential property that has been let-out for a minimum period of three hundred (300) days in the previous year;
- any property in the nature of commercial establishments or complexes;

(ii) Motor Car

All motor cars whether Indian or Foreign (other than those used by the assessee in the business of running them on hire or as stock-in-trade);

(iii) Jewellery

1) Jewellery includes any jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals (other than those held by the assessee as stock-in-trade);
2) It also includes - (i) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel; (ii) precious or semi-precious stones, whether or not set in any furniture, utensils or other article or worked or sewn into any wearing apparel;
3) And does not include: The Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

(iv) Yachts, boats and aircrafts (other than those used by the assessee for commercial purposes);

(v) Urban land

1. The urban land means land situated in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board And which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date or not being 2 km from the local limits of any municipality and which has a population of more than 10,000 and upto 1 lakh or not more than 6 km, from the local limits of any Muncipality having more than 1 lakh or upto 10 lakh or not being more than 8 km, from the local limits of any Muncipality having population of more than 10 lakh

2. The urban land means any area located within eight kilometers from the local limits of any municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board but does not include:

- But does not include land classified as agricultural land in the records of the government and used for agricultural purposes or land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or
- the land occupied by any building which has been constructed with the approval of the appropriate authority or
- any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him or
- any land held by the assessee as stock-in-trade for a period of five years from the date of its acquisition by him.

(vi) Cash in hand

Cash in hand, in excess of fifty thousand rupees, of individuals and Hindu Undivided families and in the case of other persons any amount not recorded in the books of account.

ASSETS BELONGING TO OTHERS BUT INCLUDIBLE IN THE NET-WEALTH OF AN INDIVIDUAL (DEEMED ASSETS) SECTION 4

Ordinarily, in computing the net wealth of an assessee, only the assets which belong to him on valuation date are taken into account. However, to reduce the liability to wealth-tax, an individual may transfer his assets without adequate consideration to his spouse, son's wife, AOP etc.

Clauses (i) to (vi) of Section 4(1)(a); Section 4(1)(b) and Sub-sections (1A), (5A) and (7) foil an attempt on the part of propertied persons to evade or to lessen their due burden of wealth-tax by the device of transferring their property in whole or in part to their spouse or son's wife or, after December 31, 1969, converting it into the property of family, or after 1.6.1973 to their daughter-in-law. Further, w.e.f. 1.4.1980 the gift of property made by the individual to his H.U.F. is also counteracted by amending Section 4(1A). Gifts made by book entries are also includible in the donor's taxable wealth unless he proves to the satisfaction of the Wealth-tax Officer that the money was actually delivered. Thus, the Section extends the gamut of net wealth in respect of an individual regarding certain assets transferred to the spouse or to association of persons for the benefit of individual, his or her spouse or converted into the property belonging to the Hindu undivided family of which he is a member and such assets shall be deemed as belonging to the individual for being assessable in his hands, subject to satisfaction of the following conditions:

(i) The individual must be the owner of these assets.
(ii) These assets must be transferred without adequate consideration.
(iii) These assets must be held by the transferee on the valuation date.

If the asset has been spent, lost or destroyed before the valuation date, the value of such asset shall not be included in the net-wealth of the individual. If the form of assets transferred is changed before the valuation date, the substituted assets shall be included in the net-wealth of the individual. If the substituted asset is one which is exempt from wealth-tax, it shall not be included in the net-wealth of the transferor. Further, if any debt is incurred on the transferred assets by the transferee, and which is

payable on the valuation date, it shall be deducted from the value of the transferred assets. According to Section 4, the following transfers shall be included in the net-wealth of an assessee:

(1) Assets transferred to spouse [Section 4(1)(a)(i)]

Assets transferred by an individual to his or her spouse directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart.

In this connection the following points are important:

(a) The asset must be transferred to spouse, i.e., a person who is lawfully wedded and the relationship of spouse must exist on the two dates namely, the date of transfer and the valuation date.

Thus, if the transferor and the transferee were not in the relation of husband and wife on the date of the transfer, but they had merely entered into an agreement to marry, a mere alliance, such a transaction would not attract this clause. Again a divorce terminates the legal relationship between spouses and, therefore, the transfer between the divorced husband and wife would not be affected by the present sub-clause. The existence of relationship is necessary not only on the date of transfer but also on the valuation date. Thus, if transfer is effected before the marriage is solemnised, or, although the transfer is effected during subsistence of marriage, but on the valuation date such relationship is terminated, then in both the cases, the value of assets cannot be included in the net-wealth of the transferor.

(b) The asset may be transferred directly or indirectly by an individual to the spouse. A direct transfer may be by handling over certain assets to the spouse or by regular deed of conveyance. An indirect transfer may be through a trust or by a cross-transfer.

Thus, if X and Y are father and son, and X transfers certain assets to his daughter-in-law and, in return, thereof, Y transfers his property to his mother, it would really be a case of both X and Y adopting circuitous method to evade tax. In such a case, the veil would be pierced through to expose the real character of the so-called independent transactions and both X and Y would be subject to the operation of this clause [CIT v. C.M. Kothari (1963) 49 ITR 107 SC].

(c) The asset must be transferred without adequate consideration. Love and affection may be a good consideration but it is not adequate consideration. ‗Adequate consideration‘; means something more than valid consideration. It must be construed as valuable consideration capable of being compared and measured with money or money‘s worth. If the property has been transferred without adequate consideration, the difference between the adequate consideration and inadequate consideration shall be included in the net-wealth of transferor.

(d) If the asset has been transferred under an agreement that husband and wife shall live apart and the agreement is genuine and not sham, the value of the asset transferred shall not be included in the net- wealth of

the transferor. The phrase ―to live separately‖ is of wider connotation and even the voluntary agreements to live apart fall within it.

The arrangement in connection with an agreement to live apart may be in both ways. A husband might give his wife moneys for her living apart and similarly the wife may give moneys to her husband for his consent to live apart.

(2) Assets held by minor child [Section 4(1)(a)(ii)]

Assets held by a minor child (not being minor married daughter) of such individual. The word ‗child' means a legitimate child or a step child or adopted child but does not include an illegitimate child or grand child or child of any other relative. The child must be minor on two dates, i.e., the date of transfer and the valuation date. If the child attains majority before the valuation date, the value of the asset held by such child shall not be included in the net-wealth of the assessee.

However, such assets as have been acquired by the minor child out of his income referred to in the proviso to Section 64(1A) of the Income-tax Act (i.e. such income as accrues or arises to the minor child on account of any manual work done by him or any activity involving application of his skill, talent or specialised knowledge, experience etc.) and which are held by him on the valuation date are not be included in computing the net wealth of such individual. Further, where the assets held by the minor child are to be clubbed with that of his parents, the following rule shall apply:

(a) where the marriage of his parents subsists, in the net wealth of that parent whose net wealth (excluding the assets of the minor child so includible under this sub-section) is greater; or
(b) where the marriage of his parents does not subsist, in the net wealth of that parent who maintains the minor child in the previous year, and where any such assets are once included in the net wealth of either parent, they will not be included in the net wealth of the other parent unless the Assessing Officer is satisfied after giving that parent an opportunity of being heard that it is necessary so to do.

(3) Assets transferred to a person or association of persons [Section 4(1)(a)(iii)]

Assets transferred by an individual to a person or association of persons after 31.3.56 directly or indirectly, otherwise than for adequate consideration for the immediate or deferred benefit of the transferor, his or her spouse are to be included in net-wealth of the transferor. Here it is important to note that the beneficiary can enjoy either the asset as such or the income of property transferred. Further, in the case of deriving of benefits by the ‗spouse', relationship of husband and wife between the transferor and beneficiary must exist on the valuation date. Otherwise, the value of the assets transferred shall not be included in the net-wealth of transferor. However, assets transferred to trust in respect of which gift-tax is chargeable are not includible in computing net wealth of donor - CWT v. H.H. Bhawanisingh (1989) 89 CTR (MP) 134.

(4) Assets transferred under revocable transfers [Section 4(1)(a)(iv)]

Assets transferred under revocable transfers [Section 4(1)(a)(iv)] are included in the net wealth of the transferor. For this purpose, the following transactions are treated as revocable transfers [Clause (b) of Explanation to Section 4]:

(i) transfer revocable within a period of six years or during the transferee's lifetime; or

(ii) if the transferor derives any benefit, directly or indirectly, from the assets transferred; or

(iii) if the transferor has a right to re-transfer, directly or indirectly, in respect of the whole or any part of the assets or income from the assets to be transferred; or

(iv) if the transferor has the right to re-assume power, directly or indirectly, over the whole or any part of the assets or income from the assets so transferred.

Where a trust is revocable by the donor after ten years, it is irrevocable. [CWT v. Sardar Surjit Singh (1982) 138 ITR 186 (Cal.)]. The property transferred under irrevocable transfer shall be included in the net wealth of the transferor, when he gets the right to revoke the transfer even if he does not revoke the transfer. Here it must be noted that the irrevocable transfer should not be for the benefit of spouse or minor child of the transferor. It must be for the _benefit' of a person other than spouse or minor child of the transferor. Assets transferred under points (1) to (4) described hereinabove shall not be included in the net-wealth of an individual for any assessment year commencing after 31.3.1964, but before 1.4.1972, if:

(a) the transfer of such assets or any part thereof is chargeable to gift-tax under the Gift-tax Act, 1958, or

(b) the transfer of such assets is exempt under Section 5 of the Gift-tax Act.

From this, it follows that the gifts made prior to the previous year 1963-64 or made after 31.3.1972 shall be chargeable to Wealth-tax under the Wealth-tax Act, 1957, notwithstanding the fact that such gifts have also been chargeable to gift-tax or exempted under Section 5 of the Gift-tax Act.

(5) Assets transferred by an individual to son's wife or son's minor child including step child and adopted child [Section 4(1)(a)(v)]

Assets held by son's wife to whom such assets have been transferred by the individual directly or indirectly on or after 1.6.1973, otherwise than for adequate consideration shall be included in the net wealth of the assessee for wealth-tax purposes. [CWT v. Sushiladevi (1998) 232 ITR 556 (MP)].

(6) Assets transferred by an individual for the benefits of son's wife [Section 4(1)(a)(vi)]

Directly or indirectly, assets transferred on or after 1.6.1973 without adequate consideration, to a person or an association of persons for the immediate or deferred benefits of the son's wife are deemed to be the assets of the assessee.

(7) Interest in the assets of the firm, etc. [Section 4(1)(b)]

The value of the partner's interest in the assets of the firm includible in the net wealth, shall be determined in the manner laid down in Schedule III. Where a minor is admitted to the benefits of partnership in a firm, the value of such minor's interest, determined as per Schedule III shall be included where the marriage of the parents subsists in the net wealth of that parent of the minor whose net wealth (excluding the minor's interest) is greater. Once such interest is included in the net wealth of either parent for any assessment year, the same shall not be included in the net wealth of the other parent unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do. In case the marriage of his parents does not subsist, the value of such minor's interest in the assets of the firm shall be included in the net wealth of that parent who maintains the minor child in the previous year.

(8) Converted Property [Section 4(1A)]

Where an individual who is a member of a Hindu undivided family, converts his individual property after 31.12.69 into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family, such property is known as converted property and the value of such converted property or any part thereof on the valuation date shall be included in the net-wealth of the individual. Further, any gift made by a member of a HUF, of a separate property or any transfer of property otherwise than for adequate consideration to the family has also to be included in the net-wealth of the individual.

Where the converted property is the subject-matter of partition subsequently amongst the members of the family, the converted property or any part thereof received by the spouse of the individual on such partition shall be deemed to be assets transferred by the individual indirectly to the spouse and the value of such assets shall be included in his net-wealth. The property, on being included in the net-wealth of the individual, shall be excluded from the net-wealth of the family or spouse as the case may be.

(9) Transfer by means of entries in the books [Section 4(5A)]

Where a gift of money from one person to another is made by means of entries in the books of account maintained by any one or more of the following persons:

(a) the donor;

(b) an individual with whom the donor has business or other relationship; and

(c) a Hindu undivided family or a firm or an association of persons or body of individuals with which the donor has business connection, the amounts so gifted shall be included in the net wealth of the donor. However, if the donor can prove to the satisfaction of the Wealth-tax Officer that simultaneous to the making of the book entry, money is actually handed over to the donee in the physical sense, the money so gifted shall not be included in the net-wealth of the donor.

(10) Impartible estate [Section 4(6)]

Although under the general law the Hindu undivided family is the owner of the properties in an impartible estate, for the purpose of Wealth Tax Act, the holder is deemed to be the individual owner of that estate and accordingly liable to include the value of all properties comprised in the estate in his individual net- wealth.

(11) House from a co-operative housing society [Section 4(7)]

Where the assessee is a member of a co-operative housing society and a building or part thereof is allotted or leased to him under a house building scheme of the society, the assessee shall be deemed to be the owner of such building or part thereof and the value of such building shall be included in the net-wealth of the assessee. For determining the value of such building, any outstanding amount payable by the assessee to the society towards the cost of such building or part thereof and the land appurtenant thereto shall be deducted as a debt owed by him in relation to such building. While including the above assets under Section 4, the following points must be considered:

(a) The asset need not be in the same form in which it was transferred by the transferor.

(b) Though Section 4 covers ‗direct‘ and ‗indirect‘ transfers, accretions to the assets transferred do not come within the scope of Section 4. Hence, as held in the case of CWT v. Saraswathi Achi (1980). Taxman 356 (Mad.) though the value of equity shares gifted by an assessee to his wife is taxable in his hands, value of bonus shares allotted to wife is not includible as an asset of the donor.

(c) The phrase ‗individual‘ has to be interpreted to mean both man and woman.

ASSETS EXEMPT FROM WEALTH-TAX

Under Section 5, wealth-tax shall not be payable by an assessee in respect of the following assets and such assets shall not be included in the net wealth of the assessee.

(i) Property held under a Trust [Section 5(1)(i)]

Any property held by the assessee under a trust or other legal obligation for any public purpose of a charitable or religious nature in India.

For exemption under this clause three conditions must be satisfied:

(a) The property must be held by him under a trust or other legal obligation for the stated purposes. However, the property of the trust should not be used for the benefit of the donor or the family members of such person.

(b) The property must be for a public charitable purpose or a public religious purpose. The expression ―charitable purpose‖ means relief of the poor, educational or medical relief or the advancement of any other object of general public utility, and ―religious purpose‖ means any purpose related to the advancement, support or propagation of religion.

(c) The property of the trust must be used in India. If the trust is situated in India but the property is used outside India, the property shall not be exempt from tax.

In a case where the deed did not provide specifically that the income of the trust should be spent in India but there was nothing on record to show that any part of the income was spent outside India, it was held that the exemption cannot be denied. [Trustees of H.E.H. The Nizam's Sahebzadas of Sarf-E-Khas Trust v. C.W.T. (1981) 127 ITR 694 (A.P.)].

By virtue of amendment of Section 5(1)(i) from the assessment year 1986-87, exemption from wealth-tax in respect of business assets of public charitable or religious trusts and institutions has been withdrawn. Consequently, w.e.f. assessment year 1986-87, only the following assets, as provided in the Income-tax Act will be exempt from wealth-tax:

(a) where the trust carried on business wholly for public religious purposes and the business consists of: (i) printing and publication of books; or (ii) publication of books; or (iii) is of a kind notified by the Central Government in this behalf in the Official Gazette.
(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is carried on mainly for the beneficiaries of the institution; and separate books of account are maintained by the trust or institution in respect of such business.
(c) an institution, fund or trust referred to in clause (22) or (22A) or (23B) or (23C) of Section 10 of the Income-tax Act carries on the business.

However, exemption in respect of property forming part of business of an educational institution or a hospital entitled to exemption under Section 10 (22)/10(22A) of the Income-tax Act, would be available, only if such institution satisfy conditions of Section 11(4A) of the Income-tax Act.

(ii) Interest in the coparcenary property of the HUF [Section 5(1)(ii)]

The interest of the assessee in the coparcenary property of any H.U.F. of which he is a member. However, on this property the family is liable to pay tax. This exemption is available to the assessee only so long as the property remains joint and he continues as a member of that family. As soon as a partition is effected, the share allocated to a member becomes his personal property and after that he would be liable to pay tax on his share.

(iii) One official residence of the Ruler [Section 5(1)(iii))]

As per Section 5(1)(iii), any one building in the occupation of a former ruler of a princely state which has been declared by the Central Government as his official residence immediately before the commencement of the Constitution (Twenty Sixth Amendment) Act, 1971. If a Ruler has several official residences, out of them exemption is available in respect of one alone. The choice of this one residence was left to the Ruler, who accordingly conveyed his option to the Board. Further, the exemption of building in full value can be enjoyed by the Ruler during his life time. After the death of the Ruler the successor cannot enjoy the benefit of the exemption. It must be

noted that the exemption is granted only in respect of those buildings or places which were occupied by the Ruler and not in respect of buildings let-out to tenants - Mohd. Ali Khan v. CWT (1983) 12 Taxman 330 (Delhi).

(iv) Hireloom Jwellery of an erstwhile ruler [Section 5(1)(iv)]

Jewellery in the possession of any Ruler (excluding his personal property) which has been recognised before the commencement of the Wealth-tax Act, by the Central Government, as his heirloom or by the Central Board of Direct Taxes, hereinafter referred to as ―Board‖ as his heirloom at the time of his first assessment to wealth-tax under Wealth-tax Act. The recognition of the jewellery shall be subject to the following conditions:

(a) that the jewellery shall be permanently kept in India and shall not be removed outside India except for a purpose and period approved by the Board;
(b) that reasonable steps shall be taken for keeping jewellery substantially in its original shape;
(c) that reasonable facilities shall be allowed to the authorised person to examine the jewellery as and when necessary.

If the assessee fails to fulfill any of the above conditions, the Board after recording the reasons in writing, may withdraw retrospectively with effect from the date of commencement of the Rulers of Indian States (Abolition of Privileges) Act, 1972 and wealth-tax shall become payable by the assessee for all the assessment years for which the jewellery was exempted on account of the recognition. However, the wealth-tax payable on the valuation date relevant to the assessment year in which the recognition was withdrawn shall not exceed 50 per cent of the fair market value of such jewellery.

(v) Money and the assets brought into India by Citizen of India or person of India Origin [Section 5(1)(v)]

An assessee being a person of Indian origin or a citizen of India who was ordinarily residing in a foreign country and who, on leaving such country, has returned to India with the intention of permanently residing therein, moneys and the value of assets brought by him into India and the value of the assets acquired by him out of such money. (Within one year immediately preceding the date of his return and at any time thereafter). However, this exemption shall be available for a period of 7 successive assessment years commencing with the assessment year next following the date on which such person returned in India.

For the purpose of this clause, a person shall be deemed to be of Indian origin if he or either of his parents or any of his grand- parents, was born in undivided India. Moneys standing to the credit of such persons, in a Non-resident (External) Account in any bank in India in accordance with the Foreign Exchange Management Act, 1999, and any rules made there under, on the date of his return to India, shall be deemed to be moneys brought by him into India on that date.

(vi) One House or part of the house [Section 5(1)(vi)]

One house or part of a house belonging to an individual or a Hindu Undivided Family; or a plot of land comprising an area of five hundred square meters or less. A cinema hall cannot be treated as a house as per Section 5(vi), as was decided in the case CIT v. Jai Kishen Gupta (2004) 137 Taxman 388 (All.).

DEBTS AND LIABILITIES

What is Debt?

The word debt is not defined under the Act. But in the very nature of things, the deductible debt or liability must be –external‖ to the concerned assessee that is to say in favour of other persons, or parties. In other words, from the –liabilities side‖ of his Balance Sheet, his own capital, reserves and the profit and loss a/c credit balance etc., must be ignored altogether.

In order to compute the net-wealth of the assessee, the aggregate value of the debts and liabilities which are legally enforceable against him on the valuation date must be deducted from the aggregate value of the assets. Further, the liabilities which have matured into debts payable at present or in future are deductible. The most important thing of course is that the debt or liability in question must have been incurred specifically in relation to the taxable asset. While bank overdraft taken for meeting the working capital requirements will therefore not be deductible.

In computation of the net wealth of an assessee under section 2(m), any debt secured on the security of an asset which is entirely and completely excluded in computation of wealth tax shall not be deducted. When a debt is secured on secured on several items of properties one of which alone is exempted, that portion of the debt which attributable to the value of the property exempted from wealth tax can not be deducted in the computation of the net wealth of the assessee [CIT v. Vaidyanathan (K.S) (1985) 153 ITR 11 (Mad)]

The following debts are not deductible:

(i) Debts located outside India, in case of non-citizens of India and an individual or a Hindu Undivided Family who is a non-resident or not ordinarily resident in India. These debts are not taken into account because in these cases the assets located outside India are also to be ignored.

(ii) Debts secured on or incurred in relation to the non-taxable assets i.e. assets for which exemption is available under Section 5 or assets which do not fall within the definition of the term in Section 2(ea).

LOCATION OF ASSETS AND DEBTS

The determination of location of assets and debts is necessary for the following three reasons:

(i) The assets and debts located outside India and belonging to non-citizens are not included in the net- wealth.

(ii) Payment of tax may be held in abeyance where the assets taken into account for assessment are located outside India in cases

where the laws of that country prohibit or restrict the remittance of money to India.

(iii) Tax rebate is granted to an individual and a H.U.F. in respect of their assets located outside India.

Though the question as to where an assets is located is essentially one of fact and will have to be determined in the light of evidence, guidelines, as follows, may be used for the purpose:

(a) Tangible Immovable Property: The location of the tangible immovable property (land, buildings, lakes, etc.) is in India, if it is physically situated in India.

(b) Intangible Immovable Property: Rights or interest in or over immovable property (otherwise than by way of security) or benefits arising out of immovable property are located in India if the immovable property to which the rights are attached or out of which the benefits arise, lies in India.

Examples of rights and interests are easements of light and air, right of way, ferry, right of fishery, etc.

Examples of benefits arising out of immovable property are: right to collect market dues at a fair held on a plot of land; right to levy tolls; right to use water of a lake or tank for irrigation; right to collect lac from trees; etc.

(c) Movable Property: Right or interests (otherwise than by way of security) in or over tangible movable property are located in India if such property is located in India.

However, the supreme Court has held that the goods on high seas, while in transit to India, are located outside India, since the high seas cannot be considered as a part of India in the absence of anything in the Act making a part of India [C.W.T. v. Consolidated Pneumatic Tools Co. Ltd. (1971) 81 ITR 752].

(d) Debts: Debts, secured or unsecured are located in India if they are contracted to be repaid in India and where the place of repayment is not specified, if the debtor is residing in India. The circumstance that the documentary evidence of the debt is situated in a country different from the country of residence of the debtor is immaterial.

(e) Ship or Air Crafts: They are located in India if they are registered in India.

For assets which are covered by the above items, the location shall be determined having regard to the nature of the assets.

VALUATION OF ASSETS

Wealth-tax is charged on the net-wealth of the assessee, therefore, it is an important function of the Assessing Officer to determine the value of the assets held by the assessee on the valuation date. Section 7 lays down the method of its determination, the value of any asset, other than cash, shall be the value thereof determined in the manner laid down in Schedule III.

(A) VALUATION OF IMMOVABLE PROPERTY

The valuation of immovable property is given in Part B of Schedule III of the Wealth tax Act.

Steps for Valuation of immovable property:

1. Determine annual rent.
2. Calculate Gross maintainable rent.
3. Calculate Net Maintainable Rent.
4. Capitalise Net Maintainable Rent as per the given formula in Rule 3.
5. Now make adjustments for unbuilt area of plot of land
6. Then adjust for unearned increase in the value of the land.
7. At last compare the value derived with actual cost of construction as given below in (g) to determine the value to be taken for wealth tax purpose.

(a) Determination of Annual Rent:

Annual Rent is equal to: Actual rent received or receivable (including all payments /benefits/perquisites paid by the tenant for the use of the property in any form or name) (if property is let out throughout the year ending on the valuation date)

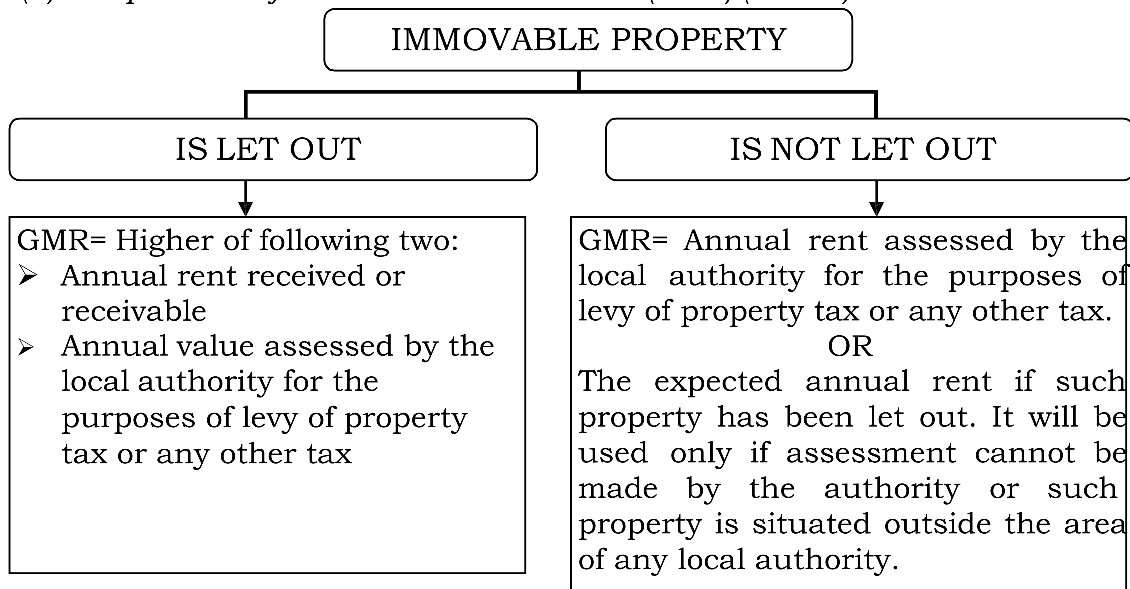
Or

Actual rent received or receivable (including all payments /benefits/perquisites paid by the tenant for the use of the property in any form or name) × 12 Number of Months for which the property is let out (if property is let for only a part of the year ending on the valuation date)

Add:

- Local taxes paid by the tenant
- 1/9th of the actual rent (if repairs expenditure is borne by the tenant)
- 15% p.a. on deposit held by the owner for the number of the months (excluding part of a month) in the previous year (but it does not include advance rent for a period not exceeding three months and the interest to be paid by the owner will be deducted from this amount)
- (Amount received for lease/ the number of years of the period of the lease) If the owner has received any amount by way of premium for leasing of the property.
- Any benefit or perquisite derived by the owner in consideration for leasing of the property or any modification of the terms of the lease.

(b) Computation of Gross maintainable rent (GMR) (Rule 5):



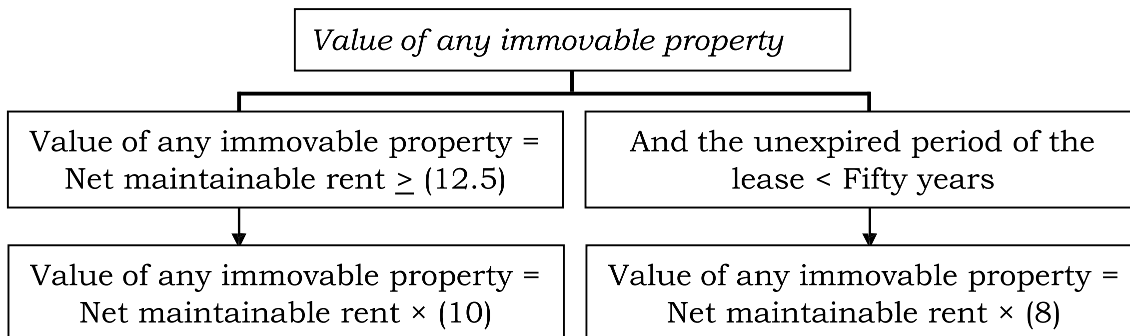
(c) Calculation of Net Maintainable Rent (Rule 4):

Gross maintainable rent

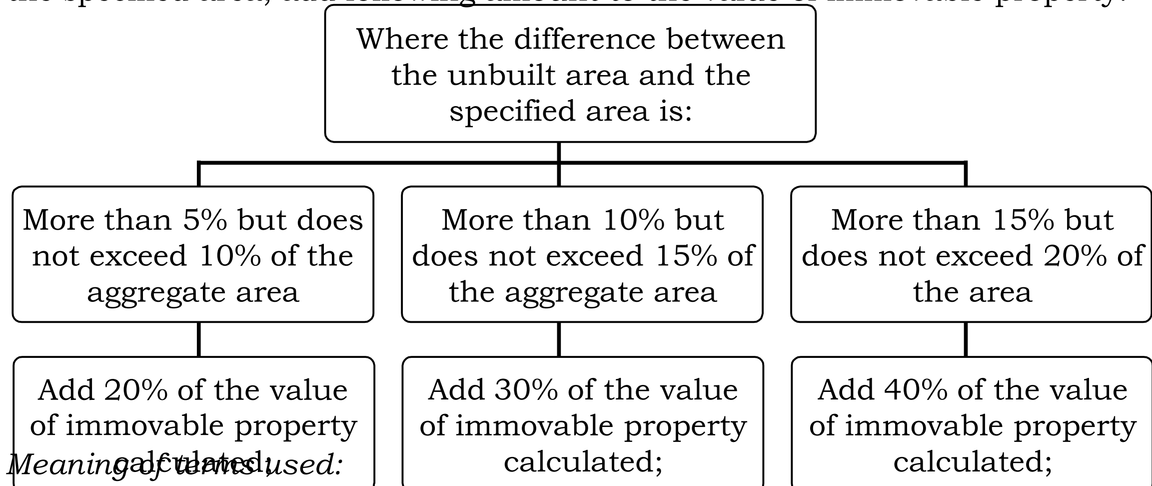
Less: Taxes levied by any local authority in respect of the property 15% of gross maintainable rent

Net maintainable rent

(d) Value of any immovable property (Rule 3):



If the unbuilt area of the plot of land on which the property is constructed > the specified area, add following amount to the value of immovable property:



Meaning of terms used:

- Aggregate area means the aggregate of the area on which the property is constructed and the unbuilt area.
- Unbuilt area means that part of such aggregate area on which no building has been erected.
- Specified area means where the property is situated at:

Place	Specified area
Mumbai, Kolkata, Delhi or Chennai	60% of the aggregate area
Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bhopal, Cochin, Hyderabad, Indore, Jabalpur, Jamshedpur, Kanpur, Patna, Pune, Salem, Sholapur, Srinagar, aggregate areaLucknow, Ludhiana, Madurai, Nagpur, Surat, Tiruchirapalli, Trivandrum, Vadodara (Baroda) or Varanasi (Benaras)	65% of the aggregate area
At any other place	70% of the aggregate area

– Specified area shall be the minimum area when such minimum area is kept as open space for the enjoyment of the property under any law for the time being in force and such minimum area is greater than the specified area.

(f) Adjustment for unearned increase in the value of the land (Rule 7):

It is applicable when:

(a) The property is constructed on land obtained on lease from

– the Government,

– a local authority or

– any authority referred to in clause (20A) of section 10 of the Income-tax Act, and

(b) The Government or any such authority is entitled to claim and recover a specified part of the unearned increase in the value of the land at the time of the transfer of the property, under the terms of the lease.

The value of such property

Value of property as determined under Rule 3 after making adjustment for unbuilt area of plot if any	XXX
Less: Lower of the following two	
Amount equal to 50% of the value of the property as determined above	
Amount liable to be claimed and recovered by the Government for unearned increase	XXX

where, unearned increase= (value of such land on the valuation date as determined by the Government or authority - amount of the premium paid or payable to the Government or such authority for the lease of the land)

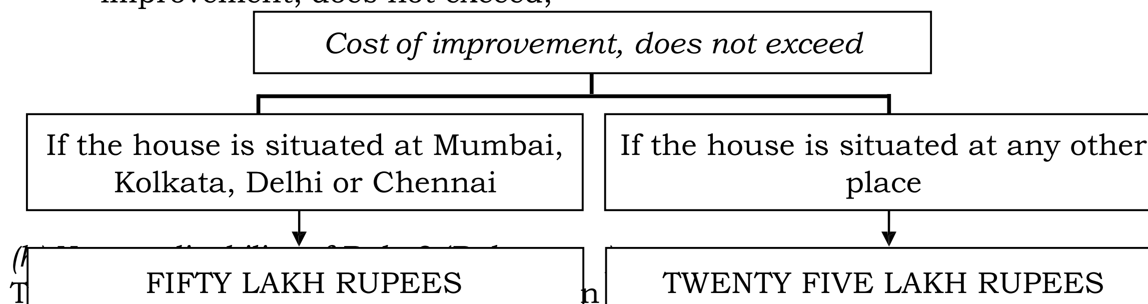
(g) Now compare the value derived with actual cost of acquisition,

If the property is acquired or construction of property is completed after the 31/03/1974. The value of such property will be higher of following:

- Value derived above after all the adjustments.
- Actual cost of acquisition/construction and cost of improvement.

This clause will not be applicable for:

- Only one residential house exclusively used for his own residential purposes throughout the period of 12 months immediately preceding the valuation date and
- If the actual cost of acquisition/construction plus cost of improvement, does not exceed, –



in the manner laid down in Rule 20.

- Where, having regard to the facts and circumstances of the case, the Assessing Officer, with the previous approval of the Deputy

Commissioner, is of opinion that it is not practicable to apply the provisions of the said rule to such a case; or

- Where, (unbuilt area - specified area) > 20% of the aggregate area; or
- Where, the immovable property is constructed on leasehold land and the lease is for a period = 15 years from the relevant valuation date and there is no provision for the renewal of the lease.

(B) VALUATION OF ASSETS OF BUSINESS

The valuation of immovable property is described in Part D of Schedule III of the Wealth tax Act. As per Rule 14(1), for the assessee who is carrying on a business and has maintained accounts regularly, the value of Net Assets (Total Assets minus Total liabilities) will be calculated on the basis of Balance Sheet of the assessee to determine the value of business, subject to the conditions mentioned under Rule 14(2).

Following are the conditions mentioned in Rule 14(2):

(i) The value of the asset will be the value as disclosed in the balance-sheet. The depreciable assets will be valued at written-down value, Non depreciable assets at book value and the Closing stock value will be as adopted under the Income-tax Act.

(ii) If the value of asset as determined under Rule 14(2)(a) exceeds the value calculated under Schedule III of this Act by more than 20%, then the higher value shall be taken to be the value of that asset.

(iii) If the value of an asset is not disclosed in the balance-sheet, determine the value under Schedule III of this Act.

Assets not to be Included: [Rule 14(2)(d)]

Following assets even if disclosed in the balance sheet shall not be included in calculating the Value of Assets of Business:

(i) Advance tax paid under the Income-tax Act;

(ii) the debt due to the assessee according to the balance-sheet or part thereof which has been allowed as a deduction under clause (vii) of sub-section (1) of section 36 of the Income-tax Act, for the purposes of assessment for the previous year relevant to the corresponding assessment year under that Act;

(iii) The value of any asset in respect of which wealth-tax is not payable under this Act;

(iv) Any amount shown in the balance-sheet including the debit balance in the profit and loss account or profit and loss appropriation account which does not represent the value of any asset;

(v) Any asset shown in the balance-sheet not really pertaining to the business;

Liabilities not to be Considered: [Rule 14(2)(e)]

Following amounts shown as liabilities in the balance-sheet shall not be considered:

(i) Capital employed in the business other than that attributable to borrowed money;

(ii) Reserves by whatever name called except provision for taxation; (iii) Any provision made for meeting any future or contingent liability;

(iv) Any liability shown in the balance-sheet not really pertaining to the business;

(v) Any debt owed by the assessee to the extent to which it has been specifically utilised for acquiring an asset in respect of which wealth-tax is not payable under this Act. Provided that where it is not possible to calculate the amount of debt so utilised, it shall be taken as the amount which bears the same proportion to the total of the debts owed by the assessee as the value of that asset bears to the total value of the assets of the business.

(C) VALUATION OF INTEREST IN FIRM OR ASSOCIATION OF PERSONS

The Part E of the Schedule III of the Wealth Tax Act deals with the Valuation of Interest in firm or association of persons. As per Rule 15 the value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member shall be determined in the manner provided in Rule 16.

STEP 1 : The net wealth of the firm or association of persons on the valuation date shall first be determined as if it were the assessee.

STEP 2 : The portion of the net wealth of the firm or association, as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them.

STEP 3 : The residue shall be allocated amongst the partners or members in accordance with the agreement of partnership or association for distribution of assets in the event of dissolution of the firm or association.

STEP 4 : In absence of such agreement, the apportionment of net wealth shall be done in the proportion in which the partners or members are entitled to share the profits.

STEP 5 : The sum total of the amounts so allocated to the partner/member under steps 2 to 4 shall be taken as the value of interest of that partner or member in the firm or association.

(D) VALUATION OF LIFE INTEREST

According to the Rule 17(1) (Part F of Schedule III), the value of the life interest of an assessee is–

[(Average annual income accrued to the assessee from the life interest) x $\{1/(p+d)-1\}$].

Where,

p = the annual premium for a whole life insurance without profits on the life of the life tenant for unit sum assured as specified in the Appendix to these rules

$d = i / (1+i)$, i is the rate of interest.

$i = 6\frac{1}{2}\,\%$ per annum

Average annual income = (Average gross annual income) – (Average Expenses incurred on collection of such income)

Average annual gross income = (Total gross income from the life interest) / (Total number of years) Average Expenses = (Total expenses incurred on the collection of such income) / (Total number of years)

Note:

- Average expenses incurred on collection of such income shall not exceed 5% of the average annual gross income.
- Average annual income will be calculated only for the period of maximum 3 years preceding the period ending on the valuation date
- The Assessing Officer may vary the normal premium rates in force and determine value accordingly if he thinks that the normal rates are low or any insurance company would not provide insurance at that premium.
- The value of the life interest determined above shall not be greater than the value of the corpus of the trust determined under schedule III of this Act.

(E) VALUATION OF JEWELLERY (PART G OF SCHEDULE III)

The value of the jewellery shall be estimated to be the price which it would fetch if sold in the open market on the valuation date i.e. the fair market value. The return of net wealth furnished by the assessee shall be supported by,–

- a statement in the prescribed form (if the value of jewellery = 500,000)
- a report of a registered valuer in the prescribed form (if the value of jewellery > 500,000)

The Assessing Officer (AO) may refer the valuation of jewellery to a Valuation Officer under Section 16A(1) and the value of such jewellery shall be the value as estimated by the Valuation Officer, if AO is of the opinion that:

The value of the jewellery declared in the return < fair market value by such percentage as is prescribed under Section 16A(1)(b)(i) of the Act;

The value of the jewellery declared in the return < fair market value.

The value of jewellery so estimated by the Valuation Officer shall be taken to be the value of such jewellery for the subsequent 4 (four) assessment years, subject to the following adjustments:–

- where the jewellery includes gold or silver or any alloy containing gold or silver, the value of such gold or silver or such alloy as on the valuation date relevant to the concerned subsequent assessment year shall be substituted for the value of such gold or silver or alloy on the valuation date relevant to the first assessment year;
- where any jewellery or part of jewellery is sold or otherwise disposed of by the assessee, or any jewellery or part of jewellery is acquired by him, on or before the valuation date relevant to the concerned subsequent year, the value of the jewellery determined for the first assessment year shall be reduced or increased, as the case may be, and the value as so reduced or increased shall be the value of the jewellery for such subsequent assessment year.

(F) VALUATION OF ASSETS IN OTHER CASES (PART H OF SCHEDULE III)

The value of any asset, other than cash, not covered by above schedules shall be the fair market value as in the opinion of the Assessing Officer on the valuation date.

If the valuation of any asset is referred by the Assessing Officer to the Valuation Officer under section 16A, the value of such asset, shall be the fair market value as in the opinion of the valuation officer on the valuation date.

If the value of any asset cannot be estimated under this rule because it is not saleable in the open market, the value shall be determined in accordance with such guidelines or principles as may be specified by the Board from time to time by general or special order.

The price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive covenant in any instrument of transfer shall be ignored for the purposes of determining value under any provision of this Schedule and the price of such property would be the price the property would fetch if sold in the open market on the valuation date.

ROUNDING OFF OF NET-WEALTH (SECTION 44C)

Under Section 44C, the net-wealth computed under the provisions of the Act shall be rounded off to the nearest multiple of ` 100. If the amount contains a part of one hundred rupees and if such part is fifty rupees or more, the amount shall be increased to the next higher amount which is multiple of hundred. If such part is less than fifty rupees, the amount shall be reduced to the next lower amount which is a multiple of one hundred. The amount so rounded off shall be deemed to be the net-wealth of the assessee.

ROUNDING OFF OF TAX, INTEREST, PENALTY ETC. (SECTION 44D)

The amount of wealth-tax, interest, penalty, fine or any other sum payable or refundable under the Act shall be rounded off to the nearest rupee. If the amount contains a part of rupee, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paisa it shall be ignored.

RETURN OF WEALTH

(1) Voluntary Return

The procedure under the Wealth-tax Act for making the assessment of net wealth begins with the filing of a return of wealth. Section 14 of the Act contains the relevant provisions relating to the filing of return of Wealth. According to that section it is statutorily obligatory for every person, if his net wealth or the net wealth of any other person in respect of which he is assessable under this Act on the valuation date exceeded the maximum amount which is not chargeable to wealth-tax, shall, on or before the due date, furnish a return of his net wealth or the net wealth of such other

person as on that valuation date in the prescribed form and verified in the prescribed manner setting forth particulars of such net wealth and such other particulars as may be prescribed.

Explanation: Sub-section(1) specifies the ―due date‖ in relation to an assessee under the Wealth-tax Act, to be the same date as that applicable to an assessee under the Income-tax Act under the Explanation to Sub-section (1) of Section 139 of the Income-tax Act, i.e.,

(a) Where the assessee is a company, the 30th day of September of the assessment year;

(b) Where the assessee is a person, other than a company:

- (i) in a case where the accounts of the assessee are required under the Income Tax Act or any other law to be audited or in the case of a partner of a firm where the accounts of the firm are required to be so audited, or, in the case of a co-operative society, the 30th day of September of the assessment year;
- (ii) in a case where the total income referred to in Sub-section (1) of Section 139 includes any income from business or profession, not being a case falling under Sub-clause (i) hereinabove, the 31st day of July of the assessment year;
- (iii) in any other case, the 31st day of July of the assessment year.

However, notwithstanding anything contained in any other provisions of the Wealth-tax Act, a return of net wealth which shows the net wealth below the maximum amount which is not chargeable to tax shall be deemed to have never been furnished. It is further provided that Sub-section (2) shall not apply to a return furnished in response to a notice under Section 17;

(2) Return after Due Date and Amendment of Return (Section 15)

If any person has not furnished a return within the time allowed under Section 14(1) or under a notice issued under Section 16(4)(i), or having furnished a return discovers any omission or a wrong statement therein, he may furnish a belated return or revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

An assessment is made or completed when the order of assessment is signed by the Assessing Officer, and not when the assessment order or notice of demand is served on the assessee. If the assessee files the belated return or revised return before the assessment is made, the Assessing Officer is bound to consider such return and he cannot assess the assessee under Section 17 (wealth escaping assessment).

Return by whom to be signed (Section 15A)

The return of wealth must be signed and verified:

(a) In case of an individual:

- (i) by individual himself;
- (ii) where the individual is absent from India, by the individual concerned or by a person duly authorised by him;

- (iii) where the individual is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf;
- (iv) where for any other reason it is impossible for the individual to sign the return, by any person competent to act on his behalf.

(b) In case of Hindu undivided family:

- (i) by the Karta;
- (ii) where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the family; and

(c) In the case of a company:

- (i) by the Managing Director of the company;
- (ii) where the Managing Director, because of any unavoidable reason could not sign the return, or where there is no Managing Director, by any Director thereof.
- (iii) where the company is being wound up, whether under the orders of the Court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return has to be signed and verified by the liquidator referred to in Section 178(1).
- (iv) where the management of the company has been taken over by the Central Government or any State Government under any law, the return has to be signed and verified by the principal officer thereof.
- (v) where the company is not resident in India the return may be signed and verified by any person who holds a valid power of attorney from such company to do so, which shall be attached to the return.

POWER OF BOARD TO DISPENSE WITH REFURNISHING DOCUMENTS ETC. WITH RETURN OF WEALTH (SECTION 14A)

For a particular class or classes of persons the Board has a power to exempt such person or classes of person from the requirement of furnishing documents, statements, receipts, certificates, audit report, reports of register valuer or any other document which are required to be furnished along with return of net wealth. But, such documents are required whenever the demand is made by the Assessing Officer.

FILING OF RETURN IN ELECTRONIC FORM (SECTION 14B)

The Board has power to make rules for a particular class or classes of persons who shall be required to furnish the return in electronic form in such a form and manner as may be prescribed by Board. The Board also has a power to make rules providing for documents, statements, receipts, certificates, audit report, reports of register valuer or any other document which may not to furnished along with return of net wealth. But, such documents are required whenever the demand is made by the Assessing Officer. It may prescribed ten ways of making electronic records.

ASSESSMENT

(1) Self Assessment [Section 15B]

Where any tax is payable on basis of any return furnished under Section 14 or Section 15 or in response to a notice under clause (i) of Sub-section 4 of Section 16 or under Section 17, after taking into account the amount of tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such tax, together with interest payable under any provision of this Act for any delay in furnishing the return, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

Where the amount paid by the assessee under Sub-section (1) (as above), falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable. After the regular assessment under Section 16 has been made, any amount paid under Sub-section (1) shall be deemed to have been paid towards such regular assessment.

If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of Sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid and all the provisions of this Act shall apply accordingly.

(2) Assessment

Section 16, provides for assessment, as follows:

(1) Where a return has been made voluntarily or after due date or in response to a notice under clause (i) of Sub-section (4), -
   - (i) if any tax or interest is found due on the basis of such return after adjustment of any amount paid by way of tax or interest, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice issued under Section 30 and all the provisions of the Act shall apply accordingly; and
   - (ii) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee.

Provided that except as otherwise provided in this sub-section the acknowledgement of the return shall be deemed to be intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him. An intimation for any tax or interest due under this clause shall not, however, be sent after the expiry of two years from the end of assessment year in which the net wealth was first assessable.

(2) In the above cases, if the Assessing Officer considers it necessary or expedient to ensure that the assessee has not understated the net wealth or has not underpaid the tax in any manner, he shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend at the office of the Assessing Officer or to produce, or cause to

be produced there, any evidence on which the assessee may rely in support of the return:

Provided that no notice under the sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.

(3) On the day specified in the notice issued under Sub-section (2) or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by order in writing, assess the net wealth of the assessee and determine the sum payable by him on the basis of such assessment.

(4) For the purposes of making an assessment under the Act, the Assessing Officer may serve, on any person who has made a return under Section 14 or Section 15 or in whose case the time allowed under Sub-section (1) of Section 14 for furnishing the return has expired, a notice requiring him on a date to be specified therein, -

(i) where such person has not made a return within the due date, to furnish a return of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act, on the valuation date, in the prescribed form and verified in the prescribed manner, setting forth the particulars of such net wealth and such other particulars as may be prescribed, or

(ii) to produce or cause to be produced such accounts, records or other documents as the Assessing Officer may require.

(5) If any person, –

(a) fails to make the return required under Sub-section (1) of Section 14 and has not made a return or a revised return under Section 15, or

(b) fails to comply with all the terms of a notice issued under Sub-section (2) or Sub-section (4).

The Assessing Officer shall, after taking into account all relevant material which he has gathered, and after giving such person an opportunity of being heard, estimate the net wealth to the best of his judgement and determine the sum payable by the person on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the person to show cause, on a date and time to specified in the notice, why the assessment should not be completed to the best of his judgement:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under Sub-section (4) has been issued prior to the making of the assessment under the sub-section. Where a regular or best judgement assessment is made, any tax or interest paid by the assessee shall be deemed to have been paid towards such regular assessment and, if no refund is due on regular assessment and the amount

refunded exceeds the amount refundable on regular assessment, the whole of the excess refunded shall be deemed to be tax payable by the assessee.

(3) Reference to Valuation Officer (Section 16A)

Where for making a Wealth-tax assessment under the Act and Section 7 thereof, read with the relevant rules (in Wealth-tax Rules as well as Schedule III), the market value of any asset is to be taken into account in such assessment, the Assessing Officer may refer the valuation of any asset to the Valuation Officer under the following circumstances.

(i) where the value of the asset has been estimated by a registered valuer and the Assessing Officer is of the opinion that the value estimated by the registered valuer is less than its fair market value and it requires an upward revision;

(ii) in any other case, if the Assessing Officer is of the opinion that fair market value of the asset exceeds the value of the asset as returned by more than 33-1/3% or by more than ` 50,000; or

(iii) if he considers it necessary to do so on account of the nature of the asset and other relevant circumstances.

On a reference having been made to the valuation officer, he will proceed to value each asset separately after giving notice to the assessee to produce or cause to be produced before him, such accounts, records or other documents as he may require.

Where the Valuation Officer is of the opinion that the value of the asset has been correctly declared in the return made by the assessee, he shall pass an order in writing and send a copy of it to the Assessing Officer and to the assessee. Where the Valuation Officer is of the opinion that the value of the asset is higher than the value declared by the assessee, or where the asset is not disclosed, or the value of the asset is not declared in the return, or, where no such return has been made, he shall serve a notice on the assessee intimating the value which he proposes to estimate and give him an opportunity to state the objections, if any, on the date specified by the Valuation Officer. The assessee, either in person or through any other person, or in writing, can file his objections or produce or cause to be produced such evidence as he wants to rely on in support of his objections.

After hearing all the evidence which the assessee may produce and considering all the material which the Valuation Officer has gathered, he shall estimate the value of the asset and send a copy of his order to the Assessing Officer and the assessee. The order of the Valuation Officer is binding on the Assessing Officer who, after receiving the order, shall proceed to complete the assessment in conformity with the estimate of the Valuation Officer. Where the Valuation Officer values an asset for an amount less than the amount returned by the assessee, the value assessed by Assessing Officer would be final. Further, the assessee can file an appeal against valuation report and valuation officer is bound to follow valuation rules given under Schedule III.

(4) Wealth Escaping Assessment (Section 17)

If the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of which any person is assessable under the Wealth-tax Act, has escaped assessment for any assessment year (whether by reason of under assessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this Section and Section 17A, serve on such person a notice requiring him to furnish within such period, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth the net wealth in respect of which such person is assessable as on the valuation date mentioned in the notice, along with such other particulars as may be required by the notice, and may proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section for the assessment year concerned and the provisions of the Wealth-tax Act shall, so far as may be, be applicable as if the return were a return required to be furnished under Section 14.

It is further provided that in cases where assessment under Section 16(3) or this section has been made for the relevant assessment year, no action shall be taken under this section after expiry of four years from the end of the relevant assessment year unless any net wealth chargeable to tax has escaped assessment for such assessment year by reason of failure on the assessee's part to: (i) make a return under Section 14 or 15 or in response to a notice issued under

Section 16(4) or this section or, (ii) full and true disclosure of all material facts necessary for his assessment for that assessment year. And, the Assessing Officer shall, before issuing any notice under this sub-section, record his reasons for doing so.

Explanation to the proviso (as above) clarifies that production of account books and other evidence, before the Assessing Officer, from which material evidence could have been discovered by the Assessing Officer with due diligence will not necessarily amount to disclosure.

It is provided further that the period of 4 years or six years shall be extended to sixteen years where any net wealth in relation to any asset (including financial interest in any entity) located outside India chargeable to tax, has escaped assessment for any assessment year.

Sub-section (1A) provides that notice specified at paragraph (1) hereinabove shall not be issued for the relevant assessment year –

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees ten lakh or more for that year.

(1B) (a) This sub-section restrains issuance of notice by an Assessing Officer below the rank of Assistant Commissioner or Deputy Commissioner unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice in cases where assessment under Section 16(3) or 17(1) has been made for the relevant assessment year.

Additional restraint made by proviso to this sub-section is: after the expiry of four years from the end of the relevant assessment year, notice to be issued only if the Commissioner or Chief Commissioner is satisfied on the reasons recorded by such Assessing Officer about the case being a fit one for the issuance of notice.

(b) In case other than the ones specified at (a) above, no notice shall be issued under Sub-section (1) by an Assessing Officer below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

Sub-Section (2) to Section 17 states that the aforementioned time limit within which any proceeding for assessment or reassessment may be commenced shall not apply to an assessment or reassessment to be made on such person in consequence of or to give effect to any finding or direction contained in an order passed pursuant to: (i) Section 23 [Appeal to the Commissioner (Appeals)]; (ii) Section 24 (Appeal to Appellate Tribunal); (iii) Section 25 (Revisions of orders by Commissioner); (iv) Section 27 (Reference to High Court); (v) Section 29 (Appeal to Supreme Court) or by a Court in any proceeding under any other law.

However, the provisions of Sub-section (2) shall not apply in any case where the assessment or reassessment relates to an assessment year in which an assessment or reassessment could not have been made at the time the order which was the subject matter of the appeal, revision or reference, was made by reason of any provision limiting the time within which any action for assessment or reassessment may be taken.

(4) Time limit for completion of Assessment and Re-assessment

Section 17A, provides as follows:

(1) No order of assessment shall be made under Section 16 at any time after the expiry of two years from the end of the assessment year in which the net wealth was first assessable:

Provided that:

(a) Where the net wealth was first assessable in the assessment year commencing on 1.4.1987 or any earlier assessment year, the assessment can be made on or before 31.3.1991.

(b) Where the net wealth was first assessable in the assessment year commencing on 1.4.1988, such assessment can be made on or before 31.3.1992.

Provided further that in case the Assessment Year in which the net wealth was first assessable is the assessment year commencing on the 1st day of April, 2004 or any subsequent year, the provisions of this sub-section

shall have effect as if for the words ―two years‖, the words ―twenty-one months‖ had been substituted.

(2) No order of assessment or reassessmnt shall be made under Section 17 after the expiry of one year from the end of the financial year in which the notice under 17(1) was served:

However, where the notice under Sub-section (1) of Section 17 was served on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such assessment or reassessment may be made at any time upto the 31st day of March, 2002.

Provided further that where the notice under sub-section (1) of Section 17 was served on or after the 1st day of April, 2005, the provisions of this sub-section shall have effect as if for the words ―one year‖, the words ―nine months‖ had been substituted‖.

Sub-section (3) of Section 17A provides that notwithstanding anything contained in Sub-section (1) and (2) of Section 17A, an order of fresh assessment in pursuance of an order passed on or after 1.4.1975 under Section 23A, Section 24 or Section 25 setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under Section 23A or Section 24 is received by the Chief Commissioner or Commissioner as the case may be, the order under Section 25 in passed by the Commissioner.

However, where the order under Section 23A or Section 24 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under Section 25 is passed by the Commissioner, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such an order of fresh assessment may be made at any time upto the 31st day of March, 2002.

Provided further that where the order under Section 23A or Section 24 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under Section 25 is passed by the Commissioner, on or after the 1st day of April, 2005, the provisions of this sub-section shall have effect as if for the words ―one year‖, the words ―nine months‖ had been substituted.

Where the assessment or re-assessment is made on an assessee or any other person in consequence of, or to give effect to, any finding or direction contained in an order passed on Appeal Revision or Reference; under Section 23, Section 24, Section 25, Section 27 or Section 29, or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Wealth-tax Act, the time limits prescribed in Sub-sections (1) and (2) Sections 17A will not apply. Such assessment or re-assessment may be completed at any time subject to the provisio of Sub-section (3) of that section.

In computing the period of limitation the time taken in the following shall be excluded:

(i) the time taken in re-opening the proceeding or in giving an opportunity to the assessee to be re-heard;

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any Court;

(iii) the period, not exceeding sixty days, commencing from the date on which the Wealth-tax Officer received the declaration under Section 18C (1) and ending with the date on which the order under Sub-section (3) of Section 18C (regarding an identical question of law being pending before the High Court) is made by him or;

(iv) where an application made before the Wealth-tax Settlement Commission is rejected by it, the period commencing from the date on which application is made and ending with the date on which the order is received by the Commissioner from the Commission.

However, where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in Sub-section (1), (2) and (3) available to the Assessing Officer for making an order of assessment or reassessment as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

LIABILITY TO ASSESSMENT IN SPECIAL CASES

(1) Tax of Deceased Person Payable by Legal Representative (Section 19)

Where a person dies, his executor, administrator or legal representative shall be liable to pay the Wealth-tax assessed or any other sum (interest, fine or penalty) payable by the deceased out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge.

Where a person dies either without furnishing a return or after furnishing incorrect or incomplete return, the Assessing Officer may make an assessment and for this purpose he may serve the required notice to the legal representative to produce any accounts, documents or evidence which might have been required from the deceased person if he had survived.

The legal representative shall also be liable to file a return (if the deceased had not filed it) or a belated return or revised return or pay tax on wealth escaping assessment. However, his liability is restricted to the assessment years in which the assessee has expired or earlier assessment year for which the assessment has not been made. He shall not be liable for the tax for valuation date falling after his death.

If the penalties are imposed prior to death, the same may also be collected from the legal representative but, for the default made by the deceased, no penalty can be levied on the legal representative [Smt. Yawarunnissa Begum v. WTO (1975) 100 ITR 645 (A.P.)].

Similarly, the penalty proceedings commenced against the deceased cannot be continued after his death against his legal representative [Remeshwar Prasad v. CWT (1980) 124 ITR p. 77].

Following the Allahabad High Court‘s decision in the case of Rameshwar Prasad v. Commissioner of Wealth-tax (1980, 124 ITR 77) the Madhya Pradesh High Court held in the case of Commissioner of Wealth-tax v. Abdul Mazid Khan (1984, 147 ITR 53) that Section 19(1) does not provide for the continuation of penalty proceedings against the legal representative when the assessee dies before the proceedings are concluded. In the absence of any provision like Section 159 of the Income-tax Act, 1961 in the Wealth-tax Act, it could not be held that penalty proceedings started against an

assessee under Section 18 could be continued against his legal representatives.

The Andhra Pradesh High Court's decision in the case of Smt. Yawarunnissa Begum v. Wealth-tax Officer (supra) was followed by the Allahabad High Court in the case of Ram Prasad (supra) and by the Madhya Pradesh High Court in the case of Abdul Mazid Khan (supra).

(2) Assessment in the case of Executors (Section 19A)

After the death of a person, his estate is chargeable to Wealth- tax in the hands of the executor/s who are treated as an individual and whose residence and citizenship shall be the same as those of deceased on the valuation date immediately preceding his death.

The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own net wealth or on the net wealth of the deceased under Section 19.

Separate assessment shall be made on the executor in respect of the net wealth as on each valuation date from the date of the death of the deceased to the date of complete distribution to the beneficiaries of the estate according to their interests. If he has distributed any assets of the estate, the value thereof shall not be included in the net wealth of deceased but it shall be included in the net wealth of beneficiary, if he continues to own the asset on the valuation date.

(3) Assessment after Partition of a Hindu Undivided Family (Section 20)

Where, at the time of making an assessment, it is brought to the notice of the Assessing Officer that a partition has taken place, on the valuation date, amongst the members of a H.U.F. and the Assessing Officer, after enquiry, is satisfied that the joint property has been partitioned as a whole among the various members in definite portions, he shall record an order to that effect and shall make assessments on the H.U.F. for that assessment year as well as for any earlier year/s. Every member of the family shall be liable jointly and severally for the tax assessed on the net wealth of the family.

Where the partition has taken place during the previous year prior to the valuation date, the family as such shall not be liable for the tax after the partition but each member shall be liable to pay tax on his net-wealth.
Where the Assessing Officer is not satisfied about the partition of the family, he may declare that the family shall be deemed to continue to be a H.U.F. However, if a member gets out of it after taking his share of the joint property, the reduced family shall be liable to be taxed as a unit in respect of the diminished net wealth.

(4) Assessment after Partial Partition of a Hindu Undivided Family (Section 20A)

Where a partial partition has taken place after the 31st day of December, 1978, among the members of a Hindu undivided family hitherto assessed as undivided, such family shall continue to be liable to be assessed under this Act as if no such partial partition had taken place, and each

member or group of members of such family shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the family in respect of any period, whether before or after such partial partition. Partial partition is no partition after the above date. However, the several liability of any member or group of members aforesaid shall be computed according to the portion of the joint family property allotted to him or it at such partial partition. ‗Partial partition' means a partition which is partial as regards the persons constituting the family or the properties belonging to the family, or both.

(5) Assessment of Charitable Trusts (Section 21A)

Where any property is held under trust for any public purpose of a charitable or religious nature in India and (i) any part of such property or any income of the trust is used or applied; or (ii) any part of the income of the trust, being a trust created on or after 1.4.1962, ensures directly or indirectly for the benefit of

(a) the author of the trust or the founder of the institution; or

(b) a person who has made substantial contribution to the trust; or

(c) where the author or founder is a H.U.F., a member of the family; or

(d) any trustee of the trust or manager of the institution;

(e) any relative of the author, founder person, member, trustee or manager or member of H.U.F.; or

(f) concern in which any of the person referred to in clauses (a), (b), (c), (d) and (e) has substantial interest, for any period during the previous year, such a trust institution shall be liable to pay wealth-tax on the value of the entire property. Wealth tax is also leviable in case any funds of the trust are invested or deposited or any shares in a company are held by the trust in contravention of the provision of Section 13(1)(d) of Income-tax Act, 1961. However, in the case of a trust created before 1.4.1962, the provisions of clause (i) shall not apply to the use of any part of such property or income of the trust for the benefit of person referred to in (a) to (f) above, if such use or application is by way of compliance with a mandatory term of the trust.

Wealth-tax for the purposes of this section shall be leviable upon, and recoverable from the trustee or manager (by whatever name called) in the like manner and to the same extent as if the property were held by an individual who is a citizen of India and resident in India for the purposes of this Act.

(6) Assessment of an Association of Persons (Section 21AA)

Where there is an ―association of persons‖ other than a company or a co-operative society ―or society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India‖ in which the shares of individual members are indeterminate on the date of its formation or any time thereafter, Wealth-tax will be levied upon and recovered from such association in the same manner

and to the same extent as is leviable upon an individual resident citizen for the purposes of the Act.

Where any business or profession carried on by such association has been discontinued or the association is dissolved, the Assessing Officer shall make an assessment of the net wealth of such association as if no discontinuance or dissolution had taken place.

Every person who was, at the time of such discontinuance or dissolution, a member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(7) Assessment of Persons Residing outside India (Section 22)

Where the person liable to wealth-tax resides outside India, the tax may be levied upon and collected from his agent and his agent shall be deemed to be the assessee in respect of such tax. Any of the following persons may be appointed by the Assessing Officer as the agent of the person residing outside India after giving him a notice and an opportunity of being heard:

(i) an employee of the person resident outside India;
(ii) a person through whom he received any income, profit or gain;
(iii) a person who is in possession or custody of any asset of a non-resident and upon whom the Assessing

Officer has caused a notice to be served of his intention of treating him as the agent of such person. The agent is entitled to recover the amount so paid from the person on whose behalf it is paid or to retain out of any money that may be in his possession or may come to him in the capacity of an agent.

Any agent or any person, who apprehends that he may be assessed as an agent of an outsider, he may retain out of any money payable by him to the principal, a sum equal to the estimated Wealth-tax liability. In the case of disagreement regarding the amount to be so retained, the agent may secure a certificate from the Assessing Officer stating the amount to be so retained. If the agent fails to retain the amount, he runs the risk of having to pay the wealth-tax out of his own pocket.

In the final settlement, the amount recoverable from the agent cannot exceed the amount specified in the certificate. However, the Assessing Officer can realise the excess out of any additional assets of the principal in the hands of the agent or recover it from any assets of the outsider that may at any time come within India.

PAYMENT AND RECOVERY OF WEALTH-TAX

(1) Notice of Demand (Section 30)

After an order has been made under this Act imposing any tax, interest, penalty, fine or any other sum, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the

sum so payable. According to Rule 4 of the Wealth-tax Rules the notice of demand shall be in Form C.

Any failure on the part of the Assessing Officer to comply with the requirements of Rule 4 in regard to the particulars therein specified, or any failure on the part of the Wealth-tax Officer to serve the notice is required by this section will invalidate the subsequent proceeding in recovery.

Whether fresh Notice of Demand is necessary after an order on appeal or other proceedings?

The answer is: No such notice is necessary. But if the result of the appellate or other proceedings is to reduce the original assessment, another notice is necessary.

Payment (Section 31)

The amount demanded shall be paid within 30 days of the service of the notice at the place and to the person mentioned in the notice. However, if the Assessing Officer has reason to believe that if the period of full 30 days is allowed to the assessee, it will be detrimental to the revenue, he may, with the previous approval of the Joint Commissioner, reduce period for the payment of the sum demanded.

Section 29A also provides that the Wealth-tax, as assessed, is payable though a reference has been made to the High Court or the Supreme Court. The provision implies that mere pendency of reference will not amount to a stay for recovery of demand.

If the demanded amount is not paid within 30 days or such lesser period, as may be prescribed by the Assessing Officer, the assessee shall be liable to pay simple interest @1% for every month or part of month for the period of default, i.e., the next day of the last date for payment, to the actual date of payment. According to Rule 12 the period and the amount in respect of which the interest is to be calculated shall be rounded off.

The rules regarding rounding off are as under:

(i) where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month or months and for this purpose any fraction of a month shall be ignored; and the period so rounded off shall be deemed to be the period in respect of which the interest is to be calculated;

(ii) where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month and the interest shall be so calculated;

(iii) the amount in respect of which the interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and for this purpose any fraction of one hundred rupees shall be ignored; and the amount so rounded off shall be deemed to be the amount in respect of which the interest is to be calculated.

Where, as a result of an order under appeal the amount on which interest was payable had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded. And, in

respect of any period commencing on or after 7.9.2003, the interest for the period falling after that date shall be calculated @1% for every month or part of the month. On an application made by the assessee before the expiry of the due date for payment, the Assessing Officer may extend the time for payment or allow the payment by instalments subject to such conditions as he may think fit to impose. If the assessee fails to pay the amount within the time allowed, he shall be deemed to be in default. Further in case of payment by instalments where the assessee commits any default in paying any one of the instalments within the time fixed, the assessee shall be deemed to be in default as to the whole amount due on that date and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

Where an assessee has presented an appeal to the commissioner (Appeals), the Assessing Officer may treat the assessee as not being in default in respect of the amount in dispute in the appeal so long as the appeal remains undisposed of. The assessee shall not be deemed to be in default where he has been assessed in respect of assets located in a country outside India, the laws of which prohibit or restrict the remittance of money to India. He shall not be deemed to be in default in respect of that part of the tax only which is attributable to the assets in that country and until the prohibition or restriction of remittance is removed. But, as soon as restriction on remittance is removed, the assessee must make the payment within the specified time, failing which he would be treated as assessee in default.

Mode of Recovery (Section 32)

The provisions relating to the mode of recovery of Income tax apply also to the recovery of Wealth-tax.

(2) Liability of Transferees of Properties (Section 33)

If an individual transfers assets to any of the persons mentioned in Section 4 (i.e., to spouse to a person or association of persons for the benefit of his or her spouse etc.) the transferred assets are included in the net wealth of transferor and he would be assessed to tax in respect thereof. Normally, as a general rule a transferee of property is not liable to pay tax due by the transferor in respect of a transferred asset but Section 33 provides that after issuing a notice of demand, the portion of the tax attributable to the transferred asset (on a pro rata basis) may be recovered from the transferee. If the transferred asset is held jointly by more than one persons, they shall be jointly and severally liable to pay the tax. If the transferee fails to pay the tax demanded from him, he shall be deemed in default and all the provisions relating to recovery shall apply accordingly.

REFUNDS (SECTION 34A)

Where a refund of any amount becomes due to the assessee, as a result of an appeal or other proceedings (reference, rectification of mistake or revision) the Assessing Officer shall refund the amount to the assessee without his having to make any claim in that behalf. However, where, by the order aforesaid, an assessment is set aside or cancelled and an order of

fresh assessment is directed to be made, the refund, if any shall become due only on the making of such fresh assessment. And, if the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the net wealth returned by the assessee.

Further, where refund of any amount becomes due to the assessee as a result of an order of assessment, whether pursuant to the filing of a return of wealth within or after due date/amendment or in response to a notice etc. and the Assessing Officer is of the opinion that in view of the matter being the subject-matter of an appeal or further proceeding or any other proceeding being pending, the grant of refund is likely to adversely affect the revenue, he may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as determined by the Chief Commissioner or Commissioner.

Where a refund is found due to any person, the Assessing Officer, the Deputy Commissioner (Appeals), or Commissioner (Appeals) or Chief Commissioner, or Commissioner after giving a written intimation to the assessee, may, in lieu of payment, set off the amount of refund against the amount, if any, remaining payable under this Act by the assessee.

With effect from 7.9.2003, as per Sub-section (4B), where any refund becomes due to the assessee under the Wealth-tax Act, he is entitled to receive simple interest thereon @ 1/2 per cent for every month or part of a month from the date/s of payment of the tax or penalty to the date of grant of refund. In the case of delay in the proceedings, attributable to the assessee, the period of delay shall be excluded from the period for which he is entitled to the interest. Further, in the case of reduction or increase in the amount on which interest is payable, as a result of an order of assessment or the orders by Appellate authorities in appeal, revision, or order of the Wealth-tax Settlement Commission, the interest shall also be correspondingly increased or reduced. In the case where the interest is reduced, the Assessing Officer shall issue a notice of demand to the assessee, calling for payment of the excess interest paid.

RECTIFICATION OF MISTAKES (SECTION 35)

With a view to rectify any mistake apparent from the record, the Assessing Officer, a Wealth-tax authority, the Valuation Officer, the Joint Director, Joint Commissioner, Director, Commissioner, Commissioner (Appeals), Appellate Tribunal may amend their respective orders either on his/its own motion or when it is brought to notice either by the assessee or where the authority concerned is the Valuation Officer or the Commissioner (Appeals) or the Appellate Tribunal, by the Assessing Officer. If the amendment enhances the assessment or reduces a refund, the authority concerned cannot do so without giving a notice to the assessee of its intention to do so and allowing him a reasonable opportunity of being heard.

If the assessee pays any amount of tax, penalty or interest in dispute within 6 months from the date of order passed in the first appeal or revision, the sum so paid would be allowed as a permissible deduction. This deduction would be allowed as a deemed rectification of mistake. The order

of amendment shall be passed in writing by the authority concerned and where it has the effect of enhancing the assessment or reducing a refund already made, the Assessing Officer shall serve on the assessee a notice of demand specifying the sum payable.

The time limit for rectification is four years from the end of the financial year in which the order was passed in the first appeal or revision and in other cases it is four years from the end of the financial year in which the order sought to be amended was passed.

SETTLEMENT OF CASES

The provisions regarding settlement of cases under this Act are the same as those of the Income-tax Act. Therefore, the students are advised to study these provisions from the Lesson 12.

APPEAL TO COMMISSIONER (APPEALS) [SECTION 23(1A) & (B)]

Any person who is not satisfied by any of the following orders may file an appeal to the Commissioner (Appeals), in the prescribed form and verified in the prescribed manner:

(1) objecting to the amount of the Net wealth/amount of Wealth-tax determined to be payable or denying his liability to be assessed under this Act. The above is subject to the condition that the total wealth determined in assessment made under Section 16 exceeds ` 15 lakhs;

(2) objecting to the penalty imposed under Section 18(1), with the previous approval of the Deputy Commissioner, under Section 18(3); or

(3) objecting to any assessment or order referred to in the preceding items (i) to (viii), where such assessment or order has been made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under Section 8 or 11; or

(4) objecting to any penalty imposed by the Joint Director or Joint Commissioner under Section 18A; or

(5) objecting to an order made by an Assessing Officer in case of such persons or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

Sub-Section (1B), further provides that notwithstanding anything contained in Sub-section (1), the Board or the Director General or the Chief Commissioner or Commissioner, if so authorised by the Board may, by order in writing, transfer any appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) if the Board or, as the case may be, the Director General, the Chief Commissioner or Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the

Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was before it was so transferred:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be re-heard.

Appealable orders before Commissioner (Appeals) [Section 23A]

(1) Any person may appeal to the Commissioner (Appeals) against the assessment or order:

(a) objecting to the amount of net wealth determined under this Act.
(b) objecting to the amount of Wealth Tax determined as payable by him under this Act.
(c) denying his liability to be assessed under this Act.
(d) objecting to any penalty imposed by the assessing officer under Section 18 or Section 18A.
(e) objecting to any order of the assessing officer under Sub-section (2) of Section 20.
(f) objecting to any penalty imposed by the assessing officer under the provision of Section 221 of the Income-tax Act as applied under Section 32 for the purposes of Wealth Tax.
(g) objecting to any order made by the assessing officer under Section 22 treating him as agent of a person residing outside India.
(h) objecting to any order of the assessing officer under Section 35 having the effect of enhancing the assessment or reducing a refund or refusing to allow the claim made by the assessee under the said section, or
(i) objecting to any order of the Valuation Officer under Section 35 having the effect of enhancing the valuation of any asset or refusing to allow the claim made by the assessee under the said section, or
(j) objecting to any penalty imposed by the Deputy Director or Deputy Commissioner under Section 18A. The application in duplicate, has to be in the prescribed form (form E) and verified in the prescribed manner and on payment of a fee of two hundred and fifty rupees.

Explanation: For the purpose of this sub-section where on or before 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director the reference in this sub-section for —Deputy Commissioner‖ and —Deputy Director‖ shall be substituted by —Joint Commissioner‖ and _Joint Director" respectively.

(2) Every appeal pending before the Deputy Commissioner (Appeals), immediately before the appointed day and any matter arising out of or connected with such appeal shall stand transferred to the Commissioner (Appeals) and he may proceed with such appeals or matter from the stage on which it was on that day. However, the appellant may demand that before proceeding further with the appeal or matter, the previous proceedings or any part thereof be reopened or that he be reheard. Appointed day means the day appointed under Section 246A of the Income-tax Act.

(3) An appeal shall be presented when thirty days of the receipt of the notice of demand relating to the assessment or penalty objected to or the day on which any order objected to is communicated to him. The Commissioner (Appeals) may, however, admit an appeal after the expiry of the aforesaid period, if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

Section 23A further provides that appeal is admitted only if the assessee has paid the tax due on the net wealth returned by him. In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed under Section 23A(1). The order of Commissioner (Appeals) shall be in writing and shall state the points for determining the decision thereof and reasons for the decision and a copy of every order so passed shall be forwarded to the appellant and the Chief Commissioner or Commissioner. Order passed by the Appellate Tribunal on appeal shall be final except as provided in Section 27 or Section 27A.

APPEAL TO THE APPELLATE TRIBUNAL (SECTION 24)

Where the assessee is not satisfied by any of the following orders of the Commissioner (Appeals), he may file an appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him:

(1) penalty under Section 18; or
(2) penalty under Section 18A; or
(3) order passed by the Commissioner (Appeals) under Section 23 or Section 23A; or
(4) imposing a fine under Section 37(2).

In the same way, if the Commissioner is not satisfied by the order of the Commissioner (Appeals), he may direct the Assessing Officer to appeal to the Appellate Tribunal against the order. The appeal shall be filed in the prescribed Form F and within 60 days of the date of which the order sought to be appealed against is communicated to the Commissioner. If the appeal is filed by the assessee, it shall accompany a fee of ` 1000. However, for appeal not relatable to net wealth as computed by the Assessing Officer, fee is ` 500.

After receiving the application from the aggrieved party in form F, the Appellate Tribunal shall issue a notice to the other party that an appeal against the order has been preferred. The other party may file a memorandum of cross objections in the prescribed Form G against the order within 30 days of the receipt of the notice. The memorandum of cross objections shall be treated as if it were an appeal presented by the other party. If the assessee or the Assessing Officer, as the case may be, fails to file the appeal or memorandum of cross objection in the prescribed time, the Appellate Tribunal may admit it after the expiry of relevant period if it is satisfied that there was sufficient cause for not presenting it within the prescribed time.

The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such order as it deems fit. However, it is not empowered to enhance the assessment or penalty without giving an opportunity to the assessee showing cause against such assessment.

By amendment in this section Finance Act, 1999 has provided that in every appeal the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed. It is further provided that the cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal.

A copy of the order passed by the Tribunal shall be forwarded to the assessee and the Commissioner. The decision of the Tribunal regarding the facts of the case shall be final.

REVISIONS OF ORDERS BY COMMISSIONER (SECTION 25)

The Commissioner can revise the orders passed by any authority subordinate to him under two circumstances:

(1) In the interest of assessee.
(2) In the interest of the revenue.

The Commissioner, either on his own motion or on an application by the assessee for revision, can call for the record of any proceeding under this Act which has been conducted by any authority subordinate to him (including the Appellate Assistant Commissioner). After making such enquiry as may be necessary, the Commissioner may pass such orders as he thinks fit. However, the order cannot be prejudicial to the assessee. The Commissioner is not empowered to revise any order on his own motion if a period of more than one year has expired from the date of the order sought to be revised. If the application is made by the assessee for revision, it must be accompanied by a fee of ` 25 and it must be made within one year from the date of the order sought to be revised or within such further period as the Commissioner may think fit allow on being satisfied that the assessee was prevented by sufficient cause from making the application within the prescribed time. If the Commissioner refuses to interfere, it shall not be deemed an order prejudicial to the assessee. Further, the Commissioner shall not revise any order in the following cases:

(i) where an appeal against the order lies to the Commissioner (Appeals) or to the Appellate Tribunal, the time within which such appeal can be made has not expired or in the case of an appeal to the Tribunal, the assessee has not waived his right of appeal.

(ii) where the order is the subject of an appeal before the Commissioner (Appeals) or the Tribunal.

The Commissioner on his own motion, may call for and examine the record of any proceeding under this Act and if he considers that any order passed by the Assessing Officer is prejudicial to the interests of the revenue, he may, after giving the assessee a reasonable opportunity of being heard and after making or causing to be made the necessary enquiries pass such order as the circumstances of the case justify. At the time of revision, he can

enhance or modify the assessment or cancel it and direct for a fresh assessment. However, no order shall be made after the expiry of 2 years from the date of the order sought to be revised.

In respect of any application made on or after 1st October, 1998, it shall be obligatory on the Commissioner to pass an order within a period of one year from the end of financial year in which such application is made by the assessee for revision. But, an order in revision can be passed by the Commissioner at any time, in the case of any order which has been passed in consequence of or to give effect to any finding or direction contained in an order of the Tribunal, the High Court or the Supreme Court. Further in computing the period of two years, the time taken in giving an opportunity to the assessee to be re-heard (under Section 39) and any period during which proceeding under this section is stayed by an order of injunction of any court shall be excluded.

REFERENCE TO THE HIGH COURT (SECTIONS 27)

Section 27 provides for a reference on a question of law to the High Court. The assessee or the Commissioner may, within 60 days of the date on which he is served with an order of the Appellate Tribunal or the Commissioner [under Section 24 or 25 by application in the prescribed form ‗H' require the Appellate Tribunal to refer to the High Court any question of law arising out of such order. A question will be said to arise out of the Tribunal's order only if it has been raised before or decide by the Tribunal.

However, no application shall be made to the Appellate Tribunal to make a reference to the High Court on or after 1st day of June 1999 as provided by Finance Act, 1999. The Tribunal may accept an application within 30 days even after the expiry of the prescribed time (60 days) if it satisfied that the applicant was prevented by sufficient cause from presenting the application within time.

If the application is made by the assessee for reference of the case to the High Court, it must be accompanied by a fee of ` 200. On receipt of an application for reference, the Tribunal shall state the case to the High Court within 120 days of the receipt of the application. Where the Tribunal refuses to state the case either on the ground that no question of law arises from its order, or that the application is time barred, the aggrieved party may apply to the High Court against the refusal by the Tribunal to state the case to it. In this case the application must be presented within 90 days from the date on which he is served with a notice of refusal or rejection. The High Court may admit an appeal even after the expiry of the period of one hundred and twenty days if it is satisfied that there was sufficient cause for not filing the same within that period.

If the court is not satisfied with the decision of the Tribunal, it may require the Tribunal to state the case and on receipt of such requisition the Tribunal shall state the case. Where the assessee is satisfied on the Tribunal's refusal to state to the case on the ground that no question of law arises, he may, within 30 days from the date on which he receives notice of

refusal, withdraw his application and if he does so, the fees paid by him shall be refunded to him.

Where the Tribunal is of the opinion that on account of conflict of decisions between the different High Courts in respect of any particular question of law, it is expedient to refer the question to the Supreme Court, it may refer the question to the Supreme Court through its President. The Tribunal shall state the facts of the case, its own finding and the questions of law which are required for reference. If the Court finds that the statement does not set out all the points which might have been referred, it may send the case back for making such necessary modifications as may be directed by the Court.

The court, upon hearing the reference, shall decide the question of law raised therein and deliver the judgement containing the grounds on which decision is founded. A copy of the judgement shall be sent under seal of the court and the signature of the Registrar to the Tribunal. The Tribunal shall pass such orders as are necessary for disposing of the case conformably to such judgement. The costs of the reference to the court excluding the fee for making the reference shall be in the discretion of the court.

APPEAL TO HIGH COURT (SECTION 27A)

Section 27A has been inserted by Finance (No. 2) Act, 1998 to provide that an appeal shall lie to the High Court from every order passed on an appeal by Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law. An appeal can be made within 120 days of the date of service of relevant order. The High Court may admit an appeal even after the expiry of the period of one hundred and twenty days if it is satisfied that there was sufficient cause for not filing the same within that period.

In an appeal under the new section, the Memorandum of Appeal shall precisely state the substantial question of law involved in the appeal. Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate the question. The appeal shall be heard only on the question so formulated and the respondent shall, at a hearing of the appeal, be allowed to argue such question. However, nothing in this section shall be deemed to take away or abridge the power of the court to hear for reasons to be recorded, appeal in any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court decides the formulated question of law and deliver judgement containing the grounds on which such decision is founded. It may also award costs. The assessing officer is required to give effect to the order of the High Court on the basis of a certified copy of the judgement delivered. In the case of appeal to High Court the provisions of the Code of Civil Procedure, 1908 apply.

Section 28 - Hearing by High Court

The case referred to or appeal filed to in the High Court shall be heard by a Bench of not less than two judges, the case is to be decided unanimously or where they differ, according to the opinion of the majority.

Where the number of judges hearing the case is even and there is no majority in forming an opinion on a point the case shall be heard on that point only by one or more other judges of the Court. Such point shall then be decided according to the opinion of the majority of the judges who have heard the case, including those who first heard it.

APPEAL TO SUPREME COURT (SECTION 29)

An appeal may lie to the Supreme Court from any judgement of a High Court provided the High Court certifies the case to be a fit one for appeal to the Supreme Court. The High Court grants such certificate only if a substantial question of law is involved in the case or the question is likely to occur in future or if the question is otherwise of great public or private importance, if, however, the High Court decide not to give such a certificate, then the aggrieved party, may make an application to the Supreme Court under Article 136 of the Constitution of India.

The Supreme Court, after hearing the appeal, may either affirm, vary or reverse the decision of the High Court. Accordingly, the decision of the supreme Court shall be sent to the Tribunal which shall pass such orders as are necessary for disposing of the case in conformity with such judgement.

PENALTIES UNDER THE WEALTH-TAX ACT

The non-compliance with the various provisions of Wealth-tax Act, Sections 15B(3), 18, 18A and 32 provide for the levy of penalty on the assessee. In addition, Sections 35A to 35L contain provisions under which an assessee might be prosecuted for certain offences under the Wealth-tax Act. The various terms of penalty are described below:

(1) Penalties Imposable under Wealth-tax Act

The various items of penalties imposable and prosecutions under the Wealth-tax Act, are as under:

Section	Nature of default	Penalty/Fine
(A)	(B)	(C)
15B(3)	Failure to pay tax or interest payable on self-assessment	Liable for penalty by deeming assessee to be in default (Not exceeding 100% of tax in arrears)
18(1)(ii)	Failure to comply with notice under section 16(2) or (4) without reasonable cause	Minimum : ` 1,000 for each failure Maximum : ` 25,000 for each failure
18(1)(iii)	Concealment of wealth	Minimum : 100% of tax sought to be avoided Maximum : 500% of tax sought to be avoided

Section	Nature of default	Penalty/Fine
(A)	(B)	(C)
18A(1)(a), and (c)	Failure to answer questions (i) legally bound or (ii) sign statements legally required or (iii) comply with summons under section 37(1) without reasonable cause.	Minimum : ` 500 for each failure/default Maximum : ` 10,000 for each failure/default
18A(2)	Failure to furnish in due time statement/ information required under section 38 without reasonable cause.	Manimum : ` 100 for every day of default Maximum : ` 200 for every day of default
32	Committing default in payment of tax	Not exceeding 100 per cent of tax in arrears
Prosecutions		
35A(1)	Wilful attempt to evade tax, penalty or interest: in case amount sought to be evaded exceeds ` 1,00,000	6 months rigorous imprisonment which may extend to 7 years and fine without prejudice to penalty imposable under any other provision of the Act.
	in any other case	3 months rigorous imprisonment which may extend to 3 years and fine without prejudice to penalty imposable under any other provision of the Act.
35A(2)	Wilful attempt to evade payment of tax, penalty or interest	3 months rigorous imprisonment which may extend to 3 years and fine without prejudice to penalty imposable under any other provision of the Act.
35B	Wilful failure to furnish in due time return of wealth in terms of section 14(1) or 14(2) or 17 (1)-	
	(a) in case where tax sought to be evaded exceeds ` 1,00,000	6 months rigorous imprisonment which may extend to 7 years and fine
	(b) in any other case	3 months rigorous imprisonment which may extend to 3 years and fine
Note: Prosecution is not to be resorted to in cases where return is furnished		

Section	Nature of default	Penalty/Fine
(A)	(B)	(C)
before end of assessment year or tax determined on regular assessment does not exceed ` 3,000		
35C	Wilful failure to produce accounts/records in terms of section 16(4)	Up to 1 year rigorous imprisonment or fine between ` 4 and ` 10 for every day of default or with both
35D	Filing of false statement in verification (other than under Section 35AB regarding registration of valuers)/delivering false statement-	
	(a) in case where tax sought to be evaded exceeds ` 1,00,000	6 months rigorous imprisonment which may extend to 7 years and fine
	(b) in any other case	3 months rigorous imprisonment which may extend to 3 years and fine
35E	Making false statement in verification mentioned in section 35AB	Imprisonment up to 6 months or fine or both
35EE	Failure without reasonable cause, to furnish particulars under section 35ACC regarding intimation by registered valuer of his conviction of any offence	Rigorous imprisonment up to 2 years and fine
35EEE	Making contravention of order made under section 37A/(3A)	Up to 2 years rigorous imprisonment and fine.
35F	Abetting or inducing another person to make and deliver false accounts, statement or declaration relating to net wealth chargeable to tax:	
	(a) in case where tax, etc. sought to be evaded exceeds ` 1,00,000	6 months rigorous imprisonment which may extend to 7 years and fine
	(b) in any other case	3 months rigorous imprisonment which may extend to 3 years and fine
35G	Second and subsequent offences under sections 35A(1),	6 months rigorous imprison-ment which may extend to 7

Section	Nature of default	Penalty/Fine
(A)	(B)	(C)
	35B, 35D or 35F	years and with fine

**Note*: Prosecution has to be initiated with the previous sanction of specified wealth-tax authorities who have also power to compound offences vide section 35

The student should also note that by virtue of the provisions of Sections 34A and 37C, as amended : (a) interest @ for every month or part of the month on the refund due on the assessee is payable to him by the Wealth-tax authorities for the period specified in Section 34A, and (b) interest @ 15% per annum is payable by the Central Government on the surplus remaining after the application of the assessee‘s assets by the assessing authorities towards recovery of the Wealth-tax due from him (for the period specified in Section 37C).

Failure to furnish return on time is not a continuing default. The quantum of penalty will be determined in accordance with the provisions as they stood on the date on which the return was due. [C.W.T. v. Mor Shrikant Ramnaryan. (1984) 147 I.T.R. 412].

Section 18 provides for penalty for failure to furnish returns to comply with notice and concealment of assets etc. If the Assessing Officer, Commissioner (Appeals), Chief Commissioner or Commissioner or Appellate Tribunal, in the course of any proceeding under the Wealth-tax Act is satisfied that any person has failed to: (i) comply with the notice under Sub-sections (2) or (4) of Section 16, or (ii) has concealed the particulars of any assets or furnished inadequate particulars of any assets or debts, he or it may, by an order in writing, direct that such person shall pay, in the case of (i) hereinabove, in addition to the amount of Wealth-tax payable by him, the penalty which may be minimum of ` 1,000 and maximum ` 25,000. The penalty payable in the case of (ii) hereinabove is minimum the amount of tax sought to be evaded by reason of concealment of the particulars of any assets or furnishing of inadequate particulars in respect of any assets or funds. The maximum penalty imposable in this case is five times the amount of tax sought to be evaded. In the case of non-compliance with the notice under Section 16(2) or (4), the penalty is not imposable if the person proves that there was reasonable cause for the failure referred to thereunder.

Explanation 3 to Sub-section (1) provides that where any person, who is not previously assessed under the Wealth-tax Act fails, without reasonable cause, to furnish within the time limit for completion of assessment (Section 17A), the return of his net wealth in respect of assessment year 1989-90 onwards and till the expiry of the time limit

relevant thereto (two years) no notice has been issued to him by the assessing authority and the concerned assessing authority is satisfied that in respect of such assessment year, such person is assessable for Wealth-tax, he shall be deemed to have concealed the particulars of his assets or furnished inadequate particulars of any asset or debt in respect of such assessment year, even if such person has furnished the return of his net wealth at any time after the expiry of the applicable periods under Section 17.

In this case, the amount of _tax sought to be evaded‘ means the tax assessed on the net wealth. In any other case, it means the difference between the tax on the net wealth assessed and the tax chargeable on the wealth disclosed by the assessee. Further, in the case of failure of an assessee to offer an explanation in respect of any facts material to the computation of his net wealth or the explanation offered by him being found by the concerned assessing authority to be false or where he is not able to substantiate his explanation and fails to prove the bona fides of such explanation, the consequential deduction or disallowance in computing his net wealth shall be deemed to represent the value of the assets in respect of which the particulars have been concealed.

Any bullion, money, jewellery or other valuable article or thing found in the course of search and claimed by the assessee as forming or representing parts of his net wealth are deemed to have been concealed by him if the assets have not been declared in the return of wealth furnished before the date of search for the valuation date falling before or after the date of search unless the assets are recorded either before the date of search or specified in the books of account maintained by him or disclosed to the Commissioner before the date of search or the assessee declares such assets in the course of search, specifies the manner of acquisition thereof and pays tax and penalty thereon.

Explanation 6 clarifies that the circumstance where any additional tax is charged as a consequence of rectification of arithmetical error, exemptions or deductions allowed/disallowed on the basis of the information available in the return of wealth does not tantamount to concealment. Sub-section (3) makes the prior approval by the Joint Commissioner compulsory for the following cases : (i) where the penalty exceeds ` 10,000 and the concerned assessing authority is the Income-tax Officer; (ii) where the penalty exceeds `20,000 and the concerned assessing authority is the Assistant Commissioner or Deputy Commissioner.

Sub-section (5) lays down that no order imposing the penalty under this Section shall be passed in a case where the assessment to which the proceedings for imposition of penalty relate is the subject matter of an appeal under Section 23 or 24; after the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed or 6 months from the end of the month in which the order of assessing authority i.e. the Commissioner (Appeals) or ITAT is received by the Chief Commissioner or Commissioner whichever is later. Where the relevant assessment is subject matter of revision under

Section 25(2), the order imposing penalty shall not be passed after the expiry of six months from the end of the month in which such order or revision is passed. In any other case, the penalty order cannot be passed after the expiry of the financial year in which the proceedings in course of which action for imposition of penalty has been initiated, are completed or six months from the end of the year in which action for imposition of penalty is initiated, whichever period expires later.

In computing the above periods of limitation, the period during which immunity is granted under Section 22H; the time taken in giving an opportunity to the assessee to be reheard under Section 39 and the period during which a proceeding for levy of penalty is stayed by an order or injunction of any court shall not be taken into account.

(2) Failure to Pay Tax (Section 31)

When an assessee fails to pay tax demanded of him during the prescribed time (30 days), he shall be liable by way of penalty, to pay such amount as the Assessing Officer may direct and in case of continuing default, such other sum as directed from time to time. However, the total amount of penalty can not exceed the amount of tax in arrears. Where the Assessing Officer is satisfied that the default was for good and sufficient reasons, no penalty shall be levied on the assessee.

POWER TO REDUCE OR WAIVE PENALTY (SECTION 18B)

The Commissioner is empowered to reduce or waive the amount of penalty imposed or imposable on an assessee either on his own motion or otherwise, in the following cases:

(i) Concealment of the particulars of his wealth or furnishing of inaccurate particulars of assets or debts. The Commissioner would reduce or waive the penalty subject to the following conditions :

(i) in case of (i) above, the assessee has furnished particulars regarding the concealed wealth or particulars in respect of any asset or debt voluntarily and in good faith prior to the detection by the Assessing Officer of the concealment or inaccurate particulars of assets or debts.
(ii) he has co-operated with the department in any enquiry relating to assessment.
(iii) he has paid or made satisfactory arrangements for the payment of tax or interest payable in respect of the relevant assessment year.

Where the assessee conceals the particulars of his wealth and the amount of wealth so concealed for any of the relevant assessment years exceeds ` 5,00,000, the Commissioner cannot reduce or waive the penalty, without the previous approval of the Chief Commissioner or Director General. However, where the Commissioner has reduced or waived the penalty once in relation to one or more assessment years, the assessee shall not be entitled to any relief again for other assessment years.

Further, Section 18B(4) empowers the Commissioner to grant relief to an assessee on his application and after recording the reasons for doing so by (i) reducing or waiving every kind of penalty payable under the Wealth-

tax Act, or (ii) staying or compounding recovery proceedings in respect thereof. This right should be exercised by the Commissioner in deserving cases which satisfy the following conditions:

(i) if it is not done, it would cause genuine hardship to the assessee, and
(ii) the assessee has co-operated in any inquiry relating to assessment or recovery proceedings.

An order of the Commissioner (under Section 18B) reducing or waiving the penalty shall be final and shall not be called into question before any court or any other authority.

OFFENCES AND PROSECUTIONS (SECTIONS 35A TO 35N)

There are certain lapses on the part of the assessee for which the wealth-tax authority at the instance of the Commissioner, may launch prosecution proceedings against him in the court. In that case the Magistrate (Metropolitan or first class) shall penalise the assessee and not the department. However, the Commissioner may, either before or after the institution of proceedings compound any offence.

The prosecution proceedings may be instituted against the defaulter assessee in various cases explained in the succeeding paragraph, other than these sections which are already discussed (Section 35A to Section 35G):

(1) Wilful Attempt to Evade Tax etc. (Section 35A)

If a person willfully attempts to evade any tax, penalty, or interest or payment thereof, he shall be liable to pay penalty as well as prosecution as stated in the table under heading IX hereinbefore. A wilful attempt to evade any tax, penalty or interest etc., or the payment thereof shall include a case where any person :

(i) has, in his possession or control any books of account or documents containing a false entry or statement; or
(ii) makes, or causes to be made, any false entry or statement in such books of account or documents; or
(iii) wilfully omits, or causes to be omitted, any entry or statement in the books of account or documents; or
(iv) causes any other circumstances to exist which will have the effect of enabling him to evade the tax, penalty or interest.

(2) Failure to Furnish Returns of Net Wealth (Section 35B)

If a person wilfully fails to furnish in due time the return of net wealth under Section 14(1) or 14(2) or 17(1), he shall be punishable with both penalty and prosecution. For details see the Table under heading IX hereinbefore. However, a person shall not be proceeded against for failure to furnish in due time the return of net wealth under

Section 14(1) in the following cases :
(a) for any assessment year commencing prior to 1.4.1975; (b) for any assessment year commencing after 31.3.1975; if

(i) the return is furnished by him before the expiry of the assessment year; or

(ii) the tax payable by him, determined on regular assessment, does not exceed ` 3,000.

(3) Failure to Produce Accounts and Documents (Section 35C)

If a person wilfully fails to produce accounts, records and documents referred to in a notice issued under Section 16(4) on the date specified in the notice, he shall be punishable with rigorous imprisonment as well as fine. (See the Table under heading IX hereinbefore)

(4) False Statement in Verification (Section 35D)

If a person makes a statement in any verification (other than the registration of valuer) or delivers an account or statement which is false, and which he knows to be false or does not believe to be true, he shall be punishable with prosecution/penalty highlighted under heading IX hereinbefore.

(5) False Statement in Verification by Registered Valuers (Section 35E)

If a Registered Valuer makes a statement in verification which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to 6 months or with fine or with both. (Also given in Table under heading IX hereinbefore.)

(6) Failure to furnish particulars under Section 34ACC (Section 35EE)

If a person referred to in Section 34ACC, i.e., a registered valuer, fails to intimate to the Board the particulars of conviction or finding referred to in the said section, he shall be punishable with rigorous imprisonment and also be liable to fine. But, if such person proves that there was reasonable cause or excuse for the said failure, he shall not be punishable. (For details see the Table under heading IX hereinbefore.

(7) Contravention of order made under Section 37A (Section 35EEE)

Section 35EEE, provides for punishment with rigorous imprisonment (See Table under heading IX) and also imposition of fine in the event of contravention of the provisions of Section 37A, second proviso to Sub-section (1) and sub-section (3A) [pertaining to orders of the Assessing Officer to assessee not to remove, part with or otherwise deal with the immovable properties, except with the previous permission of the concerned officer].

(8) Abetment of False Return, etc. (Section 35F)

If a person abets or induces any other person to make and deliver an account, statement or declaration relating to any net wealth chargeable to tax which is false and which he either knows to be false or does not believe to be true, or induces any person to evade tax, he shall be punishable with prosecution and fine specified under heading IX.

(9) Punishment for Second and Subsequent Offences (Section 35G)

If any person convicted of an offence mentioned in 1, 2, 4 and 7 above is again convicted of the same offence, he shall be punishable for the second and every subsequent offence with rigorous imprisonment for at least 6 months but which may extend to seven years and with fine.

(10) Offences by H.U.F. (Section 35H)

Where an offence under this Act has been committed by a H.U.F., the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence, he shall not be punished. Where it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any member of the family, such member shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(11) Offences by companies (Section 35HA)

The Finance Act, 1992 has inserted this new Section 35HA with effect from the assessment year 1993-94. As companies have also been brought under the wealth tax net with effect from assessment year 1993-94 this new Section 35HA lays down the penalty where an offence has been committed by a company. Thus according to this section every person who at the time the offence was committed, was in-charge of and was responsible to the company for the conduct of the business of the company as well as the company will be liable to be proceeded against and punished accordingly.

However, no such person shall be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Further, this section also defines the term _company' to include a firm and an association of persons or body of individuals whether incorporated or not. W.e.f. 1.10.2004, where an offence has been committed by a Person, being a company and such offence is punishable with imprisonment and fine, then without prejudice to the aforesaid provisions such company shall be punishable with fine and every person referred to in sub-section (1) or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

(12) Prosecutions to be at the instance of Chief Commissioner or Commissioner and power of
Chief Commissioner to compound offences (Section 35-I)

A person shall not be proceeded against for an offence under the Wealth-tax Act, 1957 except with the previous approval of the Commissioner or Commissioner (Appeals). The Chief Commissioner/Director General have been empowered to issue such instructions/directions with regard to prosecution matters as they may deem fit. They have also been empowered to compound any offence either before or after the institution of proceedings.

(13) Certain offences to be non-cognizable (Section 35J)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under Section 35A or Section 35B or Section 35D or Section 35F shall be deemed to be non-cognizable within the meaning of that Code.

(14) Bar on Prosecution (Section 35K)

A person shall not be prosecuted for an offence under 1 and 4 above (Sections 35A and 35D) in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable under Section 18(1)(iii) has been reduced or waived under Section 18B. Further, any statement made or account or other document produced by the offender before any wealth-tax authority, not being an Inspector of Income-tax, shall not be inadmissible as evidence for prosecution proceedings merely on the ground that it was made or produced in the belief that the penalty would be reduced or waived or the offence would be compounded.

(15) Jurisdiction of Courts (Section 35L)

No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.616

(16) Section 360 of the code of Criminal Procedure, 1973 and the Probation of Offenders Act, 1958 not to apply (Section 35M)

Nothing contained in Section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(17) Immunity from Prosecution (Section 36A)

The Central Government may grant immunity to potential supplier of valuable information, data and evidence on the basis of which tax-evaded wealth may be discovered and due taxes, penalty, etc., recovered from the tax- evader concerned. Such immunity extends to prosecution for the offences and penalty under the Wealth-tax Act. However, if the person does not comply with the conditions on which the immunity was granted or willfully conceals anything or gives false evidence, the Government, after recording the reasons in writing for doing so, may withdraw the immunity granted. Then, the person may be tried for any offence and be liable to any penalty imposable under this Act.

UNIT IV
CUSTOM AND EXCISE DUTIES

CUSTOM DUTY

Customs duty is on imports into India and export out of India. The power to levy customs duty is derived from Entry 83 of Union List of the Seventh Schedule to the Constitution of India, which reads as, ―Duty of Customs including export duties‖.

Thus, the power to make laws in respect of Customs duty vests with the Central Government. The tax receipts on account of customs duty-are solely enjoyed by the Union.

Section 12 of Customs Act, often called charging section, provides that duties of customs shall be levied at such rates as may be specified under ‗The Customs Tariff Act, 1975', or any other law for the time being in force, on goods imported into, or exported from, India.

The body of the Customs Law comprises of -

(1) The Customs Act, 1962	This is a consolidating enactment providing levy of import and export duties of customs on goods imported into or exported from India through sea, air or land. It provides for the provisions of levy and collection of duty, importation or exportation, transit and transshipment, prohibition on importation or exportation of goods, warehousing, duty drawback, appeals, settlement commission, advance rulings, offences and penalties etc.
(2) The Customs Tariff Act, 1975	The Act contains various types of custom duties to be levied on the importation and exportation of the articles. It contains two Schedules - Schedule I known as, ‗Import Tariff and Schedule II known as, ‗Export Tariff.' ‗Import Tariff consists of 98 Chapters grouped under 21 Sections. This Schedule refers to goods liable to import duty of customs. ‗Export Tariff refers to goods liable to export duty of customs.
(3) Rules	Section 156 of the Customs Act, 1962 empowers the Central Government to make rules consistent with this Act. Such rules may provide for matters relating to the manner of determining the price of imported goods, duty drawback, baggage, detention and confiscation of goods etc.
(4) Regulations	Section 157 of the customs Act, 1962 empowers the Central Board of Excise and Customs to make regulations consistent with the Act and the rules, generally to carry out the purposes of the Act. For example, Import Manifest Vessels Regulation, Boat Note Regulations, Export Manifest Vessel Regulations have been framed in this regard.
(5) Notification under Customs Act	Notification, as per Article 13(3)(a) of the Constitution of India, means ‗a writ- ten or printed matter that give notice'. Central Government has been empowered to issue notifications under various sections of the Customs act, 1962.

i. There are many common provisions in Central Excise and Customs Law.

ii. In case of imports, taxable event occurs when goods mix with landmass of India - Kiran Spinning Mills v. CC 1999(113) ELT 753 = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench).

iii. In case of warehoused goods, the goods continue to be in customs bond. Hence, ‗ import' takes place only when goods are cleared from the warehouse - confirmed in UOI v. Apar P Ltd. 1999 AIR SCW 2676 = 112 ELT3 = 1999(6) SCC 118 = AIR 1999 SC 2515 (SC 3 member bench).-followed in Kiran Spinning Mills v. CC 1999(113) ELT 753 = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench).

iv. In case of exports, taxable event occurs when goods cross territorial waters of India –UOI v. Rajindra Dyeing and Printing Mills 2005 (180) ELT 433 (SC)

v. Territorial waters of India extend upto 12 nautical miles inside sea from baseline on coast of India and include any bay, gulf, harbour, creek or tidal river.
(1 nautical mile = 1.1515 miles = 1.853 Kms).
Sovereignty of India extends to the territorial waters and to the seabed and subsoil underlying and the air space over the waters.

vi. Indian Customs waters extend upto 12 nautical miles beyond territorial waters. Powers of customs officers extend upto 12 nautical miles beyond territorial waters.

vii. Exclusive economic zone' extends to 200 nautical miles from the base-line.

Common Aspects of Customs and Central Excise

i. There are many common links between Customs and Central Excise.

ii. Both are Central Acts and derive power of levy from list I - Union List - of the Seventh Schedule to Constitution.

iii. Both are under administrative control of one Board (Central Board of Excise and Customs) under Ministry of Finance.

iv. Organizational hierarchy is same from top upto Assistant Commissioner level. Transfers from customs to excise and vice versa are not uncommon.

v. Principal Chief Commissioner or Chief Commissioner in charge of each Zone is same for excise and customs at many places.

vi. In the interior areas, Excise officers also work as customs officers.

vii. Classification Tariffs of both acts are based on HSN and principles of classification are identical.

viii. Principles of deciding ‗Assessable Value' have some similarities i.e. both are principally based on ‗transaction value'. Concept of ‗Related Person' appears in Customs as well as Excise valuation.

ix. Provisions of refund, including principle of ‗Unjust Enrichment' are similar. Provisions for interest for delayed payment are also identical.

x. Provisions of raising demand for short levy, non-levy or erroneous refund are similar. Provisions in respect of recovery, mandatory penalties etc. are also similar.

xi. Provisions for granting exemptions from duty - partial or full, conditional or unconditional are identical.

xii. Powers of search, confiscations etc. are quite similar in many respects. In fact, some of provisions of Customs Act have been made applicable to Central Excise with suitable modifications.

xiii. Provisions in respect of Settlement Commission and Authority for Advance Ruling are identical.

xiv. Appeal provisions are identical.

xv. Appellate Tribunal (CESTAT) is same. Hence, procedures of appeal to Tribunal are identical.

Definitions under Customs Act, 1962

1) Adjudicating Authority [Section 2(1)]: Adjudicating authority means any authority competent to pass any order or decision under this Act, but does not include:
   - The Central Board of Excise and Customs (CBE&C),
   - Commissioner of Customs (Appeals) or
   - Customs, Excise and Service Tax Appellate Tribunal (CESTAT)

2) Assessment [Section 2(2)]: Assessment means process of determining the tax liability in accordance with the provisions of the Act, which includes provisional assessment, self assessment, reassessment and any assessment in which the duty assessed is nil.

3) Appellate Tribunal [Section 2(1B)]: Appellate Tribunal means the Customs, Excise and Service Tax Appellate Tribunal constitute under section 129.

4) Baggage [Section 2(3)]: Baggage includes unaccompanied baggage but does not include motor vehicles.

5) Bill of Entry [Section 2(4)]: Bill of Entry means a bill of entry referred to in section 46. Bill of entry is the basic document for assessment of custom duty. The importer has to present bill of entry for clearance of imported goods.

6) Board [Section 2(6)]: Board means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963.

7) Bill of Export [Section 2(5)]: The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.

8) Customs Airport [Section 2(10)]: Customs airport means,-
   - Any airport appointed under section 7(a) to be a customs airport, and
   - Includes a place appointed u/s 7(aa) to be an air freight station.

9) Conveyance [Section 2(9)]: ‗Conveyance includes a Vessel, an Aircraft and a Vehicle'. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).

10) Coastal Goods [Section 2(7)]: The term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

    Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Excise and Customs (CBE&C), may by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

11) Customs Area [Section 2(11)]: Customs area means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.

12) Customs Port [Section 2(12)]: Customs port means any port appointed under section 7(a) of the Customs Act, to be a customs port and includes a place appointed under section 7(aa) of the Customs Act, to be an inland container depot (ICD).

13) Customs Station [Section 2(13)]: Customs station means any customs port, customs airport or land customs station.

As per Section 8 of the Customs Act, 1962, the Principal Commissioner or Commissioner of Customs may (i) approve proper places in any customs port or customs airport or coastal port for the unloading of goods or for any class of goods; (ii) specify the limits of any customs area.

As per Section 141 of the Customs Act, 1962, all conveyances and goods in customs area are subject to control of officers of customs for enforcing the provisions of the Customs Act, 1962. The receipt/storage/delivery/dispatch/any other handling of goods (import/export) in the Customs area shall be in the prescribed manner and the responsibility thereon lies on the persons engaged in such activities (i.e. Custodian of the said goods).

14) Customs Act, 1962 and Customs Tariff Act, 1975 have been extended to whole of Exclusive Economic Zone (EEZ) and Continental Shelf of India for the purpose of (i) processing for extraction or production of mineral oils and (ii) Supply of any goods in connection with processing for extraction or production of mineral oils.

Say for example, Goods imported by the assessee for consumption on oil rigs which are situated in Continental Shelf/Exclusive Economic Zones of India, are deemed to be a part of Indian Territory. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty [Aban Lloyd Chilies Offshore Ltd. v UOI (2008) 227 ELT24 (SC)].

15) Dutiable Goods [Section 2(14)]: The term is defined to mean any goods which are chargeable to duty and on which duty has not been paid. It means to say that the name of the product or goods should find a mention in the Customs Tariff Act.

16) Domestic Tariff Area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), 100% Export Oriented Units (EOUs)/Electronic Hardware Technology Park (EHTP)/ Software Technology Park (STP)/ Bio Technology Park (BTP).

17) Exclusive Economic Zone: Exclusive Economic Zone extends to 200 nautical miles from the base line. In this zone, the coastal State has exclusive rights to exploit it for economic purpose like constructing artificial islands for oil exploration, power generation and so on. (Note: one nautical mile = 1.1515 miles or 1.853kms.)

18) Examination [Section 2(17)]: ―Examination‖ in relation to any goods, includes measurement and weighment thereof.

19) Exporter [Section 2(20)]: Exporter in relation to any goods at any time between their entry for export and the time when they are exported includes any owner or any person holding himself out to be the exporter.

20) Entry As per section 2(16)]: Entry in relation to goods means an entry made in bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84 of the Customs Act.

21) Export [Section 2(18)]: The term export means taking out of India to a place outside India.

22) Exported Goods [Section 2(19)]: The term exported goods means any goods, which are to be taken out of India to a place outside India.
Example: The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. [Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)]. The territorial waters extend to 12 nautical miles into the sea from the base line.

23) Fund [Section 2(21A)]: Fund means the Consumer Welfare Fund established under section 12C of the Central Excise Act, 1944.

24) Foreign going Vessel or Aircraft [Section 2(21)]: The foreign going vessel or aircraft means any vessel or aircraft for the time being in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not. The following are also included in the definition:
   - A foreign naval vessel doing naval exercises in Indian waters
   - A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters
   - A vessel going to a place outside India for any purpose whatsoever.

   Example 1: A ONGC vessel and a vessel owned by A Ltd. of USA are drilling oil beyond 12 nautical miles in the sea. Hence, both the vessels are called as foreign going vessels.

25) Goods [Section 2(22)]: The term goods includes–
(a) Vessels, aircrafts and vehicles
(b) stores
(c) baggage
(d) currency and negotiable instruments and
(e) any other kind of movable property.

26) High Seas: An area beyond 200 nautical miles from the base line is called High Seas. All countries have equal rights in this area.

27) Import [Section 2(23)]: The term import means bringing into India from a place outside India.

28) Imported Goods [Section 2(25)]: The term imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

29) Importer [Section 2(26)]: The term importer means in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

30) India (i.e. Territorial Waters) [Section 2(27)]: The term India is an inclusive definition and includes not only the land mass of India but also Territorial Waters of India. The territorial waters extend to 12 nautical miles into the sea from the base line. Therefore, a vessel not intended to deliver goods should not enter these waters.

31) Indian Customs Waters [Section 2(28)]: The term Indian Customs Waters means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

Continental Shelf means the area of relatively shallow seabed between the shore of a continent and deeper ocean.

Indian Customs Waters extend up to 24 nautical miles from the base line. Thereby, Indian Customs Waters cover both the Indian Territorial Waters and Contiguous Zone as well. Indian Territorial Waters extend up to 12 nautical miles from the base line whereas Contiguous Zone extended to a further 12 nautical miles from the outer limit of territorial waters.

Example 2: The proper officer of customs has reason to believe that any vessel in Indian Customs waters is being used in the smuggling of any goods, he may at any time stop any such vessel and examine and search any goods in the vessel (Section 106(1)(b) of the Customs Act, 1962).

32) Import Report [Section 2(24)]: The person-in-charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

33) Import General Manifest (IGM) [Section 2(24)]: IGM is a document to be filed in prescribed form with the customs by the carriers of the goods i.e. the steamer Agent or airlines in terms of Sec 30 of Customs Act, 1962. This document indicates the details of all the goods to be transshipped, private property of the crew and arms and ammunitions, gold and silver should also be cleared separately irrespective of whether for landing, for transshipment or for being carried as same bottom cargo. The IGM has to be filed within 24 hours after arrival of the ship/ aircraft. However, in the case of vessel (ship) the manifest maybe delivered even before the arrival of the vessel. This is known as ‗prior entry import general manifest'. This system enables the importer to file Bills of Entry and get them assessed and pay duty so that the goods can be taken delivery soon after the unloading.

Section 30 in being provide for electronic filing of import manifest and also provide that the commission of customs may, in cases where it is not feasible to deliver the import manifest by presenting electronically, all the same to be delivered in any other manner.

34) Market Price [Section 2(30)]: Market price in relation to any goods means the wholesale price of the goods in the ordinary course of trade in India.

35) Person-in-Charge [Section 2(31)]: means
1) Vessel Master
2) Aircraft Commander or Pilot in Charge
3) Train Conductor or Guard
4) Vehicle Driver
5) Other Conveyance Person in Charge

36) Prohibited goods [Section 2(33)]: Means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Say for example, Pornographic and obscene materials, Maps and literature where Indian external boundaries have been shown incorrectly, Narcotic Drugs and Psychotropic Substances, Counterfeit goods and goods violating any of the legally enforceable intellectual property right, Chemicals mentioned in Schedule 1 to the Chemical Weapons Convention of U.N. 1993, Wild life products, Specified Live birds and animals, Wild animals, their parts and products, Exotic birds except a few specified ones, Beef, tallow, fat/oil of animal origin, Specified Sea-shells, Human skeleton.

37) Shipping Bill [Section 2(39)]: Shipping bills means a shipping bill referred to in section 50. Shipping bill is the basic document for assessment of export duty. The exporter has to present shipping bill for clearance of export goods through vessel or aircraft.

38) Smuggling [Section 2(39)]: ―Smuggling‖, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 (improper importation) or section 113 (improper exportation).

39) Stores [Section 2(38)]: Stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

40) Tariff value [Section 2(40)]: Tariff value in relation to any goods, means the tariff value fixed in respect thereof under section 14(2) of the Act. The CBEC has the power to fix tariff values for any class of imported goods or exported goods. Fixing the tariff value for any class of imported goods or exported goods means the duty shall be chargeable with reference to such tariff value. (For example, please refer the duty based on the % of tariff value under Central Excise).

41) Value [Section 2(41)]: ―Value‖ in relation to any goods, means the value thereof determined in accordance with the provisions of Section 14(1)(2) of the Act.

42) Vehicle [Section 2(42)]: Vehicle means conveyance of any kind used on land and includes a railway vehicle.

43) Warehoused [Section 2(43)]: ―Warehouse‖ means a public warehouse appointed under section 57 or a private warehouse licensed under section 58.

44) Warehouse Goods [Section 2(44)]: —Warehouse Goods‖ means goods deposited in a warehouse.

45) Warehouse Station [Section 2(45)]: -Warehouse Station‖ means a place declared as a warehousing station under section 9.

Significance of Indian Customs Water under Custom Act, 1962

The significance of Indian Customs Waters is as under-

(i) Any person who has landed from/ about to board/ is on board any vessel within Indian Customs water and who has secreted about his person, any goods liable to confiscation or any documents relating thereto may be searched [Section 100];

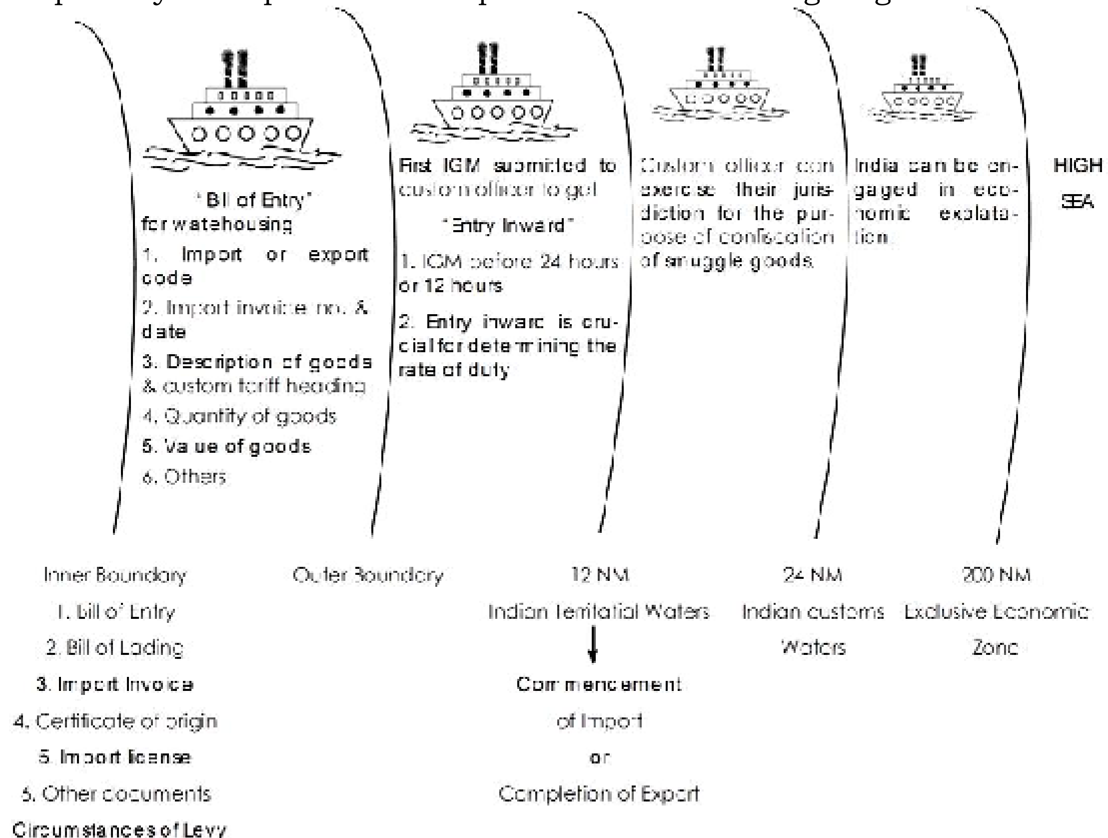
(ii) Any person within Indian Customs waters, who has committed an offence punishable under section 132 or 133 or 135 or 135A or 136, may be arrested [Section 104];

(iii) Any vessel within Indian custom water, which has been, is being, or is about to be, used in the smuggling of any goods or in carriage of any smuggling goods, may be stopped [Section 106];

(iv) Any goods which are brought within the Indian customs waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation [Section 111(d)]; and

(v) Any vessel which is or has been within Indian customs waters is constructed, adapted, altered or fitted in any manner for concealing for concealing goods shall be liable to confiscation [Section 115(1)(a)].

The primary concept has been explained in the following diagram



Section 12: Imported or Exported goods into or out of India is the taxable event for payment of the duty of customs. Lot of problems was faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of India.

The Supreme Court of India has given the landmark judgments in cases of Union of India v Apar Industries Ltd (1999) and further in the case of Garden Silk Mills Ltd v Union of India (1999). The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the Customs barriers and Bill of Entry for home consumption is filed.

(A) Taxable event for Imported Goods

In the case of Kiran Spinning Mills (1999) the Hon'ble Supreme Court of India held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters of India. Crossing customs barrier:

when goods are imported into India even after the goods are unloaded from the ship, and even after the goods are assessed to duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having crossed the customs barrier until the duty is paid and the goods are brought out of the limits of the customs station.

Hence, taxable event in case of imported goods can be summed up in the following lines:

The taxable event occur in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of Garden Silk Mills Ltd. v Union of India; and Kiran Spinning Mills v CC:

i. Unloading of imported goods at the Customs Port– is not a taxable event
ii. Date of entry into Indian Territorial Waters–is not a taxable event
iii. Date on which the goods cross the customs barrier - is a taxable event
iv. Date of presentation of bill of entry–is not a taxable event

No time limit for submission of bill of entry after the delivery of Import General Manifest (IGM): As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at any time after the delivery of import manifest or import report. Therefore, no time limit has been fixed for submission of bill of entry. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry. However, cargo should be cleared from the wharf within 30 days of unloading.

Note: Bill of Entry can also be filed up to 30 days before the arrival of the goods in India. The classification, valuation and duty can be checked and verified beforehand so that when the consignment arrives it can be cleared immediately.

Provided that a bill of entry may be presented even before the delivery of such manifest or report, if the vessel or the aircraft or vehicle by which the goods have been shipped for importation into India is expected to arrive

within thirty days from the date of such presentation. In case the vessel or aircraft or vehicle do not arrive within 30 days of presentation of the bill of entry, the bill of entry so presented shall stand cancelled.

(B) Taxable event for Warehoused Goods

The taxable event in case of warehoused goods is when goods are cleared from customs bonded warehouse, by submitting EX-bond bill of entry. As per Section 1 5(1)(b) of the Customs Act, 1962, when goods have been deposited into a warehouse, and they are removed there from for home consumption, the relevant date for determination of rate of duty is the date of presentation of ex-bond bill of entry (i.e. Sub-bill of Entry) for home consumption.

(C) Taxable event for Exported Goods

As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted —Esajee Tayabally Kapasi (1995)(SC) and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962. In the case of any other goods, on the date of payment of duty.

Therefore, export duty rate prevailing as on the date of entry outwards granted to the vessel by the Customs Officer
is relevant.

Example 3: An assessee submitted the shipping bill on 1st January 2016. At that time the export duty was nil (i.e. duty free). Let export order (i.e. entry outwards) was granted on 5th January 2016. However, due to some problems goods could not be loaded into ship. On 25th March 2016, the shipping bills were voluntarily resubmitted by the assessee with the request to permit the shipment by a different vessel. Subsequently, on 27th March 2016, let export order was granted. However, in the mean time the duty at the rate of 10% ad valorem was levied with effect from 1st March
2016. Examine, whether exporter is liable to pay duty?

Answer:

In the given case actual export took place only after revised shipping bill was submitted on 25th March 2016, for which entry outwards granted on 27th March, 2016. Hence, the rate prevalent as on the date of entry outwards granted to the vessel is relevant for determination of rate of duty. Therefore, assessee is liable to pay export duty @10%.

Note: Export duties do not carry any cess.

(D) Entry inwards to the vessel

The Master of the vessel is not to permit the unloading of any imported goods until an order has been given by the proper officer granting Entry Inwards of such vessel. Normally, Entry Inwards is granted only after the import manifest has been delivered. This entry inward date is crucial for determining the rate of duty, as provided in section 15 of the Customs Act, 1962. Unloading of certain items like accompanied baggage, mail bags, animals, perishables and hazardous goods are exempted from this stipulation.

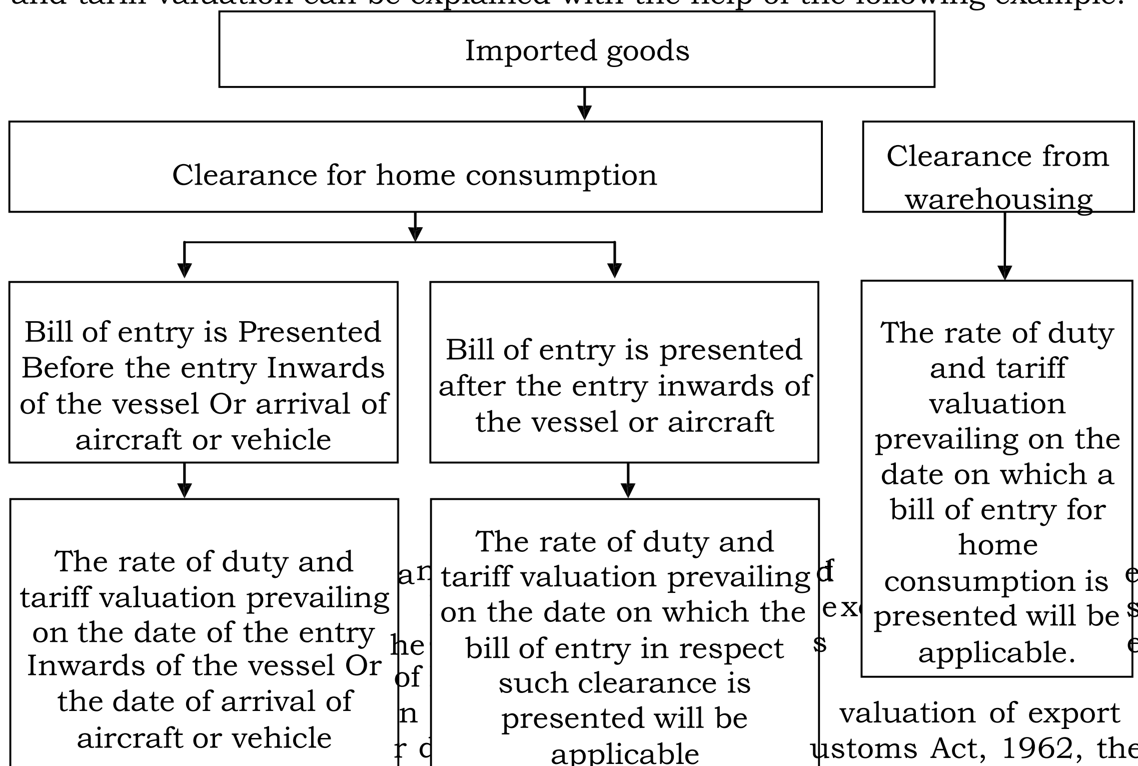
(E) Entry outwards to the vessel

The vessel should be granted _Entry Outward' . Loading can start only after entry outward is granted under section 39 of Customs Act, 1962. Steamer Agents can file _application for entry outwards' 14 days in advance so that intending exporters can start submitting _Shipping Bills'. This ensures that formalities are completed as quickly as possible and loading in ship starts quickly.

If the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards. The provisions of this section shall not apply to baggage and goods exported by post.

(F) Date of determination of Rate of duty and tariff valuation for Imported Goods

Date for determining the rate of duty and tariff valuation of imported goods will depend upon the imported goods entered for home consumption and cleared from warehouse. The determination of appropriate rate of duty and tariff valuation can be explained with the help of the following example:



valuation of export ustoms Act, 1962, the provision relating to date for determination of rate of duty and tariff valuation of export goods are as under –

(a) in the case of goods entered for export under section 50, the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.

(b) in the case of any other goods, the date of payment of duty.

The provision of section 16 shall not apply to baggage and goods exported by post.

(H) Clearance of goods from DTA to SEZ

In the case of Advait steel Rolling Mills Pvt. Ltd. vs. UOI [2012] 286 ELT 535(Mad), it is held that the clearance of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations –

- The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a unit in a Special Economic Zone for its authorized operations. Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.
- Reading section 12(1) of the Customs Act, 1962 makes it apparent that Customs duty can be levied only on goods imported into or exported beyond the territorial water of India.

Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract Section 12(1).

(I) Determination of duty where goods consist of articles liable to different rates of duty [Section 19] : Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows,-

(a) articles liable to duty with reference to quantity shall be chargeable as per quantity.

(b) articles liable to duty with reference to value shall be chargeable to duty as under,-
  - if such articles are liable with the same rate of duty then duty shall be levied at that rate;
  - if the articles in the set are liable to duty at different rates then duty shall be calculated at the highest of those rates.

(c) articles not liable to duty, then they shall also be chargeable to duty at the highest of the rates specified in (b) above.

Duty where evidence of separate value of articles is available :
If the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

(J) Rate of Duty applicable to accessories, etc. supplied with imported article [Accessories (Condition) Rules, 1963] : Certain accessories are sometimes compulsorily supplied with the main equipment. It may be difficult to value such accessories and to assess them separately or to charge duty on them when no additional consideration is involved in normal course. In such case, if any accessories of, spare parts and maintenance implements for, any article are imported along with that article, then such accessories/spare parts and maintenance implements shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade,-

(a) such accessories, parts and implements are compulsorily supplied with that article; and
(b) no separate charge is made for such supply, their price being included in the price of that article.

(K) Circumstance under which no duty will be levied

i) No duty will be levied on pilfered goods under section 13 of the Customs Act. If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a ware house, then the importer shall not be liable to pay the duty leviable on such goods.

ii) No duty will be levied when the goods are damaged or deteriorated before or during the course of their unloading, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).

iii) No duty will be levied in case of warehoused goods, when the goods are damaged before their actual clearance from such warehouse, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).

iv) No duty will be levied in case of goods lost or destroyed due to natural causes like fire, flood, etc. such loss may take place at any time before the clearance of goods for home consumption. The loss may be at the warehouse (Section 22).

v) No duty will be levied in case of goods abandoned by importers. Sometimes it may so happen that importer is unwilling or unable to take delivery of the imported goods due to the following reasons:
- the said goods may not be according to the specification,
- the goods may have been damaged during voyage,
- there might have been breach of contract.

In all the above cases the importer has to relinquish his title to the goods unconditionally and abandon them. The relinquishment is done by endorsing the document of title to the goods in favour of the Principal Commissioner or Commissioner of Customs along with invoice.

vi) No duty will be levied, if the Central Government is satisfied that it is necessary in the public interest not to levy import duty by issuing the notification in the Official Gazette.

(L) Self-assessment of Customs Duty (Section 17 of the Customs Act, 1962, w.e.f. 8-4-2011)

The importer or exporter shall self-assess the duty leviable on imported or exported goods respectively (except where goods are to be cleared as _stores‘ for supply to vessels or aircrafts without payment of duty and without assessment under section 85 of Customs Act, 1962) as per section 17(1) of the Customs Act, 1962. The procedure of self assessment is same for imports and exports. Importer importing goods is required to submit Bill of Entry under section 46 of Customs Act, 1962. Exporter is required to submit shipping bill at the time of export under section 50 of Customs Act, 1962. Bill of Entry and Shipping Bill must be submitted electronically, unless manual submission is specifically permitted by Principal Commissioner or Commissioner of Customs.

Verification by proper officer

The self assessment may be verified by _proper officer' by examining or testing the goods [section 17(2) of Customs Act 1962, w.e.f. 8-4-2011]. For verification of self assessment, _Proper Officer' may ask importer, exporter or any other person (i.e. Customs House Agent or person who has purchased goods on high seas sale basis) to produce any contract, broker's note, insurance policy, catalogue or other documents whereby duty payable can be ascertained and to furnish further information for ascertainment.

Re-assessment

The proper officer can ask for only those documents which are within the powers of importer or exporter or other person to furnish [section 17(3) of Customs Act 1962, w.e.f. 8-4-2011]. On Such verification, _proper officer' may reassess the Bill of entry. Such re-assessment would be without prejudice to any other action which may be taken under Customs Act [section 17(4) of Customs Act, 1962, w.e.f. 8-4-2011]. If the importer or exporter accepts in writing the reassessment made by proper officer about classification or valuation or exemption or concession, then no question of issuing any formal order arises.

Speaking order

Where the importer or exporter does not accept the re-assessment in writing, the proper officer shall pass a speaking order within 15 days from the date of re-assessment of _Bill of Entry' [section 17(5) of Customs Act, 1962 w.e.f. 8-4-2011].

Audit by proper officer at his office or premises of importer or exporter

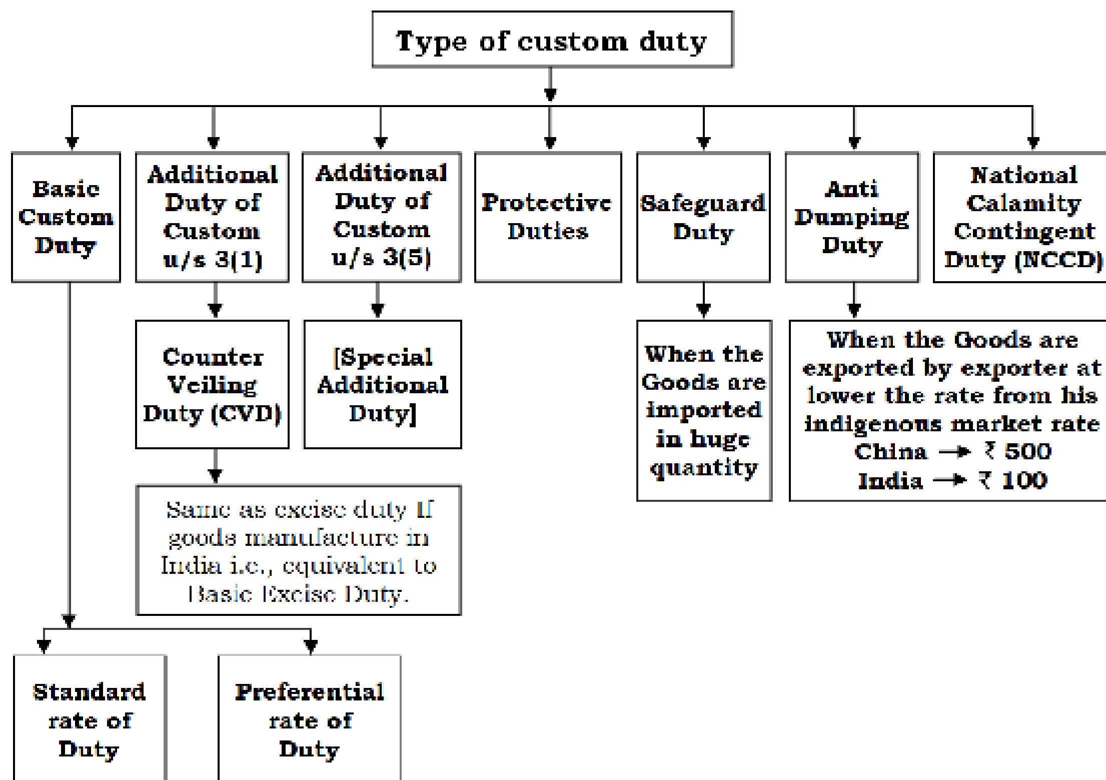
If the goods are not taken for verification of self assessment, the goods will be allowed to be cleared from customs. However, later, proper officer may audit the assessment of duty. Such audit can be done either in the office of proper officer or at the premises of importer, as may be expedient [section 17(6) of Customs Act, 1962 w.e.f. 8-4-2011]. Subsequent to such audit, demand for differential duty and interest can be made under section 28 of Custom Act 1962. This section also makes provisions in respect of penalty for such short payment.

General provisions

Assessment includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is Nil [section 2(2) of Customs Act, 1962 as substituted w.e.f. 8-4-2011].

As per section 2(34) of Customs Act, _proper officer' in relation to any function under Customs Act, the officer of customs who is assigned those functions by Board (CBE & C) or Principal Commissioner or Commissioner of Customs.

4.2 TYPES OF CUSTOM DUTY



Basic customs duty is levied under section 12 of Customs Act. Normally, it is levied as a percentage of value as determined under section 14(1). The basic customs duty are 5%, 7.5%, and 10%. Highest rate of basic customs duty is 10% for non-agricultural items, with some exceptions.

Assessable Value = CIF value of imported goods converted into Rupees at exchange rate specified in notification issued by CBE&C plus landing charges 1% (plus some additions often arbitrarily and whimsically made by customs).

Section 2 of the Customs Tariff Act, 1975 provides the rate of duty to be applied on the value of goods. Basically section 2 of the Customs Tariff Act, 1975 provides following:-

- First Schedule - Goods liable for import duty
- Second Schedule - Goods liable for export duty

Basic Customs Duty levied u/s 12 of Customs Act.

i) The rate of basic customs duty is specified in Customs Tariff Act, read with relevant exemption notification. Generally, Basic Customs Duty is 10% of Non-Agricultural Goods.

ii) (ii) CVD equal to excise duty is payable on imported goods u/s 3(1) of Customs Tariff Act. General excise duty rate is 12.5%. Consider only basic excise duty as CVD. It means CVD is equal to Basic Excise Duty(w.e.f 01-03-2015).

iii) Special CVD (SAD) is payable @4% on imported goods u/s 3(5) of Customs Tariff Act. This is in lieu of Vat/Sales tax to provide level playing field to Indian goods.

iv) Education Cess of customs @ 2% and SAH Education Cess of 1% is payable.

v) NCCD has been imposed on a few articles. In addition, on certain goods, Anti-Dumping Duty, Safeguard Duty, Protective Duty etc. can be imposed.

Calculated of customs duty payable is as follows, w.e.f. 01.03.2015

Seq.	Duty Description	Duty %	Amount	Total Duty
(A)	Assessment Value `		20,000.00	
(B)	Basic Customs Duty	10	2,000.00	2,000.00
(C)	Sub-Total for calculating CVD ‗(A+B)‘		22,000.00	
(D)	CVD ‗C‘ x excise duty rate	12.5	2,750.00	2,750.00
(E)	Sub-total for edu cess on customs ‗B+D‘		4,750.00	
(F)	Edu Cess of Customs – 2% of ‗E‘	2	95.00	95.00
(G)	SAH Education Cess of Customs – 1% of ‗E‘	1	47.50	47.50
(H)	Sub-total for Spl CVD ‗C+D+F+G‘		24,892.50	
(I)	Special CVD u/s 3(5) – 4% of ‗H‘	4	995.70	995.70
(J)	Total Duty			5,888.20
(K)	Total duty rounded to	`		5,888.00

Notes- Buyer, who is manufacturer, is eligible to avail Cenvat Credit of D and I above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. ‗I‘ above.

Additional Customs Duty U/S 3(1) (CVD)

i. CVD (Countervailing Duty) is payable on imported goods u/s 3(1) of Customs Tariff Act to counter balance impact of excise duty on indigenous manufactures, to ensure level paying field.

ii. CVD is payable equal to Excise Duty payable on like articles if produced in India. It is payable at effective rate of Excise Duty, which is generally 12.5%. It means CVD is equal to Basic Excise Duty (w.e.f 01-03-2015).

iii. CVD is payable on assessable value plus basic customs duty. In case of products covered under MRP provisions, CV duty is payable on MRP basis as per section 4A of Central Excise.

iv. CVD can be levied only if there is ‗manufacture‘.

v. CVD is neither Excise Duty nor Basic Customs Duty levied under Customs Act. However, all provisions of Customs Act apply to CVD. Calculation of duty payable is as follows –

Additional Duty Under Section 3(5) (Special CVD - SAD)

Section 3(5) of Customs Tariff Act empowers Central Government to impose additional duty. This is in addition to Additional Duty leviable u/s 3(1). Provision for this duty has been made w.e.f. 1-3-2005. Purpose of the Additional Duty is to counter balance Sales Tax, VAT, Local Tax or Other charges leviable on articles on its sale, purchase or transaction in India. The obvious intention is to provide level playing field to manufacturers in India who are manufacturing similar goods. Hence, it is termed as _Special CVD ‖or _SAD'(Special Additional Duty).

Exemption from SAD - Some categories of imports have been exempted from this special CVD (SAD), vide customs notification No. 20/2006-Custom dated 1-3-2006. The main among these are: Articles of jewellery attracts a lower rate of special CVD at 1%.

Departmental clarifications - Department has clarified as follows, vide MF (DR) circular No. 1 8/2006-Cus dated 5-6-2006 –

i. Special CVD of 4% is not leviable in case of imports under advance authorisation, EOU, EPCZ and SEZ schemes
ii. In case of Export Promotion Schemes like DEPB, target plus, service from India, DFCE and Vishesh Krishi and Gram Udyog Yojana, 4% Special CVD is required to be debited to the duty scrip/entitlement certificate.
iii. In case of DFRC scheme, 4% special CVD is payable.
iv. Duty debited through DEPB, DFCE, target plus scheme etc. will be eligible for Cenvat Credit or duty drawback.

Safeguard Duty under the Custom Tariff Act, 1975

In order to ensure that goods imported in increased quantity do not cause or threaten to cause serious injury to domestic industry, there are provisions for levy of safeguard duty on import of such articles into India. It can provide adequate protection to the indigenous industry against competition from the world players. The safeguard duty on imported goods is leviable under Section 8B of the Customs Tariff Act, 1975 read with the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

i) Imposition: Safeguard Duty can be imposed if the Central Government on enquiry finds that the imports in increased quantity - (a) have caused serious injury to Domestic Industry or, (b) is threatening to cause serious injury to Domestic industry. It can be imposed irrespective of origin of imported goods.

Serious injury means an injury causing significant overall impairment in the position of a domestic industry.

Threat of serious injury means a clear and imminent danger of serious injury.

ii) No Safeguard Duty on Articles Originating from Developing Countries: In case of articles originating from a Developing Country (i.e. a country notified by the Government of India for purpose of levy of such duty), this duty cannot be imposed under following circumstances -

(a) If the imports of such article from that developing country does not exceed three percent of the total

imports of that article into India.

(b) Where the article is originating from more than one developing countries (each with less than three percent import share), then the aggregate of imports from all such countries taken together does not exceed nine percent of the total imports of that article into India.

iii) Provisional Safeguard Duty Pending Enquiry: Section 8B(2) enables the Central Government to impose a provisional Safeguard Duty in appropriate cases, pending the determination of the issues as to whether the import of the concerned article to India would cause or threaten to cause serious injury to the domestic industry. The duty so collected, shall be refunded if, on a final determination, the Central Government is of the opinion that neither any injury has been caused to the Domestic Industry, nor there is any such threat to cause serious injury.

The Provisional safeguard Duty cannot remain in force for more than 200 days from the date when it was first imposed.

iv) Duration: The Safeguard Duty shall, unless it is revoked earlier, be in force till the expiry of 4 years from the date of its imposition. However, the Central Government reserves the right for its extension but total period of imposition cannot be beyond 10 years from the date of its imposition.

v) No Safeguard Duty in certain cases: Unless specifically provided, the safeguard duty shall not be imposed on goods imported by a 100% EOU or unit located in Free Trade Zone/ Special Economic Zone.

vi) Provision of custom Act, 1962 to apply: The provision of custom Act, 1962 and the rules and regulations made there under, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duty leviable under that act.

Anti-Dumping Duty

i. Anti dumping duty is leviable u/s 9A of Customs Tariff Act when foreign exporter exports his goods at low prices compared to prices normally prevalent in the exporting country.

ii. Dumping is unfair trade practice and the anti-dumping duty is levied to protect Indian manufacturers from unfair competition.

iii. Margin of dumping is the difference between normal value (i.e. his sale price in his country) and export price (price at which he is exporting the goods).

iv. Price of similar products in India is not relevant to determine ‗margin of dumping'.

v. ‗Injury Margin' means difference between fair selling price of domestic industry and landed cost of imported products. Dumping duty will be lower of dumping margin or injury margin.

vi. Benefits accruing to local industry due to availability of cheap foreign inputs are not considered. This is a drawback.

vii. CVD is not payable on anti-dumping duty. Education Cess and SAH education Cess is not payable on antidumping duty • In case of

imports from WTO countries, anti-dumping duty can be imposed only if it causes material injury to domestic industry in India.

viii. Dumping duty is decided by Designated Authority after enquiry and imposed by Central Government by notification. Provisional antidumping duty can be imposed.

ix. Appeal against antidumping duty can be made to CESTAT.

(i) Anti Dumping Duty on Dumped Articles

Often, large manufacturer from abroad may export goods at very low prices compared to prices normally prevalent in export market. Such dumping may be with intention to cripple domestic industry or to dispose of their excess stock. This is called ‗Dumping' and is an unfair trade practice. In order to avoid such dumping and to protect domestic industry, Central Government can impose, under section 9A of Customs Tariff Act, anti-dumping duty, if the goods are being sold at less than its normal value. Levy of such anti-dumping duty is permissible as per WTO agreement. Anti dumping action can be taken only when there is an Indian industry producing ‗like articles'. In Shenyang Mastusushita v. Exide Batteries 2005 (181) ELT 320 (SC 3 member bench), it was observed, ‗ Principle behind anti-dumping laws is to protect the domestic industry from being adversely affected by import of goods at export prices which are below the normal value of the goods in the domestic market of the exporter. The duty is calculated on the margin of dumping which is the difference between the export price and the normal value'.

In SS Enterprise v. Designated Authority AIR 2005 SC 1527 = 181 ELT 375 (SC 3 member bench), it was held that purpose being imposition of anti-dumping duty is to curb unfair trade practices resorted to by exporters of a particular country of flooding the domestic markets at rates which are lower than the rate at which the exporters normally sell the same or like goods in their own countries, so as to cause or be likely to cause injury to the domestic market. The levy of dumping duty is a method recognized by GATT (should be WTO) which seeks to remedy the injury and at the same time balances the rights of exporters from other countries to sell their products within the country with the interest of domestic markets. Thus the factors to constitute ‗ dumping' is (i) an import at prices which are lower than the normal value of goods in exporting country, (ii) the exports must be sufficient to cause injury to domestic industry.

However, negligible quantity of imports would not be sufficient to cause such injury.

Presently, countries like China, Taiwan are said to be involved in dumping. Even Indian steel exporters are facing
charges of dumping goods in USA.

(ii) Provisional Anti-Dumping Duty

Pending determination of margin of dumping, duty can be imposed on provisional basis. After dumping duty is finally determined, Central Government can reduce such duty and refund duty extra collected than that finally calculated. Such duty can be imposed upto 90 days prior to date of

notification, if there is history of dumping which importer was aware or where serious injury is caused due to dumping.

(iii) No CVD on Anti-Dumping Duty

Anti Dumping Duty and Safeguard Duty is not required to be considered while calculating CVD – view confirmed in Tonira Pharma v. CCE (2007) 208 ELT 38(CESTAT 2 v. 1 order).

(iv) No Education Cess and SAHE Cess on Anti-Dumping Duty –

Education Cess and SAH Education Cess is not payable on anti-dumping duty.

(v) No Anti-Dumping Duty in Case of Imports by EOU and SEZ –

Anti-dumping duty is not applicable for imports by EOU or SEZ units, unless it is specifically made applicable in the notification imposing antidumping duty. [section 9A(2A) of Customs Tariff Act]

(vi) Margin of Dumping

‗Margin of dumping' means the difference between normal value and export price (i.e. the price at which these goods are exported). [Section 9A(1)(a)].

‗Normal Value' means comparable price in ordinary course in trade, for like article, when destined for consumption in the exporting country or territory. If such price is not available or not comparable(a) comparable representative price of like article exported from exporting country or territory to appropriate third country or (b) cost of production plus reasonable profit, can be considered [section 9A(1)(c) of Customs Tariff Act]. The ‗normal value' is to be determined as per rules.

In Reliance Industries Ltd. v. Designated Authority 2006 (202) ELT 23 (SC), it was held that ‗normal value' a are not exporter specific but exporting country specific. Once dumping of specific goods from country is established, dumping duty can be imposed on all exports of those goods from that country in India, irrespective of the exporter. Rate of duty may vary from exporter to exporter depending upon the export price.

‗Export Price' means the price at which goods are exported. If the export price is unreliable due to association or compensatory arrangement between exporter and importer or a third party, export price can be constructed (revised) on the basis of price at which the imported articles are first sold to independent buyer or according to rules made for determining margin of dumping. [Section 9A(1) (b)].

Margin of dumping is determined on basis of weighted average of ‗normal value' and the ‗export price' of product under consideration.

(vii) Quantum of Dumping Duty

The anti-dumping duty will be dumping margin or injury margin, whichever is lower. ‗Injury margin' means difference between fair selling price of domestic industry and landed cost of imported product. The landed cost will include landing charges of 1% and basic customs duty. Thus, only

anti-dumping duty enough to remove injury to domestic industry can be levied.

For example, if normal value in exporting country is ` 11 and export price is ` 8, dumping margin is ` 3. If landed cost is ` 9 and fair selling price of domestic industry is ` 10, then injury margin is ` 1. Hence, anti-dumping duty of only Re 1 can be imposed.

In Reliance Industries Ltd. v. Designated Authority 2006 (202) ELT 23 (SC), it was held that noninjurious price (NIP) has to be calculated for domestic industry as a whole and not in respect of any particular company or enterprise. [Hence, even if product is captively consumed by Indian manufacturer, transfer price (market value) of inputs is to be considered and not actual cost of captive consumption]. It was observed that there has to be a single NIP for a product and not several NIP for the same product. NIP is not exporter specific. In Alkali Manufacturers Association of India v. Designated Authority 2006 (194) ELT 161 (CESTAT). Designated Authority had calculated domestic price on basis of profit of 22% of investment. It was held that this is reasonable.

(viii) Dumping Duty for WTO Countries

Section 9B of Customs Tariff Act provides restrictions on imposing dumping duties in case of imports from WTO countries or countries given ‗Most Favored Nation' by an agreement. Dumping duty can be levied on import from such countries, only if Central Government declares that import of such articles in India causes material injury to industry established in India or materially retards establishment of industry in India.

[WTO agreement permits levy of anti-dumping duty when it causes injury to domestic industry as a result of specific unfair trade practice by foreign producer, by selling below normal value]. ‗Injury to domestic industry' will be considered on basis of volume effect and price effect on Indian industry. There must be a ‗casual link' between material injury being suffered by dumped articles and the dumped imports.

(ix) Rules for Deciding Subsidy or Dumping Margin

Central Government has been empowered to make rules for determining (a) subsidy or bounty in case of bounty fed goods (b) the normal value and export price to determine margin of dumping in case of dumping. Accordingly, Customs Tariff (Identification, Assessment and Collection of Antidumping duty on Dumped Articles and for determination of Injury) Rules, 1995 [Customs Notification No. 2/95 (N.T.) dated 1-1-95] provide detailed procedure for determining the injury in case of dumped articles.

(x) Procedure for Fixing Anti Dumping Duty

After the ‗designated authority' is satisfied about prima facie case, he will give notice to Governments of exporting countries. Opportunity to inspection of documents and making representations will be given to interested parties who are likely to be affected. Designated Authority will first give preliminary finding and then final finding within one year. Provisional duty can be imposed on basis of preliminary finding which can

continue upto 6 months, extendable to 9 months. Additional duty may be imposed on basis of the final finding.

As per rule 18 of Anti-Dumping Duty Rules, Central Government has to issue a notification fixing antidumping duty within three months from date of notification issued by designated authority.

(xi) Appeal against Order Determining Dumping Duty

Appeal against the order determining the duty can be made to CESTAT. The appeal will be heard by at least three members bench consisting of President, one judicial member and one technical member [section 9C of Customs Tariff Act].

(xii) No Appeal against Order of Tribunal

Section 9C does not provide for statutory appeal against order of Tribunal. Hence, only remedy is either writ in
High Court or SLP in Supreme Court.

(xiii) High Court should not Exercise Writ Jurisdiction

In view of appeal provisions, High Court should not entertain writ petitions and grant interim relief. Otherwise, the provisions of appeal would be rendered otiose –Association of Synthetic Fibre Industry v. J K Industries 2006 (199) ELT 196 (SC) * Nitco Tiles v. Gujarat Ceramic Floor Tiles Mfg Association 2006 (199) ELT 198 (SC).

(xiv) Mid-Term Review

Mid-term review of Anti-Dumping Duty is permissible under rule 23 of Anti-Dumping Duty Rules. In Rishiroop Polymers v. Designated Authority 2006 (196) ELT 385 (SC), it was held that scope of review enquiry by Designated Authority is limited to the satisfaction as to whether there is justification for continuing imposition of Anti-Dumping Duty. The inquiry is limited to change in various parameters like normal value, export value, dumping margin, fixation of non-injury price and injury to domestic industry. Only changed parameters should be considered.

(xv) New Shipper Review

After imposing of Anti-Dumping Duty, a new exporter may want to export same goods to India. As per rule 22, if he had not exported earlier, he can ask for review of Anti-Dumping Duty. During the period of review, Government may resort to provisional assessment and may allow imports on submission of guarantee, pending review. If anti-dumping duty is determined, it will be payable retrospectively from date of initiation of review. Such review is termed as _new Shipper Review‘.

(xvi) Discontinuation of Anti-Dumping Duty i.e. Sunset Review

Anti dumping duty ceases on the expiry of five years from date of imposition. However, Central Government can extend the anti-dumping duty, if it is of the opinion that cessation is likely to lead to continuation or recurrence of dumping and injury.

4.3 VALUATION IN CUSTOMS

Customs duty is payable as a percentage of _Value' often called _Assessable Value' or _Customs Value'. The Value may be either (a) _Value' as defined in section 14(1) of Customs Act or (b) Tariff value prescribed under section 14(2) of Customs Act. The provisions relating to customs valuation have been completely revamped by introducing new section 14 w.e.f. 10-10-2007.

Tariff Value -

i) Tariff Value can be fixed by CBE&C (Board) for any class of imported goods or export goods. CBE&C should consider trend of value of such or like goods while fixing tariff value. Once so fixed, duty is payable as percentage of this value. (The percentage applicable is as prescribed in Customs Tariff Act). Fixing tariff value is not permitted under GATT convention. However, the provision of fixing tariff values has been retained.
ii) Tariff value for crude palm oil, RBD Palmolein, palm oil, crude soya-bean oil and brass scrap has been fixed by notification No. 36/200 1 -Cus (NT) dated 3-8-2001.
iii) Transaction value at the time and place of importation or exportation, when price is sole consideration and buyer and sellers are unrelated is the basic criteria for _value' u/s 14(1) of Customs Act. Thus, CIF value in case of imports and FOB value in case of exports is relevant.
iv) In case of high sea sale, price charged by importer to assessee would form the assessable value and not the invoice issued to the importer by foreign supplier. –National Wire v. CC 2000(122) ELT 810 (CEGAT) * Godavari Fertilizers v. CC (1996) 81 ELT 535 (CEGAT).
v) Rate of exchange will be as determined by CBE&C or ascertained in manner determined by CBE&C.
vi) Valuation for customs is required to be done as per provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
vii) CIF value of goods plus 1% landing charges is the basis for deciding _Assessable Value'.
viii) Commission to local agents, packing cost, value of goods and tooling supplied by buyer, royalty relating to imported goods are addible.
ix) Interest on deferred payment, demurrage and value of computer software loaded is not to be added.
x) Old machinery and old cars are often valued on basis of depreciated value, though such method has no sanction of law.

Additions to _Customs Value'

Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Rule 9 upto 10-10-2007] provide that following cost and services are to be added, if these are not already included in the invoice price. –

i) Commission and brokerage, except buying Commission, if not already included in the invoice price [rule 10(1) (a)(i)].
ii) Cost of container which are treated as being one with the goods for customs purposes, if not already included in the invoice price [rule

10(1)(a)(ii)]. Cost of packing whether labour or materials, if not already included in the invoice price [rule 10(1)(a)(iii)].

iii) Materials, components, tools, dies, moulds, and consumables used in production of imported goods, supplied by buyer directly or indirectly, free of charge or at reduced cost, to the extent not already included in price [rule 10(1)(b)(i), (ii) and (iii)]

iv) Engineering, development, art work, design work, plans and sketches undertaken elsewhere than in India and necessary for production of imported goods, to the extent not already included in price [rule 10(1)(b)(iv)].

v) Royalties and license fees relating to imported goods that buyer is required to pay, directly or indirectly, as a condition of sale of goods being valued [rule 10(1)(c)]

vi) Value of proceeds of subsequent resale, disposal or use of goods that accrues directly or indirectly to seller (i.e. to foreign exporter) [rule 10(1)(d)]

vii) All other payments made as condition of sale of goods being valued made directly or to third party to satisfy obligation of seller, to the extent not included in the price [rule 10(1)(e)]

viii) Cost of transport upto place of importation [rule 10(2)(a)]

ix) Loading, unloading and handling charges associated with delivery of imported goods at place of importation [These are termed as landing charges and are to be taken as 1%] [rule 10(2)(b)]

x) Cost of insurance [rule 10(2) (c)]

The additions should be on the basis of objective and quantifiable data [rule 10(3) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9(3)].

Services / Documents / Technical Know-How Supplied by Buyer

Cost of engineering, development, art work, design work and plans and sketches undertaken by buyer which is necessary for production of imported goods is includible, only if such work is undertaken outside India. [Rule 10(1)(b) (iv) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9)] The addition should be done on objective and quantifiable data. Data available with importer should be used as far as possible. If the services are purchased or leased by importer, such purchase/lease cost should be added. If the importer has himself done the work abroad, its cost should be addedon basis of structure and management practices of importer and his accounting methods (in other words, if development work, plans, sketches etc. is done by importer himself outside India, its cost should be calculated based on normal accounting practices - like apportionment of overheads, apportionment over various jobs if the same development work, design work etc. is used for more than one jobs etc.) [Interpretative Note to rule 10(1)(b)(iv) of Customs Valuation Rules].

Technical Know How Related to Imported Machinery

In CC v. Essar Gujarat Ltd. (1997) 9 SCC 738 = 88 ELT 609 = 17 RLT 588 (SC 3 member bench), it was held that payment of license fee and

transfer of technology, without which the imported plant could not function, will have to be added to the value of imported plant. However, training charges cannot be included. —wrongly followed in CC v. Himson Textile Engg. Ltd. 1997(93) ELT 301 (CEGAT).

Royalties and License Fee

Royalties and license fees related to imported goods that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable, are required to be added in assessable value. [Rule 10(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9)].

Royalty Payment Un-connected with Imported Goods not to be Added

Often, a lump-sum payment of royalty is made to foreign collaborators for technical know-how. In addition, components / parts/ CKD packs are procured from foreign collaborators. Customs department normally holds that the price of parts/CKD packs should be loaded, on assumption that the part of price of component parts/CKD packs has been paid as ‗royalty payment'.

Charges for Reproduction of Goods in India not to be Added

Interpretative Note to rule 10(1)(c) of Customs Valuation Rules makes it clear that charges for right to reproduce the imported goods in India shall not be added.

Barge/ Lighterage Charges includible

In some cases, the ship is not brought upto jetty. Goods are discharged at outer anchorage. This may be for various reasons, e.g. (a) deep draught at port, (b) Ports are busy, (c) Odd dimensional or heavy lifts or hazardous cargo discharged at anchorage. Charges for brining the goods from outer anchorage are known as ‗barging/ lighterage charges'. As per explanation to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [inserted w.e.f. 10-10-2007], ship demurrage charges on chartered vessels, lighterage or barge charges are includible. Mode of computation of freight of time chartered/daughter vessel has been specified in MF(DR) circular No. 4/2006- Cus dated 12-1-2006.

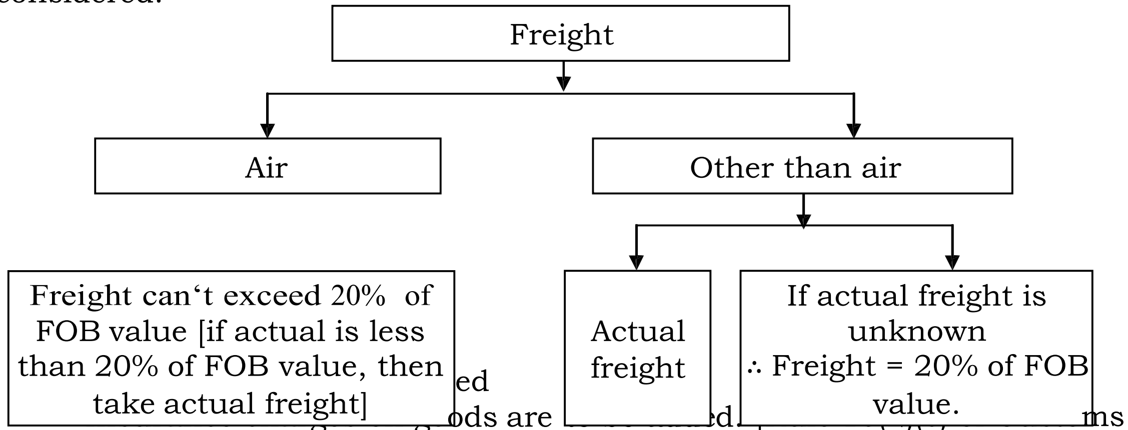
Landing Charges to be added

Cost of unloading and handling associated with delivery of imported goods in port(called landing charges) shall be added. These will be calculated @ 1% of CIF value, i.e. FOB price plus freight plus insurance. [Rule 10(2)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 –earlier rule 9].

Cost of Transport upto Port should be added

Cost of transport from exporting country to India is to be added in ‗Assessable Value'. [Rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9).] In other words, CIF

value is the basis for valuation. If the goods are imported by air, the air freight will be very high. Hence, in case air freight is higher than 20% of FOB price of goods, only 20% of FOB price will be added for Customs Valuation purposes. If cost of transport is not ascertainable, it will be taken as 20% of FOB value of goods. However, cost of transport within India is not to be considered.



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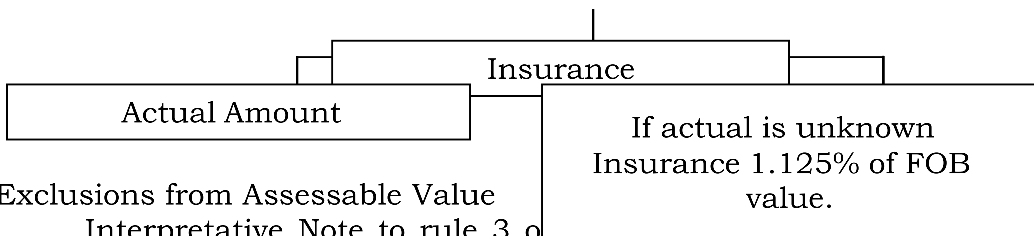
Valuation (Determination of Value of Imported Goods) Rules, 2007]. If these are not ascertainable, these will be calculated @ 1.125% of FOB Value of goods.



Exclusions from Assessable Value

Interpretative Note to rule 3 o ion of Value of Imported Goods) Rules, 2007provide that following charges shall be excluded:

(a) Charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation of plant, machinery or equipment
(b) Cost of transport after importation
(c) Duties and taxes in India

Other payments from buyer to seller that do not relate to imported goods are not part of the customs value. Demurrage charges payable to port trust authorities for delay in clearing goods are not to be added. - Deepak Fertilisers v. CC 1989(41) ELT 550 (CEGAT) * Hindustan Lever v. UOI 2002(142) ELT 33 (Cal HC). [However, ship demurrage is includible w.e.f. 10-10-2007]. Ship demurrage includible w.e.f. 10-10-2007 - explanation to rule 10(2)

Essential Ingredients of Valuation (section 14)

The essential ingredients of section 14 may be analyzed as under:

a) Section 14 would be applicable only when customs duty is chargeable on goods based on their value either under the Customs Tariff Act, 1975 or under any other law for the time being in force.
b) The value of goods under section 14(1) is deemed value.

c) The assessable value will be price at which like goods are ordinarily sold.
d) Where there is no sale price, the value shall be the price at which such or like goods are ordinarily offered for sale.
e) The terms of the price should be for delivery at the time and place of importation or exportation, as the case may be.
f) The sale or offer for sale should be in the course of international trade.
g) There should be no mutuality of interest between the seller and the buyer.
h) Price should be the sole consideration for sale or offer for sale.

Analysis in the Light of Judicial Decisions

The above ingredients may be further explained with the help of judicial rulings as under:

(a) Assessable Value is Deemed Value

Section 14(1)(a) brings about the concept of deemed value, which is a fictional value that relates to the concept of intrinsic value of goods, which it may fetch in the international market. In the case of Union of India v Glaxo Laboratories Ltd., the Court observed that the assessable value as per section 14(1), need not as a matter of fact, be the invoice price or the price that is agreed between the parties. It may be deemed value.

(b) Price

In N Gulabair D Parekh v Union of India, it was observed that the invoice price based on the prevailing price list, should be accepted in terms of section 14(1) (a) of the Customs Act. A declared price list can be used for the purpose or arriving at the value but there is no hard and fast rule and the invoice may supersede the price list as held by the Supreme Court in Mirah Exprots Pvt. Ltd. v CC.

In Rajkumar Knitting Mills P Ltd. v CC, a three member bench of Supreme Court held that for valuation purposes, ‗ordinary' price at the time of importation is relevant and not the price prevalent on the date of contract.

(c) At which such or like goods are Ordinarily Sold

In Chander Prakash & Co v Collector of Customs, it was held that when the invoice price was very low and when the prices of comparable goods were available, it would not be appropriate to adopt the invoice price.

(d) Where there is no sale price, the ‗Offer for Sale' price will be applicable

In case a sale price is not available, the offer for sale price may be construed as the basis determining the assessable value. For example, in case a price list is available, such price list is the quotation as well.

(e) Ordinarily Sold

In Collector of Customs, Bombay v Maruti Udyog Limited (1987), Maruti Udyog Limited, which had collaboration with Suzuke Motor Co. Limited, was the only buyer of Suzuki SKD/CKD packs and complete vehicles. A controversy arose so to whether the price charges by Suzuki could be considered as one at which goods were ordinarily sold or offered for sale. In this case, the court held that the price charged by the Suzuki was a commercial price. Also, it was held that there was nothing to prove that the transaction between the two companies were not at arm's length.

(f) In the course of International Trade

In Satellite Engineering Limited v Union of India (1983), the assessee, who was manufacturers of fluorescent starter switches imported lead glass tubing at rate of 0.15 pounds per kg. However, the customs department which was of the opinion that the value was low obtained two more quotations which were 0.430 pounds per kg. And 0.429 pounds per kg. respectively. It was held that the prices indicated in the two quotations were in the course of international trade and hence that rate will form the basis for determining the assessable value.

(g) Price being the Sole Consideration

In Sanjay Chandiram v Collector of Customs, the court held that as there is no proof of comparable goods being imported at a higher rate and as it cannot be shown that the importer had paid to the supplier, an amount more than that required to be paid, there is no ground for rejection of the transaction value.

Relevant Date for Rate and Valuation of Import Duty

Section 15 of Customs Act prescribes that rate of duty and tariff valuation applicable to imported goods shall be the rate and valuation in force at one of the following dates (a) if the goods are entered for home consumption, the date on which bill of entry is presented (b) in case of warehoused goods, when Bill of Entry for home consumption is presented u/s 68 for clearance from warehouse and (c) in other cases, date of payment of duty.

METHODS OF VALUATION

The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, based on WTO Valuation Agreement (earlier GATT Valuation Code), consist of rules providing six methods of valuation.

i) The methods of valuation for customs methods are as follows —
ii) Transaction Value of Imported goods [Section 14(1) and Rule 3(1)]
iii) Transaction Value of Identical Goods [Rule 4]
iv) Transaction Value of Similar Goods [Rule 5]
v) Deductive Value which is based on identical or similar imported goods sold in India [Rule 7]
vi) Computed value which is based on cost of manufacture of goods plus profits [Rule 8]
vii) Residual method based on reasonable means and data available [Rule 9]

Methods to be applied Sequentially

These methods are to be applied in sequential order, i.e. if method one cannot be applied, then method two comes into force and when method two also cannot be applied, method three should be used and so on. The only exception is that the _Computed value' method may be used before _deductive value 'method, if the importer requests and Assessing Officer permits.

Rejection of _Value'

Importer has to declare _value' of goods. If the assessing officer has reason to doubt about truth or accuracy of the value declared by the importer, he can ask the importer to submit further information and evidence. If the customs officer still has reasonable doubt, he can reject the _value' as declared by the importer. [Rule 12(1) w.e.f. 10-10-2007 – earlier rule 10A(1) of Customs Valuation Rules added w.e.f. 19-2-1 998]. If the importer requests, the assessing officer has to give reasons for doubting the truth or accuracy of value declared by importer [Rule 12(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 – earlier rule 10A(2) of Customs Valuation Rules upto 10-10-2007].

Rule 12 is only Mechanism to Reject the Declared Value

As per explanation (1)(i) to Rule 12, the Rule 12 does not provide any method for determination of value. It only provides mechanism to reject declared value, where there is reasonable doubt. If transaction value is rejected, valuation has to be done as per Rule 4 to 9 [Explanation (1)(i) to Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Transaction Value of Imported Goods [Section 14(1) and Rule 3(1)]

As per rule 3(1), value of imported goods shall be transaction value adjusted in accordance with provisions of rule 10 [Rules effective from 10.10.2007].

As per rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, various additions like sales commission, cost of containers, cost of packing; cost of materials, components etc. or services supplied by buyer; royalties payable, transport charges, insurance etc. are includible, if these do not already form part of transaction value (as mentioned above).

Rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is subject to rule 12, which means that provisions of rule 12 overrides provisions of rule 3. As per rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value as declared by importer can be rejected by Assessing Officer, if he has doubts about truth or accuracy of the value as declared. However, the Assessing Officer has to give reasons for his doubts in writing and provide opportunity of personal hearing. Thus, it is not obligatory on customs officer to accept the transaction value if he has reasons to doubt the truth or accuracy of the same.

Transaction value can be rejected either for special circumstances as per section 14(1) or conditions as specified in rule 3(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(A). Special circumstances as per Section 14(1) - The _special circumstances' in section 14(1) are (a) Buyer and seller should not be related and (b) Price should be the sole consideration for the sale. If these _special circumstances' are not satisfied, transaction value can be rejected. Any other _special circumstances' cannot be considered.

(B). Conditions as per Rule 3(2) - As per rule 3(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Earlier rule 4(2) of Customs Valuation Rules], transaction value can be accepted only if following requirements are satisfied –

(C). No restriction on Buyer for Disposal of Goods - There are no restriction on buyer on disposition or use of goods except the following: (a) restrictions prescribed by public authorities in India (b) restriction on geographical area within which goods may be resold e.g. goods should not be sold outside particular State or outside India or (c) restriction that does not materially affect value of goods - e.g. exporter puts a condition to importer of automobile that car should not be exhibited before a particular date – illustration given in Interpretative Note to rule 3(2) (a) (iii). [rule 3(2) (a)].

(D). Sale not subject to conditions of which value cannot be determined - The sale or price should not be subject to a condition or consideration for which value cannot be determined. Examples given in interpretative note to rule 3(2) (b) are – (a) Price is subject to condition that buyer buys some other goods in specified quantities from seller (b) price is dependent on price at which buyer of imported goods sells other goods to seller (c) Price is based on form of payment extraneous the imported goods. However, (i) buyer furnishing engineering and plans undertakenin India to seller (ii) Buyer undertaking activities of marketing of imported goods in India will not form part of value of imported goods [rule 3(2) (b)].

(E). No further consideration to Seller of which adjustment cannot be made - Seller should not be entitled to further consideration like part of subsequent resale, disposal or use of goods by the buyer will accrue directly or indirectly to seller, unless proper adjustment in value terms can be made as per rule 10 e.g. if the importer is a trader and the condition is that after he sells the goods in India, the foreign exporter will get a fixed amount after the sale, that extra amount can be added for Customs Valuation [rule 3(2) (c)].

(F). Unrelated Buyer and Seller, Except when price acceptable under Rule 3(3) - Buyer and seller are not be related, unless the transaction value is acceptable under rule 3(3) [rule 3(2)(d)] [earlier ru le 4(2)(h) upto 10-10-2007]. If any of the aforesaid requirements is not satisfied, _transaction value' cannot be accepted for valuation purposes.

Related person under Customs Valuations Provisions

Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Rule 2(2) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 define that persons shall be deemed to be _related' only if one of the conditions is satisfied:

- they are officers or directors of one other's businesses [Rule 2(2)(i)]
- they are legally recognised partners in business [Rule 2(2)(ii)]
- they are employer and employee [Rule 2(2)(iii)]
- any person directly or indirectly owns, controls or holds 5% or more of shares of both of them [Rule 2(2)(iv)]
- one of them controls other directly or indirectly [Rule 2(2)(v)]

- both of them are controlled - directly or indirectly - by third person [Rule 2(2)(vi)]
- together they control a third person - directly or indirectly [Rule 2(2)(vii)]
- they are members of same family [Rule 2(2)(viii)]. (what is ―**family**‖ is not defined).

Person includes legal person i.e. Company, partnership firm, trust etc. [Explanation I to Rule 2(2)]. If a person is sold agent or sole distributor or sole concessionaire of other, he will be deemed to be _related‘, if he falls within the criteria of rule 2(2) [Explanation II to Rule 2(2)]. Thus, sole selling agent or sole distributor or sole concessionaire will be _related person‘ only if he falls within the criteria as specified in rule 2(2). A sole selling agent or sole distributor or sole concessionaire is not automatically deemed as _related person‘ in all the cases.

Interpretative Note to rule 2 clarify that for purpose of rule 2(2)(v), one person is deemed to control other if he is legally or operationally in a position to exercise restraint or direction over the other. Thus, control need not be only legal - even operational control is enough.

In CC v. East African Traders 2000(115) ELT 613 (SC), it was held that authorities can pierce the corporate veil to ascertain whether the buyer and seller are indeed related persons within the meaning of the rule. [Piercing corporate veil means looking behind the facade to see the persons who are in real control]. [The Tribunal had held that even if MD of supplier company is brother of importing firm, supplier and importer cannot be treated as related person. However, Supreme Court has said that they can be treated so by piercing the corporate veil].

However, merely because two parties are related to each other will not amount to under valuation per se. It will depend on facts and circumstances of each individual case - CC v. Variant (India) Ltd. (2007) 210 ELT 481 (SC). In Siemens Ltd v. CC2000(126) ELT 1134 (CEGAT), it was held that even if buyer is a subsidiary company, invoice price should be accepted if the relationship has not affected the invoice price and price is same as the price sold to other independent buyers.

Transaction Value of Identical Goods

Rule 4(l) (a) of Customs Valuation (Determination of Value of Imported Goods) Rules 2007 of Customs Valuation Rules provide that if valuation on the basis of _ transaction value‘ is not possible, the _Assessable value‘ will be decided on basis of transaction value of identical goods sold for export to India and imported at or about the same time.

Rule 4(1)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that transaction value of identical goods at the same commercial level and in substantially same quantity as the goods being valued shall be used to determine value of imported goods. If transaction value at different commercial level or in different quantities or both is available, suitable adjustments can be made to take into account the difference.

Identical goods‘ are defined under Rule 2(1)(d) of Custom Valuation (Determination of value of Imported Goods) Rules, 2007 as those goods

which fulfill all following conditions i.e. (i) the goods should be same in all respects, including physical characteristics, quality and reputation; except for minor differences in appearance that do not affect value of goods, (ii) the goods should have been produced in the same country in which the goods being valued were produced, (iii) they should be produced by same manufacturer who has manufactured goods under valuation - if price of such goods are not available, price of goods produced by another manufacturer in the same country. However, if engineering, development work, art work, design work, plan or sketch undertaken in India were completed by the buyer on these imported goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, these will not be ‗identical goods'.

Summary of valuation of **‗Identical Goods'**

i) Contemporaneous imported goods,
ii) Same in all respect,
iii) Minor difference in appearance like Nokia 6265 (steel gray) & Nokia 6265 (Black colour),
iv) Produced in same country at same commercial level, substantially same quantity – Lowest value to be taken,
v) 1st preference – same manufacturer,
vi) 2nd preference – only if same manufacturer not available them different manufacturer,

Adjustments to be made

Price of identical goods should be compared at same commercial level and in substantially same quantity of goods [rule 4(1)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007] - noted in Elite Packaging Industries v. CC-1992 (60) ELT 311 (SC).

If transaction value at different commercial level or in different quantities or both is available, suitable adjustments can be made to take into account the difference. It should be on demonstrated evidence which clearly establishes reasonableness and accuracy of adjustments [rule 4(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

As per interpretative note to rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, if price of identical goods at same commercial level and in substantially the same quantities as the goods being valued is not available, customs officer can use any of the following price of identical goods - (a) sale at same commercial level but in different quantities (b) sale at different commercial levels but in substantially the same quantities or (c) sale at different commercial level and in different quantities. Such price can be only ‗transaction value' which has already been accepted under rule 3. After such sale is found, adjustment will be made for (a) quantity factor only (b) commercial level factors only or (c) both commercial level and quantity factors.

Such adjustment can be only on basis of demonstrative evidence e.g. valid price lists containing prices referring to different levels or different quantities. For example, assume that import is for 10 units, while

transaction value of identical goods is available for 500 units. If the seller is known to be giving quantity discounts and if seller‘s price list for 10 units and 500 units is available, adjustment can be made based on seller‘s price list. In such case, price of identical goods made in 10 units need not be available. Such adjustment can be only on objective measure on bona fide evidence and not arbitrary.

Adjustment for distances and transport costs - If valuation of identical goods was made after adding costs and services as per rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, differences arising due to differences in distances and means of transport should be considered, while arriving at ‗Assessable Value‘ of goods under valuation. This will be required if value of identical goods manufactured by different manufacturer and/ or at different place is being taken as basis for valuation [Rule 4(2).

Transaction Value of Similar Goods

If first method of transaction value of the goods or second method of transaction value of identical goods cannot be used, rule 5 (earlier rule 6) provide for valuation on basis of ‗Transaction value of similar goods imported at or about the same time‘.

What are Similar goods - Rule 2(1)(f) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [earlier rule 2(1)(e) upto 10-10-2007] define ‗similar goods‘ as

(a) Alike in all respects, have like characteristics and like components and perform same functions. These should be commercially inter-changeable with goods being valued as regards quality, reputation and trade mark.

(b) The goods should have been produced in the same country in which the goods being valued were produced.

(c) They should be produced by same manufacturer who has manufactured goods undervaluation - if price of such goods are not available, price of goods produced by another manufacturer in the same country can be considered.

However, if engineering, development work, art work, design work, plan or sketch undertaken in India were completed by the buyer on these imported goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, these will not be ‗similar goods‘.

As per rule 5(2) and interpretative note to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the adjustments that can be made are same as can be done in respect of identical goods under rule 4 i.e. (a) Adjustments for commercial level and/or quantity can be made (b) if valuation of similar goods is made after adding costs and services as per rule 10, differences arising due to differences in distances and means of transport should be considered, (c) if more than one value is available, lowest of such values should be taken.

Distinction between identical goods and similar goods

The major distinction between _identical goods' and _similar goods' is that the _identical goods' should be same in all respects, except for minor differences in appearance, while in case of _similar goods', it is enough if they have like characteristics and like components and perform same functions. In both the cases, (a) quality and reputation (including trade mark reputation) should be same (b) Goods should be from same country, (c) Goods produced by another manufacturer can be considered if price of goods produced by same manufacturer are not available. However, brand reputation and quality of other manufacturer should be comparable (d) If engineering, development work, art work, design work, plan or sketch undertaken in India were completed by the buyer on these imported goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, the price cannot be considered.

_Similar' does not mean identical but means corresponding to or resembling to in many respects. - Vishrut Industries v. CCE 2001(130) ELT 225 (CEGAT).

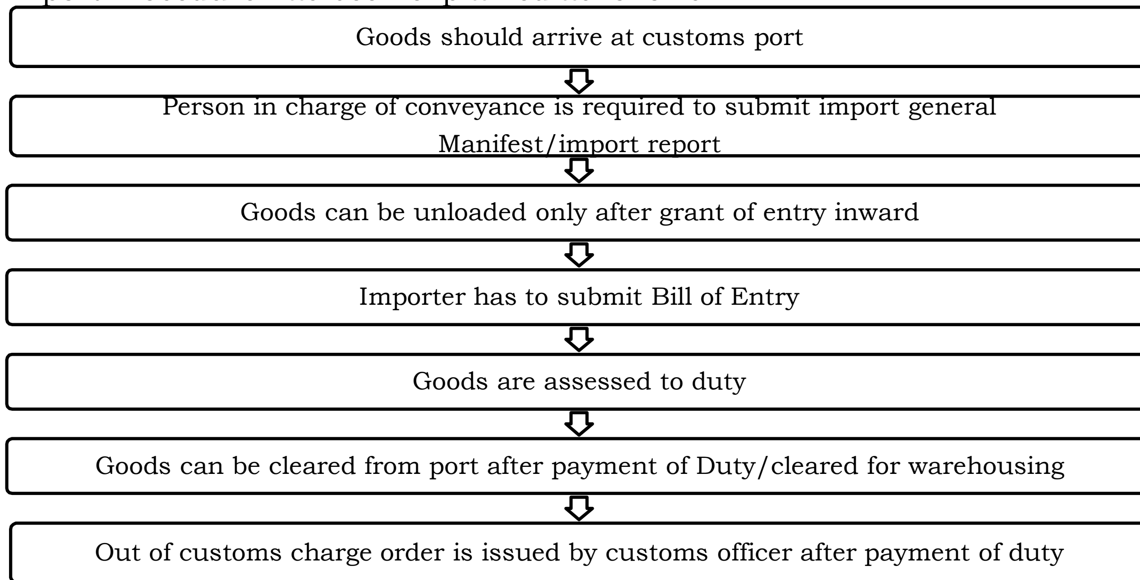
Goods produced in Japan and goods produced in France cannot be termed as _similar goods' for purpose of these rules - Nitisodya Diamond Tools v. CC - 1994 (74) ELT 49 (CEGAT)

Summary of valuation of _Similar Goods'

i) Contemporaneous imported goods,
ii) Not like in all respect,
iii) Like characteristics and component materials,
iv) Perform same functions,
v) Commercially inter changeable w.r.t. quality, reputation & trademark,
vi) Produced in same country,
vii) 1st preference – same manufacturer,
viii) 2nd preference – only if same manufacturer not available then different manufacturer.

PROCEDURES FOR IMPORT

Import Procedure has been explained as follows



Goods should arrive at Customs Port/Airport only

i. Person in charge of conveyance is required to submit Import Manifest or Export-Manifest,
ii. Goods can be unloaded only after grant of ‗Entry Inwards',
iii. Importer has to submit Bill of Entry giving details of goods being imported, along with required documents. Electronic submission of documents is to be done in many ports,
iv. Goods are assessed to duty, examined and customs duty is paid. Bond is executed if required,
v. Goods can be cleared from port after ‗Out of Customs Charge' order is issued by customs officer,
vi. Self Assessment on basis of ‗Risk Management System' (RMS) has been introduced in some ports in respect of specified goods and importers,
vii. Demurrage is payable if goods are not cleared within three days from port. Goods can be disposed of if not cleared within 30 days.

Overview of Procedures for Import

The broad procedures to be followed for assessment and clearance of imported goods are as follows –

i. Importer to submit Bill of Entry giving details of goods to be cleared from customs,
ii. Bill of Entry can be for home consumption (i.e. clearance after payment of duty) (white colour) or for warehousing (keeping in warehouse without payment of duty and later clearing on payment of duty when required) (yellow colour),
iii. Importer to submit other documents like Invoices, contracts, product literature, packing lists, import license etc. So that customs officer can assess the imported goods under clearance,
iv. Noting of Bill of Entry by customs officer,

v. Examination of goods and assessment by customs officer (if first appraisement system) or assessment of goods on basis of documents (if second appraisement system),
vi. Pre-audit by customs department,
vii. Customs Officer to approve assessment (valuation of goods) on the Bill of Entry and return to importer,
viii. Importer to execute bond if clearance at concessional rate of duty subject to some conditions or clearance is under provisional assessment,
ix. Importer to pay duty, if clearance is for home consumption or execute bond, if clearance is for warehousing,
x. Inspection of goods (if assessment was under second appraisement system), xi. Out of customs charge order by customs officer,
xi. Pay dues of port trust, pay demurrage (if applicable), pay other dues,
xii. Transport the goods from customs.
xiii. These procedures are for import by ship/air/road. There is separate procedure for goods imported as a baggage or by post.

Submission of Bill of Entry

Bill of Entry is a very vital and important document which every importer has to submit to customs officer in respect of imported goods other than goods intended for transit or Transshipment . Bill of Entry should be in prescribed form. It can be either for home consumption or for warehousing [section 46(1)]. It should include all goods mentioned in Bill of Lading or other receipt given by carrier to consignor [section 46(2)]. Importer has to declare that contents of Bill of Entry are true [section 46(4)]

i. Bill of Entry is for home consumption. Imported goods are cleared on payment of customs duty.
ii. Bill of Entry is for warehousing. It is also termed as ‗into bond Bill of Entry' as bond is executed. Duty is not paid and imported goods are transferred to warehouse where these are stored.
iii. Bill of Entry is for clearance from warehouse on payment of customs duty. It is for ex-bond clearance.

When should the Bill of Entry be filed?

Bill of entry can normally be filed to clear the goods after the Import General Manifest (IGM) is presented to the Custom officers by the steamer Agents/Airlines as the case may be. Provided that a bill of entry may be presented even before the delivery of such manifest or report, if the vessel or the aircraft or the vehicle by which the goods have been shipped an importation into India is expected to arrive within thirty days from the date of such presentation. In addition of the goods entered in the vessels manifest Bills of Entry are also required for the clearance of –

(a) Ship's stores if in considerable quantities.
(b) Ship's Ballast such as stone, sand, Shingla etc. (c) Salvaged goods
(c) ―Sweepings‖ of import cargo.

Any imported goods should be cleared within 30 days from the date of unloading of goods at a customs station failing which the goods maybe disposed of by way of auction.

Time limit to pay Duty once a Bill of Entry has been assessed:

Duty has to be paid within two days from the date on which the Bill of Entry is returned after assessment to the importer / Agent for payment of duty. If duty is not paid within the stipulated time, simple interest @ 15% p.a presently on amount of duty is payable (Section 47 of the Customs Act, 1962).

Documents to be submitted by Importer to Clear the Imported Goods for Home Consumption

Documents required by customs authorities are required to be submitted to enable them to (a) check the goods (b) decide value and classification of goods and (c) to ensure that the import is legally permitted. The documents that are essentially required are :

i. Copy of order/ contract.
ii. Supplier's invoice in four copies.
iii. Copy of the Letter of Credit.
iv. Import licence.
v. Bill of Lading (original and non-negotiable).
vi. Packing List (2 copies).
vii. Weight specification.
viii. Freight insurance memo.
ix. Manufacturer's test certificate.
x. Exchange slip for purpose of exchange rate.
xi. Certificate of origin.
xii. Delivery order issued by Shipping company, its agent or carriers.
xiii. If spare parts are being imported, invoice should indicate unit price and extended total of each item.
xiv. If invoice is for FOB, freight charges and insurance premium amount certificate should be attached.
xv. OGL declaration.
xvi. No commission letter to be given by importer i.e., Agent's commission, if any, has not been paid in India.
xvii. Customs declaration (4 copies)
xviii. Catalogue/write-up/ drawing for machinery items.
xix. Importer-Exporter Code Number.
xx. If second-hand machinery is being imported then Chartered Engineer's certificate is necessary as per the Import Export Policy.
xxi. If steel is being imported then analysis certificate from manufacturers.
xxii. In the case of chemicals and allied products like synthetic resin wax, literature showing chemical composition.
xxiii. Textile Principal Commissioner or commissioner's endorsement in respect of textile items.

Electronic Submission under EDI system

Customs work at many ports has been computerized. In that case, the Bill of Entry has to be filed electronically, i.e. through Customs EDI system through computerization of work. Procedure for the same has been prescribed vides Bill of Entry (Electronic Declaration) Regulations, 1995.

i) The broad procedures to be followed for exports are as follows –
ii) Submit Shipping Bill for export to customs authorities,
iii) Submit invoice, packing lists, contracts, export license (if applicable) and other related documents,
iv) Submit necessary declarations for export. Submit * GR/SDF/SOFTEX form as required under FEMA * Excise ARE-1- form
v) Noting of Shipping Bill by customs officer
vi) Assessment i.e. valuation and classification of goods. Checking of Advance License, if applicable
vii) Custom check whether export is restricted/prohibited
viii) Examination of goods by customs officer
ix) Pay export duty, if applicable
x) Stuffing of container, if not already done
xi) ‗Let export' Order by customs officer
xii) Obtain ARE-1 form duly signed by customs officer. Obtain Bill of Lading from shipping company. Submit proof of export to excise authorities.

Complete formalities relating to claim of duty drawback.

Prior Submission of Bill of Entry

After the goods are unloaded, these have to be cleared within stipulated time usually three working days. If these are not so removed, demurrage is charged by port trust/airport authorities, which is very high. Hence, importer wants to complete as many formalities as possible before ship arrives. Proviso to section 46(3) of Customs Act allows importer to present bill of entry upto 30 days before expected date of arrival of vessel.

Importer can Abandon the Imported Goods

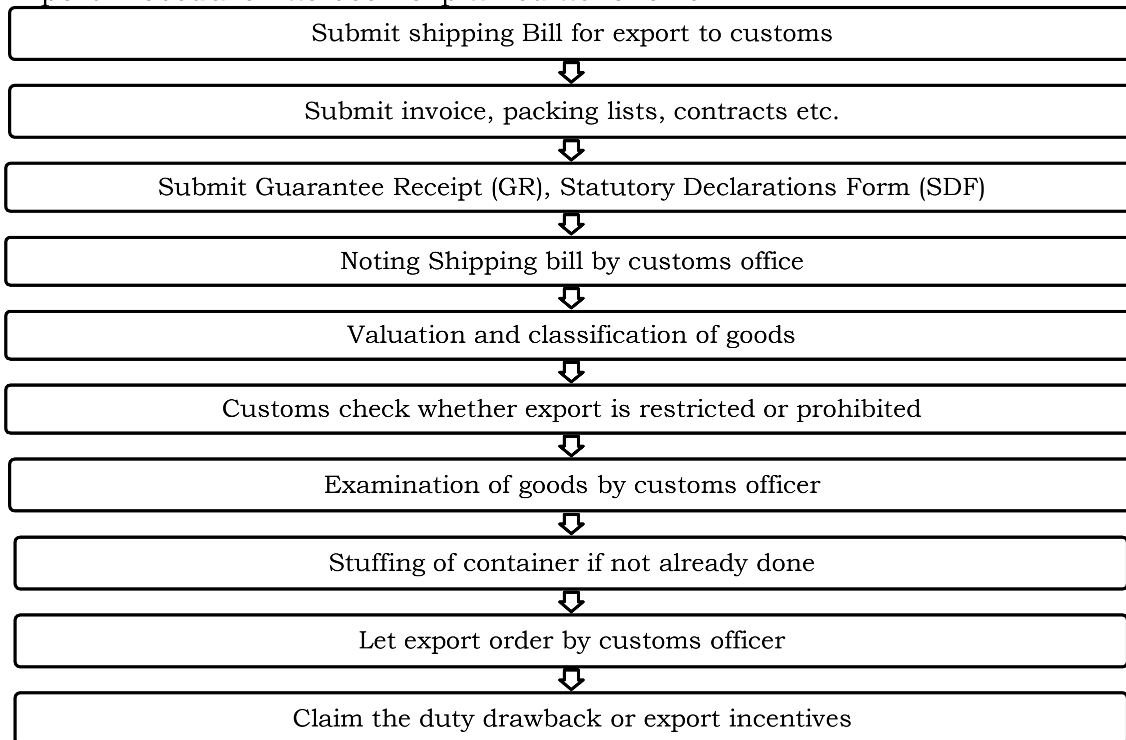
He can abandon the imported goods at any time before the proper officer has given the order for clearance of the goods for home consumption or for warehousing. However if any offence has been committed in respect of the said goods, then the option to abandon the goods is not available.

Customs Recognized Brokers for the purposes of Customs Clearance who can be approved for clearance of Import

Every custom house has authorized Customs Brokers licensed by that particular custom house. Each Customs Brokers has a license / registration no. and identity cards which can be verified from the nearest Custom House / Custom Station. An importer / exporter can file documents on his own account without the help of any Customs Brokers. But before this he must get an authority / permission from the proper officer for ‗self – clearance'. It is not mandatory to take the help of the Customs Brokers in clearing consignment.

PROCEDURES FOR EXPORT

Export Procedure has been explained as follows



The broad procedures to be followed for exports are as follows —

i. Submit Shipping Bill for export to customs authorities,
ii. Submit invoice, packing lists, contracts, exports authorization (if applicable) and other related documents,
iii. Submit necessary declarations for export. Submit* GG/SDF/SOFTEX form as required under FEMA* Excise ARE-1- form,
iv. The _Export Value Declaration‘ should be in form given in Annexure A to MF(DR) circular No. 37/2007- Cus dated 9-10-2007,
v. Noting of Shipping Bill by customs officer,
vi. Assessment i.e. valuation and classification of goods. Checking of Advance Authorization, if applicable,
vii. Custom check whether export is restricted/prohibited,
viii. Examination of goods by customs officer,
ix. Pay export duty, if applicable,
x. Stuffing of container, if not already done,
xi. _Let export‘ Order by customs officer,
xii. Obtain ARE-1 form duly signed by customs officer. Obtain Bill of Landing from shipping company. Submit proof of export to excise authorities,
xiii. Complete formalities relating to claim of duty drawback.

Every Exporter should take following initial steps

- Obtain BIN (Business Identification Number) from DGFT. It is a PAN based number

- Open current account with designated bank for credit of duty drawback claims
- Register licenses/advance license/DEPB etc. at the customs station, if exports are under Export Promotion Schemes.

RCMC Certificate from Export Promotion Council

Various Export Promotion Councils have been set up to promote and develop exports (e.g. Engineering Export Promotion Council, Apparel Export Promotion Council, etc.) Exporter has to become member of the concerned Export Promotion Council and obtain RCMC - Registration cum membership Certificate. Exporter should apply for registration with EPC that relates to his main line of business. However, exporter can take membership of any other EPC in addition –DGFT circular No. 2/2004-09 dated 6-10-2004.

Third Party Exports

Third party exports means exports made by an Exporter or Manufacturer on behalf of another exporter/s. The Shipping Bill shall indicate the names of both the exporter and/or manufacturer. The BRC, GR declaration, export order and the Invoice shall be in name of the third party exporter. SEZ unit can export goods or software through a merchant exporter/status holder.

Merchant Exporter - Merchant Exporter means a person engaged in trading activity and exporting or intending to export goods.

TRANSIT AND TRANSSHIPMENT OF GOODS (Section 53 of the Customs Act, 1962)

Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station.

Transshipment of Goods (Section 54 of the Customs Act, 1962)

Transshipment means transfer from one conveyance to another with or without payment of duty. It means to say that goods originally imported from outside India into India, then transshipped to another vessel to a place within India or outside India.

Transshipment of goods without payment of duty under Section 54(3)

Transshipment of goods without payment of import duty is permissible only if the following conditions satisfy:

i. Transshipment of goods with foreign destination.
ii. The goods find place as Transshipment Goods in the Import of General Manifest (IGM) or Import Report in case of goods imported in a vehicle.
iii. Bill of Transshipment or Declaration of Transshipment filed.
iv. Goods must be transshipped to another vessel to place outside India.

B. EXCISE DUTY

INTRODUCTION

The Central Excise Law is the law which empowers Central Government to collect excise duty on the goods manufactured or produced in India. Excise Duty is a duty on goods manufactured in India. Chapter II of the Central Excise Act, 1944 deals with levy and collection of Excise Duty with the help of section 3 which is the charging section. This duty is based on the value of the goods manufactured.

Hence, it is necessary to determine the VALUE of the excisable goods in order to levy and collect the excise duty on these goods by applying the RATES specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985. The First Schedule gives the Basic Excise Duty (BED) rate and the Second Schedule gives the Special Excise Duty (SED) rate.

In majority of cases, the general rate of excise duty has been increased from 12.36% (including education cess and secondary and higher education cess) to 12.50% (excluding education cess and secondary and higher education cess) [notification no. 01/2015-M&TP dated 01.03.2015]. The education cess which was levied on all excisable goods as a duty of excise has been fully exempted vide notification no. 14/2015 CE dated 01.03.2015 and secondary and higher education cess which was levied on all excisable goods as a duty of excise has also been fully exempted vide notification no. 15/2015 CE dated 01.03.2015.

To solve the practical problems regarding the calculation of excise duty, the general rate of 12.50% is considered here irrespective of the name and nature of the product. However, the product specific rates of excise duty are mentioned in CETA.

LAWS RELATING TO CENTRAL EXCISE

Central Excise Tariff Act, 1985(CETA): This classifies the goods under 96 chapters with specific codes assigned. Central Excise Act, 1944(CEA): The basic act which provides the constitutional power for charging of duty, valuation, powers of officers, provisions of arrests, penalty, etc.

Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000: The provisions regarding the valuation of excisable goods are laid down in this rule.

Central Excise Rules, 2002 : The procedural aspects are laid herein. The rules are implemented after issue of notification.

Cenvat Credit Rules, 2004: The provisions relating to Cenvat Credit available and its utilization are mentioned.

Central Excise law extended to ‗'designated areas'' in continental shelf and exclusive Economic Zone of India i.e., upto 200 nautical miles inside sea from the baseline of India and represents the limit till which India can be engaged in economic exploitation.

CENTRAL EXCISE ACT, 1944

The duty of Central Excise is levied if the following conditions are satisfied : (1) The duty is on goods.

(2) The goods must be excisable.
(3) The goods must be manufactured or produced.
(4) Such manufacture or production must be in India.

In other words, unless all of these conditions are satisfied, Central Excise Duty cannot be levied. Ownership of raw material is not relevant for duty liability - Hindustan General Industries v. CCE 2003 (155) ELT 65(CEGAT)

DUTIES LEVIABLE

(1) Basic Excise Duty: This duty, also known as CENVAT, is levied under section 3(1)(a) of Central Excise Act. It is levied at the rates specified in First Schedule to the Central Excise Tariff Act, read with exemption notifications, if any. Currently, the general rate of excise duty on non-petroleum products is 12.5% (w.e.f. 1-3-2015). However, there is no education cess at all (w.e.f. 1-3-2015). This duty is applicable to majority of the excisable goods.

(2) National Calamity Contingent Duty (NCCD): It is imposed vide section 136 of the Finance Act, 2001 on pan masala, branded chewing tobacco, cigarettes, domestic crude oil and mobile phones. This rate is 1% on Basic Excise Duty.

Notification No. 12/2015 Cex. dt. 01-03-2015:

w.e.f. 1-3-2016 Excise duty on mobile handsets including cellular phone is being changed from 1% without CENVAT credit or 6% with CENVAT credit to 1% without CENVAT credit or 12.5% with CENVAT credit. NCCD of 1% on mobile handsets including cellular phone, remains unchanged. w.e.f. 01.03.2016:

LEVY, COLLECTION & EXEMPTIONS FROM EXCISE DUTY

Taxable Event

The taxable event (i.e. Manufacture or production of excisable goods in India is taxable event. Central excise duty is charge on manufactured goods & not on sale of goods that means even if goods are not sold, excise duty should be payable on it. Captive consumption, free sample, intermediary goods etc. are also liable to central excise duty even from these goods no revenue is generate. An ownership criterion is irrelevant in paying excise duty) of great significance in levy of any tax or duty. Excise duty is leviable on all excisable goods, which are produced or manufactured in India. Thus, ‗manufacture or production in India' of an excisable goods is a ‗taxable event' for Central Excise. It becomes immaterial that duty is collected at a later stage i.e. at the time of removal of goods.

Persons Liable to Pay Duty

Rule 4(1) of the Central Excise Rules, 2002 provides that every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured or from a warehouse, unless otherwise provided.

Rule 4(1A) provides that not with standing anything contained in sub-rule (1), every person who gets the goods, falling under Chapter 61 or 62 or 63 of the First Schedule to the Tariff Act, produced or manufactured on his account on jobwork, shall pay the duty leviable on such goods, at such time and in such manner as is provided under these rules, as a if such goods have been manufactured by such person.

Provided that where any person had, instead of paying duty, quthorised job worker to pay the duty leviable on goods manufactured in his behalf under the provisions of sub-rule (1A) as it stood prior to the publication of this notification, he shall be allowed to obtain registration and comply with the provisions of these rules within a period of thirty days from the date of publication of this notificationin the Official Gazatte.

Rule 4(2) provides that not with standing anything contained in sub-rule (1), where molasses are produced in a khandsari sugar factory, the person who procures such molasses, whether directly from such factory or otherwise, for use in the manufacture of any commodity, whether or not excisable, shall pay the duty leviable on such molasses, in the same manner as if such molasses have been produced by the procurer.

Rule 4(4) provides that not with standing anything contained in sub-rule (1), Commissioner may, in exceptional circumstances having regard tothe nature of the goodsand shortage of storage space at the premises of the manufacturer where the goods are made, permit a manufacturer to store his goods in any other place outside such premises, without payment of duty subject to such conditions as he may specified.

From the above discussion it can be concluded that the following persons shall be liable to pay excise duty :

(I) Every person, who produces or manufactures any excisable goods,

(II) Every person, who stores excisable goods in a warehouse,

(III) In case of molasses, the person who procures such molasses,

(IV) In case goods are produced or manufactured on job work,

(a) The person on whose account goods are produced or manufactured by the job worker, or

(b) The job worker, where such person authorizes the job worker to pay the duty leviable on such goods.

Liability to Excise Duty

Section 3(1) of Central Excise Act provides that there shall be levied and collected in such manner, as may be prescribed:

(a) a duty of excise to be called the Central Value Added Tax (CENVAT), on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985;

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods specified in the Second Schedule to the Central Excise Tariff Act, 1985, which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule :

Provided that the duties of excise which shall be believed and collected on any excisable goods which are produced or manufactured by a hundred percent Export Oriented Undertaking [100%EOU] and brought to any other

place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 or any other law for the time being in force on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value. The value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975.

Explanation.-where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rate, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of these rates.

Section 3(1A) provides that the provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India, by or on behalf of Government as they apply in respect of goods which are not produced or manufactured by Government. Section 3(2) provides that Central Government may, by notification in the Official Gazette, fix for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as chargeable with duty ad valorem and may alter tariff values for the time being in force.

Exemption on DTA (Domestic Tariff Area) Clearance by 100% EOU [Notification no. 23/2003-C.E., Dated 31.3.2003]

DTA clearances by 100% EOU are exempt from- (a) 50% of the basic duties leviable thereon;

(b) Additional duty of customs u/s 3(5) of Customs Tariff Act, 1975. Exemption from additional duty is available only if the goods so removed are not exempt from payment of sales tax/VAT in India.

Collection of Excise Duty

For collection of Central Excise Duty, the following two procedures are followed by the Central Excise Department:

(i) Physical Control Procedure: Applicable to cigarettes only. In this case, assessment is done by Central Excise Offices and thereafter goods are removed under his supervision under cover of an invoice counter signed by him.

(ii) Self-Removal Procedure: Applicable to all other goods produced or manufactured within the country. Under this system, the assessee himself determines the duty liability on the goods and clears the goods.

Exemptions from Levy of Excise Duty

Section 5A of the Central Excise Act, 1944 empowers the Central Government to grant Exemption from levy of excise duty and lays down the provisions relating thereto:

(1) Power to Notify Exemptions in Public Interest

Section 5A(1) provides that the Central Government is empowered to exempt in the public interest, any excisable goods from the levy of whole or

any part of excise duty. Such exemption may be granted either absolutely or subject to such conditions, as may be specified in the Notification.

Exceptions — However, unless specifically provided in such notification, no exemption shall apply to excisable goods, which are produced or manufactured:

(i) in a Free Trade Zone or a Special Economic Zone and brought to any other place in India; or

(ii) by a hundred per cent Export Oriented Undertaking and brought to any place in India.

(2) Exemption in public interest

Section 5A(2) provides that if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

(3) Notification may provide for different method of levy of duty as well

Section 5A(3) provides that an exemption in respect of any excisable goods from any part of the duty of excise leviable thereon may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the duty statutorily payable.

Section 5A(2A) provides that the Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued or order issued, insert an Explanation in such notification or order, as the case may be, by notification in the Official Gazette at any time within one year of issue of the notification or order, and every such Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

GOODS

‗‘Goods‘‘ has not been defined in the central Excise Act,1944. As per Article 366(12) of the Constitution of India, ‗‘Goods‘‘ means all articles, materials and commodities.

Section 2(7) of Sale of Goods Act, 1930 defines ‗Goods‘ to mean every kind of movable property other than actionable claims and money and includes stocks and shares, growing crops, grass and things attached to and forming part of the land, which are agreed to be served before sale or under the contract of sale.

These articles, materials and commodities must be movable and marketable. [Decision of the Supreme Court of India in the case of Union of India vs Delhi Cloth and General Mills Ltd (1977)].

Those movable and marketable goods must be excisable goods as per section 2(d) of the Central Excise Act, 1944. Those excisable goods must be manufactured in India as per section 2(f) of the Central Excise Act, 1944 which includes any process incidental or ancillary to the completion of the

manufactured product. [Decision of the Supreme Court in the case of Wallace Flour Mills Ltd Vs Commissioner of Central Excise (1989)].

Basic conditions for levy of Duty under Section 3

It is obvious from section 3(1) that, to attract excise duty, the following conditions must be fulfilled:

- There should be movable goods;
- The goods must be excisable;
- The goods must be manufactured or produced; and
- The manufacture or production must be in India.

Goods manufactured or produced in SEZ are ―excluded excisable goods‖. This means, that the goods manufactured or produced in SEZ are ―excisable goods‖ but no duty is leviable, as charging section 3(1) excludes these goods. Thus, the goods manufactured in SEZ are not ―exempted goods‖. They can be termed as ―excluded excisable goods‖. As per explanation to section 2(d), ‗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'.

Basic Ingredients

From the above definitions of ‗goods', the two essential elements of goods are emanated: (i) They should be movable, and (ii) They should be marketable.

Goods must be Movable

In order to be movable, an article must fulfill two conditions:

(i) It should come into existence (as a result of manufacture); and

(ii) It should be capable of being moved to market to be bought and sold.

Thus, goods must exist. Where goods have not come into existence, they cannot be moved as well. So long as the goods have not come into existence, no question of levy of excise duty would arise. It has been observed that the word ‗manufacture' or ‗production' are associated with movables.

In Municipal Corporation of Greater Mumbai V. Union of India, a petrol pump of huge storage capacity which was not embedded to earth but which could not be removed without dismantling was held to be immovable in nature.

In Sirpur Papers Mills Ltd. V. CCE the machinery embedded to a concrete base to ensure its wobble free operation was held to be a movable property. CBEC has clarified that whatever is attached to earth, unless it is like a tree/building/similar thing, shall not necessarily be regarded as immovable property if the whole purpose behind such attaching to the concrete base is to secure maximum operational efficiency and safety. Thus, excise duty cannot be levied on immovable property.

Goods must be Marketable

Marketability denotes the capability of a product, of being put into the market for sale. Where goods are not marketable, excise duty cannot be charged on them. Marketability is the decisive test for durability. The article must be capable of being sold to consumer without any additional thing. The

test of marketability will depend on the facts and circumstances of each case. It is a question of fact. The vendibility or marketability test includes the following three essential components: -

(a) the goods should be capable of being sold in the market,
(b) the goods should be capable of being sold ordinarily, and
(c) the goods should be capable of being sold as such.

The following points can be noted–

i. Marketability is to be decided on the basis of condition in which goods are manufactured or produced.
ii. Everything that is sold is not necessarily _marketable‘.
iii. Waste and Scrap can be _goods‘ but dutiable only if _manufactured‘ and are mentioned in Tariff.
iv. The marketability test requires that the goods as such should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied. Thus, if machinery has to be dismantled before removal, it will not be goods - Triveni Engineering v. CCE AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC).
v. Branded Software is goods. However, service tax will be payable on tailor made software (w.e.f. Finance Act, 2008).

Shelf-life of 2 to 3 days sufficient for Marketability:

The Apex Court namely the Supreme Court ruled that short shelf-life could not be equated with no shelf-life. A shelf life of 2 to 3 days was sufficiently long enough for a product to be commercially marketed. Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelflife. Hence, product with the shelf life of 2 to 3 days was marketable and hence, excisable [Nicholas Piramal India Ltd v CCEx., Mumbai 2010 (260) ELT 338 (SC)].

Theoretical possibility of product being sold is not sufficient to establish the marketability of a product:

It means to say that a product known in the market with a nomenclature is not sufficient for marketability unless for the said product there is a buyer to buy it.

Excisable Goods

Section 2(d) of Central Excise Act, defines Excisable Goods means _Goods specified in the First Schedule and the Second Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. As per explanation to section 2(d), _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‘. Thus, unless the item is specified in the Central Excise Tariff Act as subject to duty, no duty is leviable.

In terms of the above definition of _Excisable Goods, it may be held that all those goods, which are specified in the Tariff Schedule are _Excisable Goods‘. However, question arises as to whether those goods, which are

exempted from duty by a notification, but find a place in the tariff schedule, are excisable goods. To answer this question we should know two terms namely dutiable goods and non-dutiable goods.

i. Dutiable goods mean excisable goods which has rate of duty greater than 2% per cent.

ii. Non-dutiable goods or exempted goods mean excisable goods which has rate of duty nil or 0% or 1% or 2%.

Therefore, both dutiable and non-dutiable goods are called as excisable goods.

Impact: Manufacturers paying excise duty @1% or 2% as the case may be are not eligible for claiming CENVAT Credit. Since, these goods are called as exempted goods.

By analyzing the definition, the following two important ingredients of excisable goods are found: (a) Goods must be specified in the Schedule to the Central Excise Tariff Act, 1985;

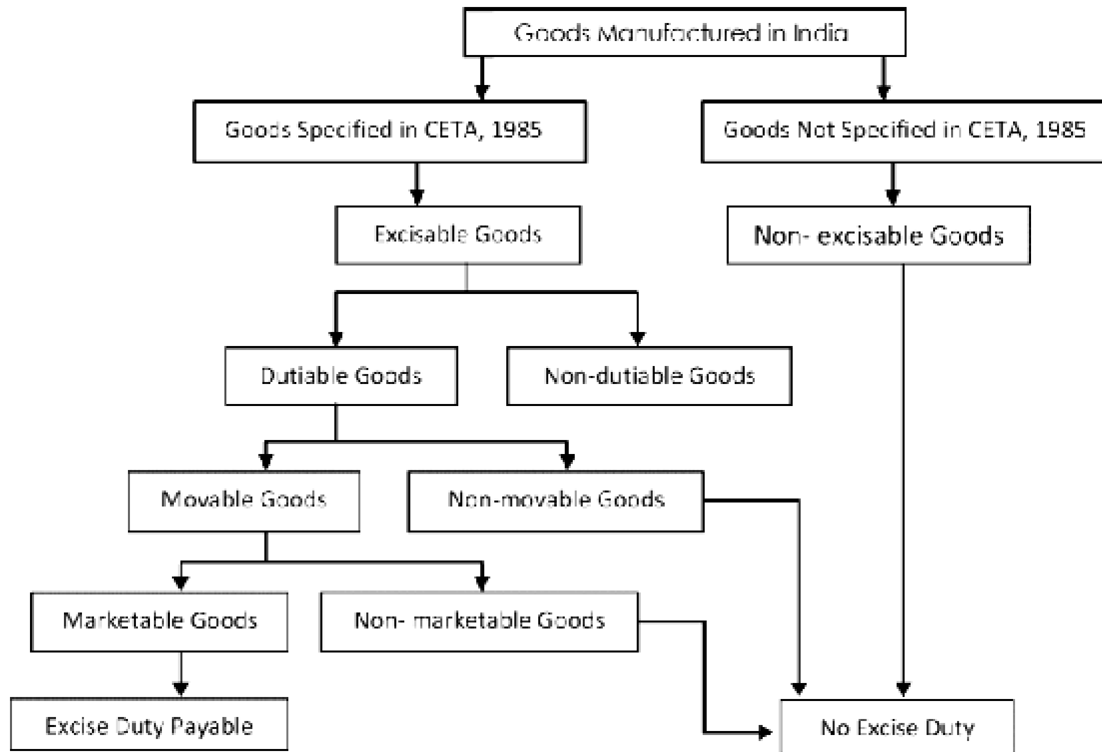
(b) The goods so specified must be subject to duty.

(c) ―Non-Excisable goods‖ are that goods which has not been very clearly mentioned in the Central Excise Tariff
Act before they are manufactured.

The goods must be Manufactured or Produced in India

The term manufacture as understood under Excise Law refers to a process involving the conversion of an input into a completely different output. Goods manufactured in Special Economic Zone are not exigible to excise duty as they are excluded from the scope of charging provisions of section 3 of Central Excise Act, 1944. However the goods manufactured by 100% EOU will be attracted if goods are cleared for domestic tariff area.

Excisable Goods manufactured in the state of Jammu and Kashmir attracts the excise duty since, the Central Excise Act, 1944 extended to the whole of India.The Central Excise Act, 1944 has been extended to the designated areas in the Continental Shelf and Exclusive Eco
nomic Zone (EEZ) of India (vide Notification No. 166/87-CE, dated 11.6.1987). Exclusive Economic Zone extends to 200 nautical miles from the base line of the coast. It means goods manufactured outside EEZ excise duty does not attract. The entire concept of Goods Manufactured in India has been explained in the following diagram:



EXCISABILITY OF PLANT & MACHINERY, WASTE AND SCRAP

Excisability of Plant & Machinery

In view of Entry No. 84 of List-I Seventh Schedule to the Constitution of India, duty of excise could be levied only on movable and marketable goods and not on immovable property. The goods are classified and charged to duty according to the state and condition in which they are removed from the factory.

Assembly of Plant & Machinery at Site:

Mere bringing together of parts of a plant and machinery at site cannot be termed to be manufacture and hence, assembled plant cannot be treated to be goods. Where assembly of parts and components brings out a different recognizable marketable product, before its installation or erection or attachment to the earth, it would be goods and hence chargeable to duty.

In Sirpur Paper Mills Ltd. v CCE, the Supreme Court held that machinery assembled and erected at site from bought out component was held to be goods and hence chargeable to duty, as it was attached to earth for operational efficiency and could be removed and sold.

However, in Triveni Engineering v CCE the Supreme Court overruled its decision given in Sirpur case and held that the marketability test, essentially, requires that goods should be in such condition, as could be brought as such to the market and sold, but if machinery requires dismantling before removal, it cannot be goods and hence, not chargeable to duty.

Excisability of Waste & Scrap

Section 3 imposes duty on manufacture of goods. Waste and scrap are not manufactured, but arise as a result of manufacture of the final product. Therefore, generally, there should not be levied any tax on the waste and scrap. Thus, waste and scrap can be ‗goods' but dutiable only if ‗manufactured' and are mentioned in Tariff.

In view of the amendment made by the Finance Act, 2008 in the definition of excisable goods under Section 2(d) of the Central Excise Act, 1944, which include bagasse, aluminium / zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty [Circular No. 904/24/09-CX, dated 28.10.2009].

Case Laws

In 1987 in the case of Modi Rubber Ltd., it was held that even though the waste was capable of fetching some amount of sale, it would not be chargeable to excise duty. Similar decision was given in the case of Captain ganj Distilleries.

Later in 1989, the criteria for determining, whether waste generated would be excisable or not was laid down in the case of Asiatic Oxygen Limited v CCE. The Tribunal held that the question as to whether waste would be charged to duty or not would depend on:

(a) whether a process of manufacture has taken place, (b) whether the waste generated is marketable, and

(c) whether the product named in the Tariff.

MANUFACTURE

Any taxable event for central excise duty is manufacture or production in India. The word ‗produced' is broader than ‗manufacture' and covers articles produced naturally, live products, waste, scrap etc. Manufacture means to make, to inset, to fabricate, or to produce an article by hand, by machinery or by other agency. To manufacture is to produce something new, out of existing materials.

i. ‗Manufacture' means:

(a) Manufacture as specified in various Court decisions i.e. new and identifiable product having a distinctive name, character or use must emerge or

(b) Deemed Manufacture.

ii. Deemed Manufacture is of two types –

(a) CETA specifies some processes as ‗amounting to manufacture'. If any of these processes are carried out, goods will be said to be manufactured, even if as per Court decisions, the process may not amount to ‗manufacture', [Section 2(f)(ii)].

(b) In respect of goods specified in Third Schedule to Central Excise Act, repacking, re-labelling, putting or altering retail sale price etc. will be ‗manufacture'. The goods included in Third Schedule of Central Excise Act are same as those on which excise duty is payable u/s 4A on basis of MRP printed on the package. [Section 2(f)(iii) w.e.f. 14-5-2003].

Definition

Section 2(f) defines the term _Manufacture�Ÿ to include 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 Schedule to the Central Excise Tariff Act, 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-labelling 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. And the word ―manufacturer‖ shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. [Clauses (ii) and (iii) are called Deemed Manufacture]

And the word ―manufacturer‖ shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account‖. Thus, according to the above definition, the manufacturer is a person: (a) who manufactures or produces any excisable goods, or
(b) carries on any process incidental or ancillary to the completion of the manufactured products.

Explanation as to what is not Manufacture

Any activity shall not be deemed to be manufacture, only because it has been so written in the licence granted. The following are not manufacture :
(a) Natural activity, even if carried otherwise, e.g. drying yarn in natural sun;(b) Processing of duty paid goods;
(c) Purchasing various item and putting into a container and selling them;
(d) Obtaining of natural products;
(e) Testing/quality control of items manufactured by others; (f) Cutting and polishing of diamond;
(g) Upgradation of computer system; (h) Printing on glass bottles;
(i) Affixing brand name;
(j) Crushing of boulders into smaller stones.

Explanation about Incidental & Ancillary Process

_Incidental‘ means anything that occurs incidentally. It refers to occasional or casual process.

_Ancillary‘ means auxiliary process, which unless pursued, shall not result into manufacture of the product. The definition of _manufacture‘ under section 2(f), of the Central Excise Act includes the processes which are _incidental or ancillary to the completion of a manufactured product‘. A process can be regarded as incidental or ancillary to the completion of the manufactured product, if it comes in relation to the finished product. It is immaterial whether the process is significant or inessential. On the other

hand, where a process is not connected to the manufacture of the final product, it cannot be termed as incidental or ancillary.

Intermediate Products & Captive Consumption

The definition of manufacture under section 2(f) implies that manufacture would take place even at an intermediate stage, so long as the intermediate product is commercially and distinctly identifiable.

Intermediate products are such products, which are produced in a process naturally in the course of manufacture of a finished product, which involves more than one process. Thus, such products are output of one process and input for the subsequent process. Captive consumption means consumption of such output of one process in the subsequent process. Generally, the intermediate products do not have any marketable identity and can hardly be sold in the market.

In the case of JK Spinning & Weaving Mills v UOI the Supreme Court held that the captive consumption would amount to removal, hence chargeable to duty. However, in Union Carbide v UOI, the Supreme Court held that an intermediate product would be chargeable to excise duty, only if it is a complete product and can be sold in the market to a consumer. This decision was affirmed in Bhor Industries v UOI.

MANUFACTURER

Manufacturer is the person who actually brings new and identifiable product into existence.

(i) Duty liability is on manufacturer in most of the cases.

(ii) Mere supplier of raw material or brand name owner is not ‗manufacturer'.

(iii) Loan licensee is not ‗manufacturer'.

Loan licensee can be treated as manufacturer only if the manufacture is carried out by use of his own raw material under his own supervision by hiring the premises and equipment shift-wise or otherwise.

Exception:

Brand owners Liable to pay Excise Duty (w.e.f. 1-3-2011)

In case of ready-made garments and made-up articles of textiles manufactured on job-work basis, liability to pay excise duty and comply with the provisions of the Central Excise Rules, 2002 is on the merchant manufacturer (i.e. person on whose behalf the goods are manufactured by job workers, namely owner of raw materials), as per rule 4 (1A) of the Central Excise Rules, 2002 (vide Notification No. 4/2011 C.E. dt. 1-3-2011).

Who is a Manufacturer as per Statute?

The following are held to be manufacturer:

(a) Person manufacturing for own consumption,

(b) Person hiring labour or employees for manufacturing, (c) A job-order worker,

(d) A contractor.

Who is not a Manufacturer?

The following have been held as not to be a manufacturer :

(a) Where an activity is not a manufacture;

(b) Brand Owners, if their relation with the manufacturer is ‗Principal to Principal' basis.

(c) Labour Contractors, who supply labor; (d) Loan licensee.

(e) Raw material supplier is not manufacturer

Dutiability of Packing, Labelling and Repacking Activities

Section 2(f) of the Central Excise Act, defines ‗Manufacture' to include any process, which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 (CETA) as amounting to manufacture. Thus, the process may not amount to manufacture as per principles evolved by Courts, but the same may be liable to excise duty, if it is defined as amounting to manufacture under CETA.

This provision seemingly includes the process like packing, labeling, re-labelling, re-packing into manufacture, though otherwise these processes are not ‗manufacture' as no new product emerges. In fact, these processes are adjunct to manufacture. The manufacture shall be complete only when the product is rendered marketable and movable and for this purpose packing is an inevitable process. Therefore, packing and associated with that the labeling is a part of the manufacturing process.

In CCE v Prabhat Packging Ltd., the Tribunal has held that repacking of an already manufactured product would not
amount to manufacture in excise law, since repacking does not result into a new commercially distinct product.

Labelling on packaged products is also not manufacture, since in the common market parlance a labeled and unlabelled product is treated as the same product and the distinction as such is made. The principle was affirmed in the case of Pioneer Tools and Appliances Ltd. v UOI by the Bombay High Court.

CLASSIFICATION OF GOODS

Central Excise Duty is chargeable on the goods, which are manufactured in India and are subject to excise duty. However, all goods cannot be charged with the same rate of duty. Therefore, the goods need to be grouped into separate categories and sub-categories, for which the rate of excise duty may be determined. This identification of goods through groups and sub-groups is called classification of goods.

The rate of duty is found out by classifying the product in its appropriate heading under Central Excise Tariff. The Central Excise Tariff Act, 1985 (CETA) classifies all the goods under 96 chapters and specific code is assigned to each item. CETA is based on International Convention of Harmonised System of Nomenclature (HSN), which is developed by World Customs Organisation (WCO) (That time called as Customs Cooperation Council).

This is an International Nomenclature standard adopted by most of the Countries to ensure uniformity in classification in International Trade. HSN is a multi purpose 6 digit nomenclature classifying goods in various

groups. Central Excise Tariff is divided in 20 broad sections. Section Notes are given at the beginning of each Section, which govern entries in that Section. Each of the sections is divided in to various Chapters and each Chapter contains goods of one class. Chapter Notes are given at the beginning of each Chapter, which govern entries in that Chapter. There are 96 chapters in Central Excise Tariff. Each chapter and sub-chapter is further divided into various headings and sub-headings depending on different types of goods belonging to same class of products.

The Central Excise Tariff Act, 1985 (CETA) came into force w.e.f. 28th February,1986.

The main features of the Excise Tariff are:

- The Central Excise Tariff has been made very detailed and comprehensive as all the technical and legal aspects in relation to goods have been incorporated in it.
- The Excise Tariff is based on the Harmonised System of Nomenclature, which is an internationally accepted product coding system formulated under the GATT (General Agreement on Tariffs and Trade).
- The goods of the same class have been grouped together to bring about parity in treatment and restrict the dispute in classification matter.
- The Central Excise Tariff provided detailed clarification notes under each section/chapter.
- The interpretation of the Tariff have been provided for at the beginning of the Schedule. All the section notes, chapter notes and rules for interpretation are legal notes and/therefore serve as statutory guidelines in classification of goods.
- The Tariff is designed to group all the goods relating to one industry under one chapter from one raw material
in a progressive manner.

Harmonised System of Nomenclature (HSN)

Goods are classified under Central Excise Tariff Act based on the ―Harmonized System of Nomenclature‖ having eight digit classifications. All goods are classified using 4 digit system. These are called _headings‘. Further 2 digits are added for sub-classification, which are termed as _sub-headings‘. Further 2 digits are added for sub-sub-classification, which is termed as _tariff item‘. Rate of duty is indicated against each _tariff item‘ and not against heading or sub-heading.

Harmonised System of Nomenclature (HSN) is an internationally accepted product coding system, formulated to facilitate trade flow and analysis of trade statistics. The system was developed by World Customs Organisation (WCO), which was earlier known as Customs Cooperative Council. HSN was adopted by International Convention of Harmonised System of Nomenclature.

The CETA is also based on the HSN pattern, of course, with some deviation. HSN has got commercial as well as judicial recognition.

Tariff Commission and other Tariff Authorities

The Tariff Commission was established in September 1997. The Commission functions as an expert body to recommend appropriate tariff levels keeping in mind the larger economic interests of our country. Bureau of Industrial Costs & Prices was merged with the Commission in April 1999, to provide in-house support. The Commission also conducts studies on costing and price fixation referred to it by Central Ministries and Agencies. Matters concerning State Governments and their agencies have also been the subject of study by the Commission.

The Commission is headed by a Chairman in the rank of Secretary to the Government of India and assisted by a Member Secretary in the rank of Additional Secretary to the Government of India. Tariff Commission is the only organization in the public domain having multi-disciplinary teams of :-

i. Engineers from the field of Science and Technology belonging to Tariff Commission

ii. Cost Accountants/Chartered Accountants from Indian Costs & Account Service (IC&AS)

iii. Economists from Indian Economic Service (IES); and iv. Statisticians from Indian Statistical Service (ISS).

The Tariff Commission aims to be a premier knowledge based organisation, and a centre of excellence in the field of domestic and global market research and in tax, tariff, trade related matters, and realistic cost/price determination. Mission of Tariff Commission is to advise the Government, Public Sector Undertakings (PSUs) and other client organisations, in a relevant, fair, and unbiased manner to enable and sharpen their decision making capabilities with practical recommendations.

Functions of Tariff Commission

A: On a reference from Government Tariff Commission undertakes:

i. Fixation of tariffs and all tariff related issues for goods and services.

ii. Examination of transition period for select industries for gradual phasing out of tariffs.

iii. Identification of tariffication process for select economic activities.

iv. To evolve an overall tariff structure and look into tariff rationalization issues.

v. To examine market access offers from trading partners within WTO framework (including antidumping
and safeguards).vi. To advise on classification of goods and applicable tariffs on such goods and products.

vii. Such other tasks as may be assigned by the Government from time to time.

B. On suo-moto basis

i. To conduct

Detailed impact analysis in select sectors like textiles, agriculture, automobiles, steel, information technology, chemicals and engineering goods.

ii. To maintain & monitor–

Tariff changes of competing and trade partner countries and inventorize tariff rates.

iii. To carry out studies–

On cost of production of different goods and services and its competitiveness in relation to other countries.

iv. To discharge–

Core functions of the merged Bureau of Industrial Costs & Prices.

When two Exemption Notifications are available, assessee can select either

If applicant is entitled to claim benefit under two different notifications, he can claim more (i.e. better) benefit and it is the duty of authorities to grant such benefit to applicant – Share Medical Carev. UOI 2007 (209) ELT 321 (SC).

Benefit of Exemption can be claimed at any stage

Even if an applicant does not claim benefit under a particular exemption notification at initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage - Share Medical Carev.UOI 2007 (209) ELT 321 (SC) – quoted and followed in Cipla Ltd. v. CC (2007) 218 ELT 547 (CESTAT), where it was held that benefit of exemption notification can be claimed at appellate stage also.

VALUATION OF GOODS

Excise duty is payable on any one of the following basis:

i. Duty based on production capacity - Some products (e.g. *Pan Masala*, rolled steel products) are perceived to be prone to duty evasion. In case of such products, Central Government, by notification, can issue notification specifying that duty on such notified products will be levied and collected on the basis of production capacity of the factory [section 3A(1) of Central Excise Act inserted w.e.f. 10th May 2008]. When such notification is issued, annual capacity will be determined by Assistant Commissioner [section 3A(2)(a) of CEA]. Factors relevant to determine production capacity will be specified by rules issued by Central Government [section 3A(2)(b) (i)].

ii. Specific Duty - It is the duty payable on the basis of certain unit like weight, length, volume, thickness etc. For example, duty on Cigarette is payable on the basis of length of the Cigarette, duty on sugar is based on per Kg basis etc.

iii. Tariff value - In some cases, tariff value is fixed by Government from time to time. This is a ―Notional Value‖ for purpose of calculating the duty payable. Once ‗tariff value' for a commodity is fixed, duty is payable as percentage of this ‗tariff value' and not the Assessable Value fixed u/s4.

Products covered under the tariff basis of valuation:

(a) Pan *Masala* packed in retail packs of upto 10 gm per pack

(b) Readymade garments

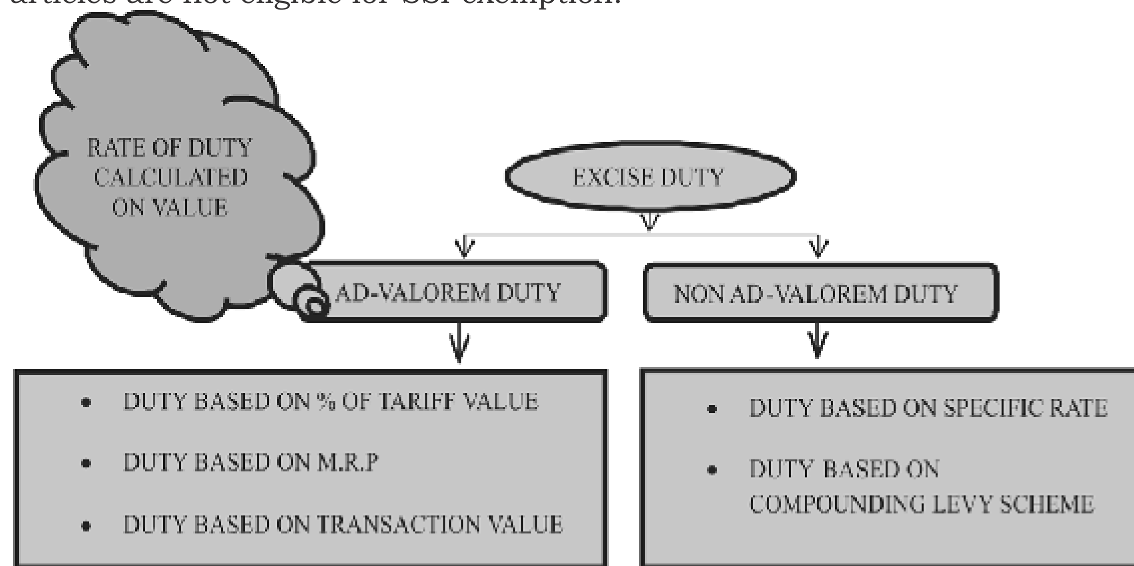
iv. Duty based on basis of Maximum Retail Price printed on carton after allowing deductions - section 4A of CEA.

As per section 4A of the Central Excise Act 1944, MRP provisions will be covered only when the following two conditions are satisfied:

(a) Goods must be specified under Legal Metrology Act, 2009, w.e.f. 1-8-2011 (earlier Standards of Weights and Measures Act, 1976).

(b) Those Goods must be mentioned in the notification issued by the Government of India along with rate of abatement.

v. Compounded Levy Scheme - Normal excise procedures and controls are not practicable when there are numerous small manufacturers. Rule 15 of Central Excise Rules provides that Central Government may, by notification, specify the goods in respect of which an assessee shall have option to pay duty of excise on the basis of specified factors relevant to production of such goods and at specified rates. The scheme is presently applicable only to stainless steel pattas/pattis and aluminium circles. These articles are not eligible for SSI exemption.



Methods & Techniques of Valuation

Proper valuation of goods manufactured is an integral part towards levy of Excise Duty accurately. Accordingly, goods manufactured should be valued strictly in the manner as prescribed in the Central Excise Act, 1944 and rules framed there-under.

Value Under the Central Excise Act, 1944

Value of the excisable goods has to be necessarily determined when the rate of duty is on ad-valorem basis. Accordingly, under the Central Excise Act, 1944 the following values are relevant for assessment of duty. Transaction value is the most commonly adopted method.

(i) Transaction value under Section 4 of the Central Excise Act.

(ii) Value determined on basis of Maximum Retail Sale Price as per Section 4A of the Act, if applicable to a given commodity.

(iii) Tariff value under Section 3, if applicable.

Details of all the methods of valuation are discussed below :

1. Transaction Value

Section 4(3) (d) of the Central Excise Act, as substituted by section 94 of the Finance Act, 2000, came into force from the1st day of July, 2000. This section contains the provision for determining the Transaction Value of the goods for purpose of assessment of duty.

For applicability of transaction value in a given case, for assessment purposes, certain essential requirements should be satisfied. If any one of the said requirements is not satisfied, then the transaction value shall not be the assessable value and value in such case has to be arrived at under the valuation rules notified for the purpose. The essential conditions for application of a transaction value are :

(a) The excisable goods must be sold by the assessee.

(b) The transaction is between unrelated parties, i.e, the assessee and the buyer are not related parties

(c) The price is the sole consideration for the sale.

(d) The goods are sold by an assessee for delivery at the time of place of removal. The term -place of removal‖ has been defined basically to mean a factory or a warehouse, and will include a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearances from the factory.

Transaction value would include any amount which is paid or payable by the buyer to or on behalf of the assessee, on account of the factum of sale of goods. In other words, if, for example, an assessee recovers advertising charges or publicity charges from his buyers, either at the time of sale of goods or even subsequently, the assessee cannot claim that such charges are not to be included in the transaction value. The law recognizes such payment to be part of the transaction value, that is assessable value for those particular transactions.(1) As per the Sec. 4, transaction value shall include the following receipts/recoveries or charges, incurred or provided for in connection with the manufacturing, marketing, selling of the excisable goods :

I. Advertising or publicity;

II. Marketing and selling organization expenses;

III. Storage;

IV. Outward handling; V. Servicing, warranty; VI. Commission or

VII. Any other matter.

The above list is not exhaustive and whatever elements which enrich the value of the goods before their marketing and were held by Hon‘ble Supreme Court to be includible in ―value‖ under the erstwhile section 4 would continue to form part of section 4 value even under section 4 definition.

(2) Thus if in addition to the amount charged as price from the buyer, the assessee recovers any other amount by reason of sale or in connection with sale, then such amount shall also form part of the transaction value. Where the assessee includes all their costs incurred in relation to manufacture and marketing while fixing price payable for the goods and bills and collects an all inclusive price-as happens in most cases where sales are to independent customers on commercial consideration - the transaction price will generally be the assessable value.

However, where the amount charged by an assessee does not reflect the true intrinsic value of goods marketed and total value split up into various elements like special packing charges, warranty charges, service charges etc. it has to be ensured that duty is paid on correct value.

Inclusions in Assessable Value

(i) Packing Charges: Packing charges shall form part of the assessable value as it is a charge in connection with production and sale of the goods, recovered from the buyer. Under the erst while Sec.4, inclusion of cost of packing in the value was related to the nature of packing such as preliminary or secondary ete. Such issues are not relevant in the Sec.4 and any charges recovered for packing, whether ordinary or special is includible in the transaction value if the same is not included in the price of the goods.

In the case of reusable containers (glass bottles, crates etc.), normally the cost is amortized and included in the cost of the product itself. Therefore, the same is not required to be included in the value or the product unless it is found that the cost of reusable container has not been amortized and included in the value of the product.

However, rental charges or cost of maintenance of reusable metal containers like gas cylinders etc. are to be included in the value since the amount has been charged by reason of, or in connection with the sale of goods. Similarly, cost or containers supplied by the buyer will be included in the transaction value of the goods, as the price will not be the sole consideration of the sale and the valuation would be governed by Rule6 of the Valuation Rules, 2000.

Durable and Returnable Packing: In case of durable / returnable containers, all that would be necessary, as per the Board's Circular No. 643 / 34 / 2002-CX dated 1-7-2002 [2002 (143) E.L.T.T 39], is to include the a mortised cost of the container in the price of the product itself; the returnable deposit taken from the buyer or deposit of the empty container by him would not then be treated as additional consideration.

(ii) Design and Engineering Charges: These charges being an essential process / activity for the purpose of manufacture shall be included in the Assessable value.

(iii) Consultancy Charges: The charges relating to manufacturing / production is included as such payment is _by reason of sale‖.

(iv) Loading and Handling charges: The charges with in the factory are included in Assessable Value.

(v) Royalty Charged in Franchise Agreement: If the agreement is for permission to use the brand name is included in Assessable value as such payment is _by reason of sale' or _in connection with sale'.

(vi) Advance Authorisation Surrendered: If it is surrendered in favour of seller is additional consideration and includible. It is considered as an Additional consideration. It shall be included if it is paid by or on behalf of buyer to manufacturer-assessee and not when it is given by third party.

(vii) Price Increase, Variation, Escalation: If there are subsequent to removal of goods cleared from the factory is not
relevant, provided the price is final at the time of removal.

(viii) Free After Sales Service/Warranty charges: It will form part of the transaction valuer respective of whether the warranty is optional or mandatory.

(ix) Advertisement and Sales Promotion Expenses Incurred by the Buyer: Manufacturer incurs advertisement expenditure. These are obviously built-in the selling & distribution cost for determining the selling price. In addition, often dealers also advertise for the product at their own cost.

Definition of ―Transaction Value‖ includes charges for ―advertisement, publicity and marketing expenses‖. However, these are includible only if the buyer is liable to pay the amount to assessee or on behalf of the assessee. Thus, advertisement and sales promotion expenses incurred by dealer / distributor, if done on his own, are not to be included, if transaction between buyer and seller is on principle to principle basis. This is because the buyer is not incurring these expenses ―on behalf of the assessee‖.

(x) After Sales Service and Pre Delivery Inspection (PDI) Charges: After sales service and pre-delivery inspection (PDI) are services provided free by the dealer on behalf of the assessee and the cost towards this is included in the dealer's margin (or reimbursed to him).

The value of goods which are consumed by the assessee or on his behalf in the manufacture of other articles will be on cost construction method only (Rule8). The assessable value of captivity consumed goods will be taken at 110% (substituted by 60/2003 (NT.) 5-10-2003) of the cost of manufacture of goods even if identical or comparable goods are manufactured and sold by the same assessee as there have been disputes in adopting values of comparable goods. The concept of deemed profit for notional purposes has also been done away with and a margin of 10% by way of profit etc. is prescribed in the rule itself for ease of assessment of goods used for captive consumption. The cost of production of captively consumed goods will be done strictly in accordance with CAS-4.

(xi) Receipts / recoveries of manufacturing, marketing and selling expenses:

―Transaction Value‖ includes receipts / recoveries or charges incurred or expenses provided for in connection with the manufacturing, marketing, selling of the excisable goods to be part of the price payable for the goods sold. In other words, whatever elements which enrich the value of the goods before their marketing and were held by Hon'ble Supreme Court to be includible in ―value‖ under the erstwhile Section 4 would continue to form part of Section 4 value even under new Section 4 definition. Where the assessee charges an amount as price for his goods, the amount so charged and paid or payable for the goods will form the assessable value. If however, in addition to the amount charged as price from the buyer, the assessee also recovers any other amount ―by reason of sale‖ or ―in connection with sale‖, then such a mount shall also form part of the transaction value for valuation and assessment purposes. Thus if assessee splits up his pricing system and charges a price for the goods and separately charges for packaging, the packaging charges will also form part of assessable value as it is a charge in connection with production and sale of the goods recovered from the buyer.

(xii) Dharmada Charges: As per CBE & C Circular No. 763/79/2003-CX dt.21-11-2003 has clarified that dharmada is includible in Assessable Value and the same view expressed by the Apex Court namely Supreme Court of India in the case of CCE v. Panchmukhi Engg. Works 2003(158) ELT550 (SC).

(xiii) Dealers Margin: Dealer's margin contained provision for rendering pre-delivery inspection and there after sale services, then amount collected by the dealers to wards pre-delivery inspection or after sale services from the buyer of the goods during the warranty period it would form part of the assessable value of such goods. Therefore, pre-delivery inspection charges and after sale service recovered from the buyers of vehicles would be included in the assessable value of vehicles. The same view confirmed by the Tribunal in the case of Maruti Suzuki India Ltd. v. CCE (2010).

Exclusions from Transaction Value

(i) Taxes and Duties: The definition of transaction value mentions that what ever amount is actually paid or actually payable to the Government or the relevant statutory authority by way of excise, sales tax and other taxes, such amount shall be excluded from the transaction value. If any excise duty or other tax is paid at a concessional rate for a particular transaction, the amount of excise duty or tax actually paid at the concessional rate shall only be allowed to be deducted from price.

(ii) Erection, Installation and Commissioning Charges: If the final product is not excisable, the question of including these charges in the assessable value of the product does not arise. As for example, since a thermal power, as a whole, is an immovable property and there fore not excisable, no duty would be payable on the cost of erection, instigations and commissioning of the steel plant.

Similarly, if a machine is cleared from a factory on payment of appropriate duty and later on taken to the premises of the buyer for installation / erection and commissioning into an immovable property, no further duty would be payable. On the other hand if parts / components of a generator are brought to a site and the generate or erected / installed and commissioned at the site then, the generate or being an excisable commodity, the cost of erection, installation and commissioning charges would be included in its assessable value.

In other words if the expenditure on erection, installation and commissioning has been incurred to bring in to existence any excisable goods, these charges would be included in the Assessable Value of the goods. If these costs are incurred to bring into existence some immovable property, they will not be included in the assessable value of such result ant property.

However, ‗time of removal' in case of excisable goods removed from the place of removal is deemed to be the time of clearance of such goods from the ‗factory'. Therefore, the assessable value is with reference to delivery at the ‗time and place of removal, transaction value will be the assessable value.

(iii) Freight: It follows from the Valuation Rules that in such categories of cases also if the price charged is with reference to delivery at a place other

than the depot, etc. then the actual or average cost of transportation (average freight being calculated according to Generally Accepted Principles of Costing - CAS-5) beyond the depot / place of sale will not be taken to be a part of the transaction value and exclusion of such cost allowed on similar lines as discussed earlier, when sales are effected from factory gate / warehouse.

There is no question of including the freight etc. right upto the buyer's premises even though delivery may be effected at that place. Delivery to the carrier at factory gate / depot is delivery to the buyer and element of freight and transit insurance are not includible in assessable value. Moreover, the ownership of the goods has no relevance so far as their transit insurance is concerned. - Escorts JCB Ltd. v. CCE., Delhi-II-2002 (146) E.L.T.31 (S.C) and Prabhat Zarda Factory Ltd. v. CCE.-2002 (146) E.L.T. 497 (S.C). Freight (actual or average) upto the point of depot etc. will, however, continue to be included.

(iv) Advertising / Publicity Expenditure by Brand Name/Copyright Owner: The expenditure incurred by brand name/ copyright owner on advertisement and publicity charges, in respect of goods will not be added to assessable value, as such expenditure is not incurred on behalf of the manufacturer- assessee.

(v) Notional Interest on Security Deposit/Advances: The notional interest on advances may not be includible if relation between advance and selling price is only casual. There is ‗relation 'but‗ no connection in relation to manufacture'.

(vi) Interest on Receivables: As regards interest for delayed payments it is the normal practice in industry to allow the buyers some credit period for which no interest is charged. That is to say, the assessee allows the buyers some time (normally 30 days, which could be less or even more depending up on industry) to make the payment for the goods supplied. Interest is charged by him from the buyer only if the payments are made beyond this period. A question has been raised whether such interest on receivables (for delayed payments) should form part of the transaction value or not. As per the earlier practice under Section 4 such amount of interest is not included in ―value‖.

Also, similar is the practice followed in this regard on the Customs side, where duties are collected on transaction value basis, and the importers are given certain ―free‖ period for payment or to pay up interest for delayed payments. As the intention is not to disturb the existing trade practice in this regard, charges for interest under a financing arrangement entered between the assessee and the buyer relating to the purchase of excisable goods shall not be regarded as part of the assessable value provided that :

(a) the interest charges are clearly distinguished from the price actually paid or payable for the goods; (b) the financing arrangement is made in writing; and

(c) where required, assessee demonstrates that such goods are actually sold at the price declared as the price actually paid or payable.

(vii) Discounts: As regards discounts, the definition of transaction value does not make any direct reference. In fact, it is not needed by virtue of the

fact that the duty is chargeable on the net price paid or payable. Thus if in any transaction a discount is allowed on declared price of any goods and actually passed on to the buyer of goods as per common practice, the question of including the amount of discount in the transaction value does not arise.

Discount of any type or description given on any normal price payable for any transaction will, therefore, not form part of the transaction value for the goods, e.g. quantity discount for goods purchased or cash discount for the prompt payment etc. will therefore not form part of the transaction value.

(i) cash discount for prompt payment and

(ii) interest or cost of finance for delayed payment, when not exorbitant, is to be granted abatement whether availed or not even under Section 4-2006 (204) E.L.T.570 (Tri-L.B.)-CCE v. Arvind Mills Ltd.

The differential discounts extended as per commercial considerations on different transactions to unrelated buyers if extended can't be objected to and different actual prices paid or payable for various transactions are to be accepted for working assessable value. Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently - as for example, year end discount-the assessment for such transactions may be made on a provisional basis.

However, the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment. Trade discount not paid to dealers at the time of in voice preparation but paid later on net sale value was held as deductable for valuation purpose by Hon'ble Supreme Court in the case of Commissioner v. DCM Textiles - 2006 (195) E.L.T. 129 (S.C). Liquidated damages (as for example price reduction for delay in delivery of goods) is acceptable - 2006 (204) E.L.T. 626 (Tri.) - United Telecom Ltd. v. CCE.

(viii) Deemed Export Incentives Earned on Goods Supplied: Duty drawback cannot be added to assessable value, especially if the reis no evidence of drawback with depression of prices.

(ix) Subsidy/Rebate Obtained by Assessee: A general subsidy / rebate is not to be included as it has no connection with individual clearances of goods. In case of rebate/subsidy which is directly relatable to individual clearances, it should not be includible.

(x) Price of Accessories and Optional Bought - out items: There are is not includible in Assessable Value.

Valuation Rules to Determine Assessable Value

As per Section 4(1)(b) of the Central Excise Act, if _Assessable Value' cannot be determined u/s 4(1) (a), it shall be determined in such manner as may be prescribed by rules. Under these powers, Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 have been made effective from 1-7-2000.

In ISPAT Industries Ltd. v CCE 2006, it was observed that Excise Valuation Rules should be applied serially. The rules are as below :

(i) Value nearest to time of removal if goods not sold: If goods are not sold at the time of removal, then value will be based on the value of such

goods sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments. [Rule4].

The rule applies when price at the time of removal is not available as the goods are not sold by the assessee at the time of removal. Thus, this rule should apply in case of removal of free samples or supply under warranty claims.

In case of new or improved products or new variety of products, price of similar goods may not be available. In such case, valuation should be on basis of cost of production plus 10%, in absence of any other mode available for valuation.

(ii) Goods sold at different place: Some times, goods may be sold at place other than the place of removal e.g. Buyer‘s place. In such cases, actual cost of transportation from place of removal upto place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis. [Rule5]

Explanation:

(1) ―Cost of transportation‖ includes–(i) the actual cost of transportation; and (ii) in case where freight is averaged, the cost of transportation calculated in accordance with Generally Accepted Cost Accounting Principle.

(2) For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods.

(iii) Valuation when the price is not the sole consideration: Where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of —

(a) such transaction value, and

(b) the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. [Rule6]

In case any of the goods and services (listed below) is provided by the buyer free of change or at reduced cost in connection with production and sale of such goods, then, the value of such goods and services, apportioned as appropriate, shall be deemed to be the money value of the additional consideration.

Only the value of the following goods and services are to be added in the transaction value: (a) materials, components, parts and similar items relatable to such goods;

(b) tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;

(c) material consumed, including packaging materials, in the production of such goods;

(d) engineering, development, art work, design work and plans and sketches under taken else where than in the factory of production and necessary for the production of such goods.

Provided that where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a priceless than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value.

(iv) Sale at Depot / Consignment Agent: Section 4(3)(c)(iii) provides that in case of sale at depot / consignment agent, the depot / place of consignment agent will be the ‗place of removal'. As per section 4(3) (cc), in case of sale from depot / place of consignment agent, ‗time of removal' shall be deemed to be the time at which the goods are cleared from factory.

In other words, in case of sale from depot / place of consignment agent, duty will be payable on the price prevailing at the depot as on date of removal from factory. Price at which such goods are subsequently sold from the depot is not relevant for purpose of excise valuation.

When goods are sold through depot, there is no ‗sale' at the time of removal from factory. In such cases, price prevailing at depot (but at the time of removal from factory) shall be the basis of Assessable Value. The value should be ‗normal transaction value' of such goods sold from the depot at the time of removal or at the nearest time of removal from factory. [Rule 7 of Valuation Rules].

As per Valuation Rule 2(b), ―normal transaction value‖ means the transaction value at which the greatest aggregate quantity of goods are sold. Say, if an assessee transfers a consignment of paper to his depot from Delhi to Agra on 5-7-2015, and that variety and quality of paper is normally being sold at the Agra depot on 5-7-2015 at transaction value of ` 15,000 per ton net to related buyers, where price is the sole consideration for sale, the consignment cleared from the factory at Delhi on 5-7-2015 shall be assessed to duty on the basis of ` 15,000 per ton near the assessable value. If assuming that on 5-7-2015 there were no sales of that variety from Agra depot but the sales were effected on 1-7-2015, then the normal transaction value on 1-7-2015 from the Agra depot to unrelated buyers, where price is the sole consideration shall be the basis of assessment.

(v) Captive Consumption (Rule8): Where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value of such goods that are consumed shall be one hundred and ten percent of the cost of production or manufacture of such goods.

(vi) Sale to a Related Person: ‗Transaction Value' can be accepted as ‗Assessable Value' only when buyer is not related to seller. In other words, price to an independent buyer has to be considered for excise valuation. As per section 4(3) (b) of Central Excise Act, persons shall be deemed to be ‗related' if

(a) They are inter-connected undertakings

(b) They are relatives

(c) Amongst them, buyer is a relative and a distributor of assessee, or a sub-distributor of such distributor or

(d) They are so associated that they interest, directly or indirectly, in the business of each other.

(vii) Best Judgement Assessment: If assessment is not possible under any of the foregoing rules, assessment will be done by ‗best judgement'. If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with

the principles and general provisions of these rules and sub-section (1) of section 4 of the Act. [Rule11]

As the Valuation Rules stand today, there is no provision for calculating ‗Value' in following cases - (a) If assessee makes sale partly to related person and partly to others. (b) Free samples. In these cases, valuation may be done under rule 11.

For an example, when a manufacturer replaces spare parts free of cost during the warranty period there is no separate rule to govern such transactions. Under such circumstances, Rule 11 helps us to navigate to Rule 8 and the value can be adopted as cost of production plus 10%.

ASSESSMENT UNDER CENTRAL EXCISE LAW

Assessment

The expression ‗assessment' has been defined in the Central Excise Rules, 2002. As per Rule 2(b), includes self-assessment of duty made by the assessee and provisional assessment under Rule 7 of the said Rules.

Assessee

The expression ‗assessee' has been defined in the Central Excise Rules, 2002. As per Rule 2(c), means any person, who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person.

Liability to Assessment and Payment of Duty

Rule 4 of the Central Excise Rules, 2002 provides that every person, who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided.

Incidence of Duty i.e. Removal

For the purposes of the Rule 4, excisable goods manufactured in a factory and utilized, as such or after subjecting to any process, for the manufacture of any other commodity, in such factory, shall be deemed to have been removed from such factory immediately before such utilization.

Major Ingredients of Assessment

Before each removal, whether outside the factory of manufacture or production or for captive consumption, duty has to be assessed on the excisable goods.

Classification and Rate of Duty

For determining the rate of duty, classification is a prerequisite. Classification means the appropriate classification code, which is applicable to the excisable goods in question under the First Schedule to Central Excise Tariff Act, 1985. There are Section Notes and Chapter Notes, in the Tariff which are helpful in determining the appropriate classification. In case of difficulties, there are ―Interpretative Rules‖ in the said Act.

Valuation

Where rate of duty is dependent on the value of goods (ad valorem duty), value has to be determined, in accordance with the provisions of Central Excise Act, 1944, as follows :
(i) Value under section 4based on transaction value or determined in terms of valuation Rule, (ii) Value based on retail sale price under section 4A,
(iii) Tariff value fixed under section 3.

Self Assessment

As per Rule 6 of the Central Excise Rules, 2002 a Central Excise assessee is himself (self-assessment) required to determine duty liability at the time of removal of excisable goods and discharge the same. In other words, the assessee should apply correct classification and value (where duty is advalorem) on the quantities being removed by him and indicate the same in the invoice. However, in case assessee manufacturing cigarettes, the Superintendent or Inspector of Central Excise has to assess the duty payable before removal by the assessee.

Provisional Assessment

Provisional Assessment is resorted to, in the event the duty cannot be determined at the point of clearance of the goods.

Guidelines and Procedure for Provisional Assessment

Rule 7 of the Central Excise Rules lays down that where the assessee is unable to determine the value of excisable goods or determine the rate of duty applicable there to, they may request the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, indicating:
i. Specific grounds and reasons and the documents or information‘s, for want of which final assessment cannot be made.
ii. Period for which Provisional Assessment is required.
iii. The rate of duty or the value or both, as the case may be, proposed to be applied by the assessee, for Provisional Assessment.
iv. The assessee under takes to appear before the Assistant Commissioner or Deputy Commissioner of Central

Excise with in 7 days or such date fixed by him, and furnish all relevant information and documents with in the time specified by the Assistant or Deputy Commissioner of Central Excise in his order, so as to enable the proper officer to finalize the provisional assessment.

Rule 7 further provides that the payment of duty on provisional basis may be allowed, if the assessee executes a bond in the form prescribed by notification by the Board with such surety or security in such amount as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, deem fit, binding the assessee for payment of difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed.

AC or DC of central excise, as the case may be, shall pass order for final assessment, as soon as may be, after the relevant information, as may be required for finalizing the assessment, is available, but with in a period

not exceeding six months from the date of the communication of the order issued under sub-rule (1);

Provided that the period specified in this sub-rule may, on sufficient cause being shown and the reason to be recorded in writing, be extended by the Principal Commissioner or Commissioner of Central Excise for a further period not exceeding six months and by the Principal Chief Commissioner or Chief Commissioner of Central Excise for such further period as he may deemed fit.

Payment of Duty Under Protest

Some times it happens that the classification of goods done by excise authorities, Assessable Value determined by the excise authorities in adjudication proceedings, etc. are not agreeable or acceptable to the assessee. In such cases, the assessee can file an appeal and in the mean while he can pay duty under protest (If no stay is obtained from Appellate Authorities).

Budget and Central Excise

Every year, taxation proposals are introduced at the time of annual budget which is presented usually on last day of February every year, by way of a Finance Bill. Major changes in excise, customs and service tax duties are announced on budget day.

Increased rates become effective immediately - Normally, any provision of legislation, takes effect only after it is passed by the Parliament and assented by President. However, in case of excise and customs provisions, this might create complications.

Provisional Collection of Taxes Act - Section 4 of _Provisional Collection of Taxes Act, 1931' provides that budget provisions in respect of imposition or increase in duty of excise and customs will take effect immediately if a declaration is inserted in the Bill that it is expedient in Public interest to have immediate effect to the provisions of the Bill. This provision is not applicable for reduction in duty.

Once this declaration is given, the new rates become effective on the expiry of the day when the bill is introduced. Accordingly, every year, the declaration is given and budget provisions come into effect immediately. Such declaration is valid only for 75 days or the date when the Finance Bill is passed, which ever is earlier.

Thus, if budget is presented on last day of February [28 or 29 as the case may be], new rates will be come effective on 1st March itself.

If rates are reduced when the bill is passed, refund will be granted of excess duty collected [subject to provisions of refund of Unjust Enrichment of section 11B (2) of CEA].

Duty liability of Pre-budget Stock

Some goods in stock on the budget day are cleared subsequent to presentation of budget. The rate applicable at the time of clearance from the factory will be applicable for payment of excise duty.

PROCEDURAL ASPECTS UNDER CENTRAL EXCISE DUTY

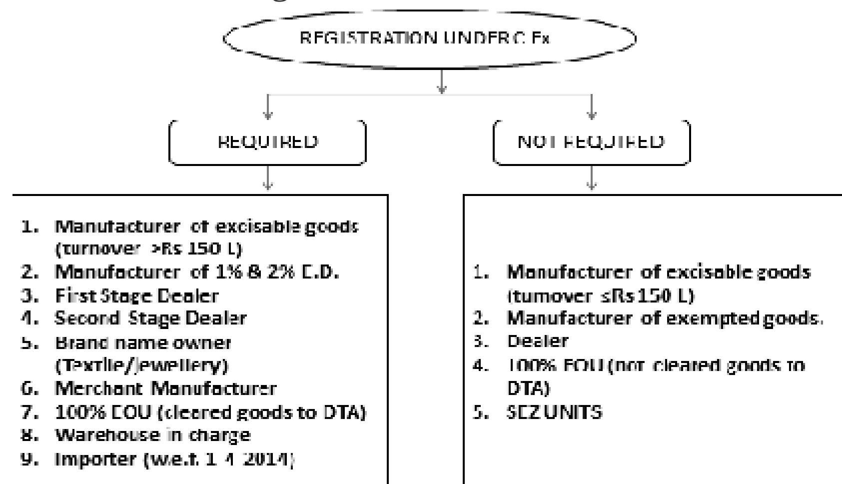
Registration under Central Excise Law:

A manufacturer has to compulsorily get registered under the central excise law if he manufactures dutiable goods. Aside of manufacturers, the following persons are required to get registered under central excise law:

• First Stage Dealer,
• Second Stage Dealer,
• Importer, and
• Person who stores dutiable goods in the specified area or in a warehouse before exports.

The following manufacturers are exempt from registration and consequently payment of excise duty:

• Manufacturer of dutiable goods who claims exemption under SSI notification
• Manufacturer in a unit of 100% Export Oriented Units (EOUs) and Software Technology Park are exempted from the registration provided they do not procure and sell the goods in the Domestic Tariff Area.



• First Stage Dealer means a dealer who purchases the goods directly from the manufacturer under the cover of an invoice issued in terms of the provisions of the Central Excise Rules, 2002.
• Second Stage Dealer means a dealer who purchases goods from a first stage dealer. Dealer of any subsequent stage after second stage cannot issue Cenvatable Invoice.
• w.e.f. 01.04.2014, an importer who issues an invoice on which CENVAT credit can be taken is also required to obtain such registration.

Thus, such importer will have to obtain registration as a ‗registered importer' with the central excise authorities to pass on the credit on the imported goods.

Exemption from Registration

• Persons who manufacture the excisable goods, which are chargeable to nil rate of excise duty or are fully exempt from duty by a notification;
• Small scale units availing the exemption based on value of clearances under a notification. However, such units will be required to give a

declaration once the value of their clearances crosses ` 90 lakhs for a financial year;

- Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962 subject to certain conditions;
- The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in Cenvat Credit Rules, 2004);
- Persons who use excisable goods for any purpose other than for processing or manufacture of goods availing benefit of concessional duty exemption notification. (Notification 36/2001 - C.E. (N.T.), dated 26-6-2001)

Procedure for Obtaining Central Excise Registration

i. Fill up Form A-1 in full and have it duly signed. If the applicant is a manufacturer/producer/dealer/ warehouse in charge/importer.

ii. Submit copy of PAN card issued by the Income Tax Department.

iii. The Inspector in the office of Assistant Commissioner/Deputy Commissioner will scrutinize the A-1 form and if found in order it shall be fed into computer through System for Allotment of Central Excise Registration (SAC- ER).

iv. A 15 digit PAN based registration number (ECC) will be allotted to the assessee on the spot; otherwise the same will be delivered to him with in the next working day.

v. Registration under Central Excise can be granted in the name of minor, provided a legal guardian under takes to conduct the business.

vi. Normally separate registrations are required if factories are located in different locations. Similarly if the warehouse is at a significant distance from the factory these must be registered separately. A single registration can be allowed by the Principal Commissioner or Commissioner of Central Excise for factories located in adjoining premises, or premises separated by road; railway, etc can if the facts and circumstance facilitates to do so.

vii. If the assessee ceases to carry on operations for which he is registered his registration certificate can be cancelled. This is called de-registration.

Sometimes registration certificate can also be revoked by registering authority. Registration certificate can be revoked in the following cases.

(a) If the manufacturer manufactures prevented goods. (like arms, explosive devise without license).

(b) Manufacturer carries higher risk (evasion of duty continuously, repeatedly producing the malafide evidences etc).

Provisions Relating to Non Registration

As per Rule 25 of the Central Excise Rules, 2002, where registration under Central Excise is required for a manufacturer but not registered then, all such goods shall be liable to confiscation. Such manufacturer is supposed to face the punishment and penalty. This provision is also applicable to an importer who issues an invoice on which Cenvat credit can be taken. (w.e.f.01.03.15)

Punishment: (Section 9 of the Central Excise Act, 1944)

i. if the duty leviable on the excisable goods exceeds ` 50,00,000 (w.e.f. 28-5-2012) (a) imprisonment upto seven years and fine without any upper limit.

(b) 6 months minimum imprisonment unless there are special and adequate reasons for granting lesser punishment.

ii. if the duty leviable on the excisable goods is less than or equal to ` 50,00,000 (w.e.f 28-5-2012) (a) Imprisonment upto three years or fine or both can be imposed

(b) 6 months minimum imprisonment unless there are special and adequate reasons for granting lesser punishment

Penalty

The penalty for non-registration is amount of duty of contravening goods or w.e.f 14-5-2015 ` 5,000 whichever is higher. [Rule 25(1)(c) of the Central Excise Rules]

Daily Stock Account (DSA)

Every assessee registered under Central Excise should maintain the Daily Stock Account (DSA) [Rule 10(1) of Central Excise Rules, 2002]

There is no specific format for Daily Stock Account. The following information should be captured in the DSA

i. Description of goods manufactured
ii. Opening balance of goods manufactured
iii. Quantity manufactured
iv, Inventory of goods (closing stock)
v. Goods removed from the place of removal (quantity)
vi. Assessable value of goods removed
vii. Amount of duty payable to the department
viii. Particulars with regard to the amount of duty actually paid.

The first page and the last page of the DSA shall be duly authenticated by the manufacturer or his authorized person. The DSA shall be preserved for five years immediately after the financial year to which such records pertain. The records under this rule may be preserved in electronic form and every page of the records preserved shall be authenticated by means of a digital signature. The Board may, by notification, specify the conditions, safe guards and procedure to be followed by an assessee preserving digitally signed records. Penalty upto the amount of duty payable can be imposed and the offending goods can be confiscated if DSA is not maintained by the manufacturer. [Rule 25(1)(b) of Central Excise Rules]

UNIT V
PROVISIONS OF CENTRAL SALES TAX AND TAMIL NADU SALES TAX ACT

A. CENTRAL SALES TAX ACT, 1956

INTRODUCTION

i. Central Sales Tax is an indirect tax which is levied by the Central Government.
ii. In this case, the taxable event is _sale of goods inter-state‘.
iii. CST applies to the whole of India including the state of Jammu & Kashmir.
iv. CST is payable in the state in which the movement of goods commences.
v. Though it is called CST, it is actually assessed, collected & administered by the local (i.e. State) sales tax authorities (namely Commercial Tax Department of the State) only.
vi. The tax collected under CST is actually retained by the state (in which it is collected). It means CST is the revenue of the State Government.

Seller is liable to pay CST on interstate sale to the State Government Commercial Tax Department where he has the place of business.

CONSTITUTIONAL PROVISIONS & NEXUS THEORY

(A) Constitutional Provisions

i. The power to levy tax is given through the constitution of India. (Entry No.92A and 92B of List I, called the Union List, in the Seventh Schedule to the Constitution of India, as per Article 246(1).
ii. Article 265 of the Constitution of India states that no tax shall be levied or collected except by authority of law.
iii. Article 269 (1)(G) empowers the Central Government to levy taxes on sale or purchase of goods other than newspapers, which takes place in the course of inter-state trade or commerce. (Entry No.92A and 92B)
iv. Article 269(2) assigns the levy of such tax to the States.
v. Article 269(3) empowers the Parliament to formulate principles for determining when a sale or purchase takes place in the course of interstate trade or commerce.
vi. Article 286 prohibits the States to levy tax on transactions which are covered by the CST Act.

(B) Nexus Theory

Sales Tax is levied on the transaction of sale of goods. A sale of goods has various elements such as goods, agreement to sell, transfer of property, valuable consideration, seller, buyer etc. It is possible that each such element of sale may be distributed over more than one state. For e.g. : the seller is in one state, the buyer is in another state, transfer takes place in the third state, consideration may pass in the fourth state etc.

Earlier, each such state tried to subject a single sale transaction to its own sales tax under the _Nexus Doctrine‘. _Nexus‘ means connection or link. Under the guise of having a territorial nexus each state brought a single sale transaction to its own sales tax. This consequently resulted in the same sale

transaction being subject to multiple taxation. To put an end to this unfair multiple taxation on a single sale transaction, Article 286 of the Constitution of India was amended.

Article 286 provides that no law of a State shall impose, or authorize the imposition, of a tax on the sale or purchase of goods where such sale or purchase takes place

(a) Outside the State, or

(b) In the course of the import of the goods into, or export out of, the territory of India.

PRINCIPLES & OBJECTS OF CST ACT, 1956

(A) Principles of Central Sales Tax Act

Entry 92 (a) of the List-I (Union List) to the Seventh Schedule of the Constitution of India empowers the Union Government to levy tax on the sale or purchase of goods, which takes place in the inter-state Trade or Commerce. Accordingly, the Central Sales Tax Act was enacted.

(B) Objective of the CST Act:

The objects of the Central Sales Tax Act, 1956 as given in the Preamble of the Act are as follows:

i. To formulate principles for determining when a sale or purchase of goods takes place:
   (a) In the course of interstate trade or commerce (Sec 3)
   (b) Outside a state (Sec 4)
   (c) In the course of import into or export from India (Sec 5).

ii. To provide for the levy, collection and distribution of taxes on the sale of goods in the course of interstate trade or commerce (Sec 9).

iii. To declare certain goods to be of special importance in inter-state trade or commerce (Sec 14).

iv. To specify the restrictions and conditions on the State laws imposing taxes on the sale or purchase of such goods of special importance (Sec 15).

v. To provide for collection of taxes from companies under liquidation (Sec 16 - 18).

DEFINITION (Sec. 2)

1. Sec 2(a) -**'Appropriate State' means:**
   (a) in relation to a dealer who has one or more places of business situated in the same state, that state.
   (b) In relation to a dealer who has places of business situated in different states, every such state with respect to the place or places of business situated within its territory.

Significance of _Appropriate State'.

i. Administration, levy and collection of tax have been delegated to Appropriate State (Sec 9).

ii. Registration should be made with the authorities of the Appropriate State.

iii. Monthly returns, appeals, reviews, references, refunds and compounding of penalties are to be dealt with by the Appropriate State.

iv. Appropriate state is equally significant in the application of :
   (a) Sec 8(2) (rate of tax on sales not covered by C Form);
   (b) Sec 8(1) and Sec 8(2)(c) (extension of tax concessions on intra state sales to inter-state sales) and
   (c) Sec 9(2A) (offences under General Sales Tax Acts are offences under CST Act too in the respective states).

2. Sec 2(aa) -**'Business' includes:**

(a) Any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture,
   i. whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and
   ii. whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern;

(b) Any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.

Analysis of the definition:

i. The meaning of _business' is significant since dealer u/s 2(b) is a person who carries on the business of buying, selling, supplying or distributing goods.
ii. The definition of business is inclusive and not exhaustive.
iii. For determining whether a transaction is in the nature of business, frequency regularity and volume of such transaction has to be looked into.
iv. It is not necessary that the business is carried on with a profit motive. Even an activity suffering a loss may be called a business.
v. Business may be legal or illegal. It may be carried on regularly or otherwise.
vi. If the main activity of a dealer is business under clause (a) above - only then incidental or ancillary activities under clause (b) above will also be business.

3. Sec 2(ab) - **_Crossing the Customs Frontiers of India'** means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities. Customs station means a customs port, customs airport or a land customs station as defined under the Customs Act, 1962.

4. Sec 2(b) - **_Dealer' means any person**

(i) who carries on (whether regularly or otherwise), the business of
(ii) buying, selling, supplying or distributing goods, directly or indirectly,
(iii) for cash or for deferred payment, or for commission, remuneration or other valuable consideration.

Dealer includes the following :

(a) A Local Authority, a Body Corporate, a Company, any Co-operative Society or other Society, Club, Firm, HUF or Other Association of Persons which carries on such business.

(b) A Factor, Broker, Commission Agent, Del-credre Agent, or any other Mercantile Agent, by whatever name called, and whether of the same description as herein before mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not, and

(c) An auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

5. Deemed Dealers

Explanation 1 : Every person who acts as an agent, in any State, of a dealer residing outside that state and buys, sells, supplies, or distributes, goods in the State or acts on behalf of such dealers as —

(a) A Mercantile Agent as defined in the Sale of Goods Act, 1930, or

(b) An Agent for handling of goods or documents of title relating to goods, or

(c) An agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment, and every local branch or office in a state of a firm registered outside that State or a Company or other Body Corporate, the principal office or headquarters whereof is outside that state, shall be deemed to be a dealer for the purposes of this Act.

Explanation 2: A Government which, whether or not the course of business buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall except in relation to any sale, supply or distribution of surplus, un-serviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purposes of the CST Act.

6. Sec 2(c) - **_Declared Goods‘** means goods declared under Section 14 to be of special importance in Interstate Trade or Commerce

7. Sec 2(d) - **_Goods‘** includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares & securities.

Analysis of definition:

The definition of _Goods‘ is inclusive definition. It does not bring out the essential characteristics of goods, but declares that all materials, articles commodities and all other kinds of movable property are goods and excludes some specified items. Article 366(12) of the Constitution of India, defines the term _Goods‘ to include all materials, commodities and articles. But this definition is very wide, when compared with the definition of goods under the CST Act.

Held to be _Goods‘	Held not to be _Goods‘
Electricity and electric meters	Labour
Animals or Birds in captivity and livestock	Money (Cash/Currency/Cheque /DD)

Copyrights, Branded software programs of Floppies or Discs	Oil Tanker embedded in earth
Lottery tickets, incomplete films, steam etc.	Claim for loss or damages

Goods include all Movable Property :
(i) The immovable property is excluded from the definition of Goods. Immovable property includes land, benefits arising out of land and things attached to earth or permanently fastened to anything that is attached to the earth.
(ii) However, goods include standing crop, grass and things attached to and forming part of land, which is agreed to be severed before sale or under contract of sale. But standing trees are not goods and not taxable, unless timber is identified, contract is unconditional and the timber is in deliverable state.
(iii) The securities like shares, debentures, stocks or money certificates are not goods and hence not taxable.

8. Sec 2(dd) -**'Place of Business' includes:**
(a) In any case, where a dealer carries on business through an agent (by whatever name called), the place of business of such agent;
(b) A warehouse, godown or other place where a dealer stores his goods; and
(c) A place where a dealer keeps his books of account.

Significance of _Place of Business'
(i) The _Place of Business' has significance in the context of registration of dealers for Sec 7, 8 & 9 of the CST Act, 1956.
(ii) A dealer having a place of business in more than one state - has to get himself registered under each state.
(iii) If a dealer has different places of business in one state, then he can apply for registration through a single application for that state.

9. Sec 2(g) - **_Sale'** means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods.
10. Deemed Sale:
Pursuant to amendment of Article 366 of the Constitution, the following deemed transactions are also covered:
i. A transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
ii. A transfer of property in goods (whether as goods or in some other form) involved in the execution of a Works Contract;
iii. A delivery of goods on Hire-Purchase or any system of payment by installments;
iv. A transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

v. A supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

vi. A Supply by way of or as part of any service of goods, being food or any other article for human consumption or any drink (whether or not intoxication), where such supply or service is for cash, deferred payment or other valuable consideration.

Essential ingredients of a sale:

i. There must be two parties to the contract of sale (i.e.) the buyer & the seller. ii. There must be valid consent of both the above parties.

ii. There must be an actual transfer of property in goods (i.e. agreement to sell is not a sale).

iii. There must be a consideration in cash or in deferred payment or any other valuable consideration in money or money‘s worth.

iv. Sale includes deemed sales.

v. Sale does not include a mortgage or hypothecation of or a charge or pledge on goods.

11. Sec 2(h) -**‘Sale price‘** means the amount payable to a dealer as consideration for the sale of any goods, less, any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof, other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

Inclusions in Sale Price:

i. Central Sales Tax - whether or not shown separately in invoice (then back calculations are made).

ii. Excise Duty- the excise duty payable is includible in _Sale Price‘. Hindustan Sugar Mills vs. State of Rajasthan(1979); Ramco Cement Distribution Co.(P) Ltd. V. State of Tamil Nadu Sales tax is also payable on excise duty whether or not shown separately in invoice and even if paid directly by purchaser. However, this is so only when liability to pay duty is on seller.-McDowell and Co. Ltd. V. CTO.

Excise duty is a part of turnover, even in that case, the duty was payable by the purchaser, as primary liability to pay duty is of the manufacturer-Mohan Breweries & Distilleries Ltd. V. CTO(1997), State of Kerala V.MRF(1997)-the judgement judgment was in case of _cess‘ payable.

iii. Packing material and packing charges - sales tax is leviable on packing material as well as packing charges (i.e. labour charges for packing goods). Sales tax is leviable on packing charges, even if shown separately-CST v. Rai Bharat Das (1988); Ramco Cement Distribution Co .(P) Ltd. V. State of Tamil Nadu; Dalmia Cement (Bharat)Ltd. V. State of Tamil Nadu (1991). Cost of packing material is includible in sale price-HPCL v .State of Kerala(1993).

iv. Bonus discount or incentive bonus- for additional sales affected by the distributor/dealer.

v. Insurance charges- if the goods are insured by the seller.

vi. Freight and delivery charges incidental to sale only are deductible- if the goods are sold from depot, transport charges from factory to the depot cannot be allowed as deduction-Dyer Meakin Breweries Ltd. V. State of Kerala(1970).

vii. Design charges- in case of goods includible if charged separately in respect of goods manufactured as per design and sold to buyer, as buyer, as it is a pre-sale expense and forms part of manufacturing cost- American Refrigerator Co. Ltd. v. State of Tamil Nadu (1994).

viii. Compulsory warranty charges- includible if a manufacturer sales goods with service warranty on which customer has no option, the charges for warranty are includible as there is no sale without it-State of AP V. Hyderabad Allwyn Ltd. (1970).

ix. Weighment charges paid for goods- includible in the sale price.

x. Subsidy/incentive paid to supplier - these are not post sale expense, hence includible. EID Parry V. ACCT(1997).

xi. Tax paid by buyer when liability is of seller - if the liability to pay tax/cess/duty is in the buyer, the same cannot be considered for purpose of ‗sale price'- P.V. Beedies (P) Ltd. v. State of Mysore (1963); G M S Prakash Rice Mills v. State of Punjab(1993). Market Cess collected by dealer from buyer and paid to Government is not part of consideration for sale and hence is not taxable-State of AP v. T. Siddaiah Naidu (1997).

xii. Any sum charged for anything done by the dealer- in respect of goods at the time of or before delivery of such goods.

Exclusions from Sale Price:

The following items shall not be a part of sale price for the calculation of sales tax liability :

(i) Freight / transport charges for delivery of goods- CST is not payable on freight and transport charges. However, CST is payable on freight charges if (a)Freight Charges are not shown separately in invoice or (b) contract is for destination.

Supreme Court envisaged three situations: (1) Price at the factory gate, i.e. ex-works price. Here tax is not payable on freight, (2) Contract for sale is FOR destination & (3) the price is FOR destination, but contract does not have all ingredients of FOR destination railway contract. Hindustan Sugar Mills Ltd. V. State of Rajasthan(SC); Kurkunta and Seram Stones (P)Ltd. V.State of Karnataka; Black Diamond Beverages v.CTO, Hyderabad Asbestos Cement Products Ltd. v.State of AP; CST v. Ballarpur Industries Ltd(1995).

(ii) Cost of Installation if charged separately- is not to be includible.

(iii) Cash discount for making timely payments- is not includible.

(iv) Trade discounts- is deduction from list price to wholesalers/dealers, cannot be considered for calculation of CST. Dy. CST V. Advani Oerlikons (P) Ltd. (SC); State of Tamil Nadu V. Alkali Chemical Corporation (1994); Dy.CST V. Kerala Rubber and Allied Products (1993); Dy.CST V. Motor Industries Co (SC).

(v) Insurance on transit if incurred at the request of buyer- are not chargeable to CST.

(vi) Goods returned within 6 months of the date of sale- Sec 8A(b) provides that if goods are returned by buyer within six months, its sale price will be deducted from ‗aggregate sale price', if satisfactory evidence is produced before sales tax authority in respect of the same. Dy.CST v. Motor Industries Co (SC); State of Maharashtra v. BASF (India) Ltd. (SC).

(vii) Goods Rejected- In such case, the period of six months is not applicable, as in case of rejected goods, there is no ‗complete sale' at all within the meaning of CST Act or Sale of Goods Act, as the purchasing party has not accepted the goods. Return of goods is a bilateral transaction brought about by consent of seller and purchaser, while rejection of goods is a unilateral transaction, open only to purchaser. It means that sale has not taken place to attract tax. Metal Alloy Co.(P) Ltd. V. CTO, Bhavanipur Charge Calcutta(1977); State of Tamil Nadu V. General Engineering Stores(1993)

(viii) Government subsidy & other subsidy- is excludible from the sale price for CST.

(ix) Deposits for returnable containers- Deposits taken for returnable bottles or tin containers are not sales. Even if the customer does not return the container for long time and security deposit is transferred to profit and loss account that will convert the deposits as part of sale proceeds. There is no intention to sale the container. If the container is not returned the deposit is retained as liquidated damages for loss of bottle. United Breweries Ltd. V.State of AP (SC); State of Tamil Nadu V McDowell (SC); Kalyani Breweries V. State of West Bengal.

(x) Customs duty paid by Buyer- when sale is by transfer of documents- Gujarat Export Corporation Ltd. V. State of Maharashtra(1990)

(xi) Taxes and fees statutorily recoverable from Buyer- Anand Swarup Mahesh Kumar V. CST(SC); State of AP V. T Siddaiah Naidu

12. Sec. 2 (i) : Sales Tax Law and General Sales Tax Law

‗Sales Tax Law' means any law for the time being in force in any state or part thereof which provides for the levy of taxes on the sale or purchases of goods generally or on any specified goods expressly mentioned in that behalf. ‗General Sales Tax Law' means the law for the time being in force in any state or part thereof which provides for the levy of tax on the sale or purchase of goods generally.

13. Sec 2 (j) -**'Turnover'** means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of interstate trade or commerce made during any prescribed period and determined in accordance with the provisions of the CST Act and the Rules made there under.

14. Sec 2(k) -**'Year'** in relation to a dealer means the year applicable in relation to him under the General
Sales Tax Law of the appropriate State and where there is no such year applicable, the financial year.

SALE OR PURCHASE IN THE COURSE OF INTERSTATE SALE (Sec. 3)

According to Section 3 of the Central Sales Tax Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase :

(a) Occasions the movement of goods from one state to another; or

(b) Is effected by a transfer of documents of title to goods during their movement from one state to another. The essential ingredients of interstate sale are as follows:

- i) The transaction should be a complete sale.
- ii) There should be movement of goods from one state to another state by virtue of agreement to sale.
- iii) The completed sale must take place in a state different from the state in which movement of goods commences.
- iv) It is not necessary that completed sale precedes the movement of goods. Sale can be either before or after the movement of goods.
- v) There must be physical movement of goods from one state to another state.
- vi) Where the movement of goods commences and terminates in the same state, it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other state.
- vii) The movement of goods shall commence when the goods are delivered to the carrier or other bailee for transmission and the movement of the goods shall end when the delivery is taken from such carrier or bailee. Thus, the transfer of documents to the title of the goods (Lorry receipt/ Railway Receipt, Bill of Lading, Airway Bill) shall be made during the movement of the goods from one state to another.

Exceptions to Section 3 :

- vii. Generally, CST is leviable on interstate sale transactions which cover movement of goods from one state to another.
- viii. However, all dispatches of goods from one state to another state do not ipso facto result in interstate sale u/s. 3 of the CST Act.
- ix. Only when the movement is on account of a covenant or the sale effected by a transfer of document of title to the goods during their movement from one state to another, it will be an interstate sale U/s 3.
- x. The following are the instances where goods move from one state to another but do not amount to interstate sales:
  - (a) A movement of goods from one state to another will not amount to interstate sales unless the seller had the responsibility to deliver the goods outside that state or the movement was as a result of a covenant or incident of contract of sale;
  - (b) Stock transfer between head office & branch office will not amount to interstate sales as the basic elements of sale i.e., the presence of a buyer & seller; consideration & transfer of ownership etc. are not present;

(c) Sale or purchase in the course of Export/ Import does not attract levy of CST since these have been specifically covered u/s 5 of the CST Act, 1956;

(d) Sale through commission agent / on account sales will not amount to interstate sales as the agent only acts on behalf of the seller and he does not acquire any ownership of the goods. The agent is only entitled to receive commission on the sales effected by him and will also get re-imbursement of the expenses incurred by him.

SALE OR PURCHASE OUTSIDE A STATE (Sec. 4)

i. Section 4(1) provides that subject to the provisions of Section 3, if a sale or purchase of goods is said to take place inside a state, then, such sale or purchase shall be deemed to have taken place outside all other states.

ii. According to Section 4(2), a sale or purchase of goods shall be deemed to take place inside a state, if :

In case of ascertained or specific goods	If the goods are within the State at the time of contract of sale
In case of unascertained or future goods	If the goods are within the State at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation

iii. Where there is a single contract for sale or purchase of goods situated at more than one place, it shall be treated as separate contracts in respect of goods at each such place.

SALE IN THE COURSE OF EXPORT /IMPORT (Sec. 5) (A) Sale in the course of export [Sec. 5(1)]

i) Section 5(1) provides that a sale or purchase of goods shall be deemed to take place in the course of export only if:
   (a) The sale or purchase occasions such export, or
   (b) It is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

ii) The requisites of an export sale are:
   (a) There is a contract of sale between an Indian exporter and a foreign buyer.
   (b) There must be an obligation to export as a result of the above foreign contract.
   (c) There must be an actual export of goods to a foreign destination.

iii) An export sale can also be effected by transferring documents of title to the goods to a foreign buyer after the goods have crossed the Customs Frontiers of India.

(B) Sale in the course of Import [Sec. 5(2)]

i) Section 5(2) provides that a sale or purchase of goods shall be deemed to take place in the course of import only if:

(a) The sale or purchase occasions such import, or

(b) It is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

ii) The requisites of an import sale are :

(a) There is a contract of sale between an Indian importer and a foreign seller.

(b) There must be an obligation to import as a result of the above foreign contract.

(c) There must be an actual import of goods from a foreign destination.

iii) An import sale can also be effected by transferring documents of title to the goods in favour of an Indian buyer before the goods have crossed the customs frontiers of India.

(C) Penultimate sale for export of goods [Sec. 5(3)]

i) Penultimate sale is the last sale immediately prior to the original export.

ii) According to Section 5(3) of the CST Act, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export if the following conditions are satisfied :

(a) There must have been pre-existing agreement or order to sell the specific goods to a foreign buyer.

(b) The last purchase as referred above, must have taken place after that agreement with the foreign buyer was entered into.

(c) The last purchase must have been made for the purpose of complying with the pre-existing agreement or order.

(d) The same goods, which are purchased in the penultimate sale, must be exported.

(e) The dealer should obtain proof of export from the original exporter.

(f) The original exporter should give Form H to the dealer and only on that basis the dealer can claim exemption of deemed export.

(D) Difference between a Sale for Export and Sale in the Course of Export

Sale for Export	Sale in the Course of Export
i. A sale effected by the dealer (seller) and he is not connected with the export of the goods which actually takes place subsequently.	Seller has an express between the sale and the export.
ii. Seller may or may not have the knowledge that the buyer intends to export the goods purchased.	The seller who purchases goods in India subsequently exports as such.
iii.Seller does not know the ultimate destination of the goods he has sold.	Seller has clear address for ultimate destination of his goods.
iv. Seller has no intention for export.	Seller has clear intention to export.
v. This sale may be called as	This sale is called as export sale.

penultimate sale.	
vi. Sale exempted from CST provided Form ‗H‘ received from his buyer.	Sale exempted from CST automatically.
vii. This sale is covered under Section 5(3) of the ctC, 1S9T5A6. CST A	This sale is covered under Section 5(1) of the t, 1956.

PERSON LIABLE TO PAY CST [Sec. 6(1) & 6(1A)]

Section 6(1) of the CST Act provides that subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of interstate trade or commerce during any year on and from the date so notified.

However, a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of section 5(3), is a sale in the course of export of those goods out of the territory of India.

Analysis of Section 6(1) :

Sec. 6(1) is the charging Section. It reveals the following ingredients:

(a) The taxability under this Section is subject to other provisions of the Act. (b) A sale under this Section shall be taxed only if it comes within the scope of section 3 of the Act, to be determined as Interstate Sale.

(b) An assessee, to become liable to pay tax, should be dealer within the meaning of section 2(b) of the Act.

(c) The liability to tax shall arise in respect of all goods, except electrical energy.

(d) The penultimate sales in the course of export of goods outside the territory of India are exempt from tax liability.

  i. Section 6(1A) provides that a dealer shall be liable to pay tax under the CST Act on sale of any goods effected in the course of interstate trade or commerce notwithstanding that no tax would have been leviable under the Local Sales Tax Act of the appropriate state if such sale had taken place inside that State.

  ii. Thus, the absence of levy in intra state sales has no bearing on the levy in respect of interstate sale

EXEMPTION IN RESPECT OF SUBSEQUENT SALE [Sec. 6(2)]

i. According to Section 6(2) of the Central Sales tax Act, 1956, any sale effected during the movement of goods from one state to another by transfer of document of title is known as subsequent sale.

ii. Such subsequent sale shall be exempted from CST when the following conditions are fulfilled:

  (a) The first sale should be an interstate sale.

  (b) A sale subsequent to the sale mentioned here in above should take place.

(c) The subsequent sale should be during the course of movement of goods from one state to another.
(d) Such subsequent sale shall be effected by a transfer of documents of title to such goods.
(e) The subsequent sale shall be made to the government or a registered dealer other than the government.
(f) Where the subsequent sale is made to a registered dealer other than the government, the goods are of the description referred to in Section 8(3).
(g) The dealer effecting the subsequent sale furnishes the prescribed certificate or declaration to the appropriate authority.
(h) The entire transaction of sale shall be supported by the following supporting documents:

Nature of Sales	Form to be issued by the Buyer*	Form to be issued by the Seller
Original Inter State Sale [Sec. 3(1)]	Form C	Form E-I
Next Inter State sale by transfer of documents of title to goods	Form C	Form E-II
Subsequent sale u/s 6 (2)	Form C	Form E-II
Second subsequent sale during same transit	Form C	Form E-II

* If the sale is made to Government, Form D will be issued.

iii. In case of subsequent sale in the course of Interstate sale, the dealer effecting subsequent sale can avail exemption by submitting Form C issued by his customer and by submitting Form E-I, issued by his seller.

iv. Form, E-I, E-II & E-III etc. are printed by the Sales Tax department and are supplied to the registered dealer for their use. Form E-I & E-III will have to be issued, in case there are more than one subsequent sale.

v. Thus, it should be noted that Form E-I can be issued by the first seller alone. Form E-II & E-III will have to be submitted by those selling dealer (other than the first dealer) to their purchaser, who can avail of the exemption under section 6(2), subject to the condition that Form C is submitted as well.

vi. Where a Government Department has submitted Form D there cannot be subsequent resale by it.

Thus, any number of subsequent sales effected in the course of such single interstate movement of the goods from one state to another by transfer of documents of title to the goods by one dealer to another shall be exempt provided that the above conditions are fulfilled and relevant f6rms are obtained and filed.

TAXABILITY OF TRANSFER OF GOODS MADE OTHERWISE THAN BY WAY OF SALE (SEC 6A)

i. Where any dealer claims that he is not liable to pay tax under the CST Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer

of such goods by him to any other place of his business or to his agent or principal and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer.

ii. The dealer may furnish to the assessing authority, within the prescribed time a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, containing the prescribed particulars in the prescribed form (Form F) obtained from the prescribed authority, along with the evidence of dispatch of such goods.

iii. If the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed to have been occasioned as a result of sale.

iv. If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer are true, he may make an order to that effect.

v. Thereupon, the movement of goods to which the declaration relates shall be deemed to have been occasioned otherwise than as a result of sale.

REGISTRATION OF DEALER

Mode of Registration

Section 7 of the CST Act lays down the provisions for registration of Dealers as under:

(A) Compulsory Registration: [Sec. 7(1)]

Section 7(1) provides that every dealer liable to pay tax under the CST Act shall, within such time as may be prescribed for the purpose, make an application for registration to such authority in the appropriate Stale as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

(B) Voluntary Registration: [Sec. 7(2)]

i. Section 7(2) provides that any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under the CST Act, apply for registration to the authority referred to in Section 7(1), and every such application shall contain such particulars as may be prescribed.

ii. A dealer shall be deemed to be liable to pay tax under the sales tax law of the appropriate State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof.

Issue of Certificate of Registration [Sec. 7(2A) & 7(3)]

i. Section 7(2A) provides that where it appears necessary to the authority to whom an application is made for registration, he may for the proper realisation of the tax payable under the CST Act or for the proper custody and use of the forms impose as a condition for the issue of a certificate of registration, by an order in writing and for reasons to be recorded therein, a requirement that the dealer shall furnish in the prescribed manner and within such time as may be

specified in the order specified security for all or any of the aforesaid purposes.

ii. Section 7(3) provides that if the authority is satisfied that the application is in conformity with the provisions of the CST Act and the rules made thereunder and the condition, if any, imposed, has been complied with, he shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of Section 8(1).

Security for Registration [Sec. 7(3A), 7(3B), 7(3BB) & 7(3C)]

i. Section 7(3A) provides that where it appears necessary to the authority granting a certificate of registration he may for the proper realisation of tax payable under the CST Act or for the proper custody and use of the forms require, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require from the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security, or, if the dealer has already furnished any security, such additional security, as may be specified in the order, for all or any of the aforesaid purposes.

ii. Section 7(3B) provides that no dealer shall be required to furnish any security or additional security unless he has been given an opportunity of being heard.

iii. Section 7 (3BB) provides that the amount of security which a dealer may be required to furnish or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish by the authority referred to therein, shall not exceed :

(a) in the case of a dealer other than a dealer who has made an application, or who has been registered in pursuance of an application, a sum equal to the tax payable under this Act, in accordance with the estimate of such authority on the turnover of such dealer for the year in which such security or as the case may be, additional security is required to be furnished; and

(b) in the case of a dealer who has made an application, or who has been registered in pursuance of an application a sum equal to the tax leviable under this Act, in accordance with the estimate of such authority on the sales to such dealer in the course of inter-State trade or commerce in the year in which such security or, as the case may be, additional security is required to be furnished, had such dealer been not registered under the CST Act.

iv. Section 7(3C) provides that where the security furnished by a dealer is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

Forfeiture of Security [Sec. 7(3D) & 7(3E)]

i) Section 7(3D) provides that the authority granting the certificate of registration may by order and for good and sufficient cause forfeit the whole or any part of the security furnished by a dealer:
  (a) for realising any amount of tax or penalty payable by the dealer;
  (b) if the dealer is found to have misused any of the forms or to have failed to keep them in proper custody.

ii) However, no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

iii) Section 7(3E) provides that where by reason of an order, the security furnished by any dealer is rendered insufficient; he shall make up the deficiency in such manner and within such time as may be prescribed.

Refund of Security [Sec. 7(3G)]

Section 7(3G) provides that the authority granting a certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under Section 7, if it is not required for the purposes of the CST Act.

Refusal to issue forms [Sec. 7(3F)]

Section 7(3F) provides that the authority issuing the forms may refuse to issue such forms to a dealer who has failed to comply with an order or with the provisions of, until the dealer has complied with such order or such provisions, as the case may be.

Appeal against the order [Sec. 7(3H), 7(31) & 7(3J)]

i) Section 7(3H) provides that any person aggrieved by an order may, within thirty days of the service of the order on him, but after furnishing the security, prefer, in prescribed form and manner, an appeal against such order to the prescribed appellate authority.

ii) However, the appellate authority may, for sufficient cause, permit such person to present the appeal:
  (a) after the expiry of the said period of 30 days; or
  (b) without furnishing the whole or any part of such security.

iii) Section 7(3I) provides the procedure to be followed in hearing any appeal and the fees payable in respect of such appeals. This shall be such as may be prescribed.

iv) Section 7(3J) provides that the order passed by the appellate authority in any appeal shall be final.

Cancellation of Registration: [Sec. 7(4) & 7(5)]

i) Section 7(4) provides that a certificate of registration granted under Section 7 may :
  (a) Either on the application of the dealer to whom it has been granted, or, where no such application has been made, after due notice to the dealer, be amended by the authority granting it if he is satisfied that by reason of the registered dealer having changed the name, place or nature of his business or the class or classes of goods in which he carries on business or for any

other reason the certificate of registration granted to him requires to be amended; or

(b) Be cancelled by the authority granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that he has ceased to carry on business or has ceased to exist or has failed without sufficient cause, to comply with an order or with the provisions or has failed to pay any tax or penalty payable under the CST Act, or in the case of a dealer registered has ceased to be liable to pay tax under the sales tax law of the appropriate State or for any other sufficient reason.

ii) Section 7(5) provides that a registered dealer may apply in the prescribed manner not later than six months before the end of a year to the authority which granted his certificate of registration for the cancellation of such registration, and the authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly, and where he does so, the cancellation shall take effect from the end of the year.

Amendment in Certificate

i) A certificate of registration can be amended in any of the following cases :
   (a) Where the dealer changes his place of business;
   (b) Where there is a change in the goods dealt with by the dealer;
   (c) Where there is change in the constitution of the firm.

ii) The dealer should get his Certificate of Registration modified in the above cases, in order to avoid penalty.

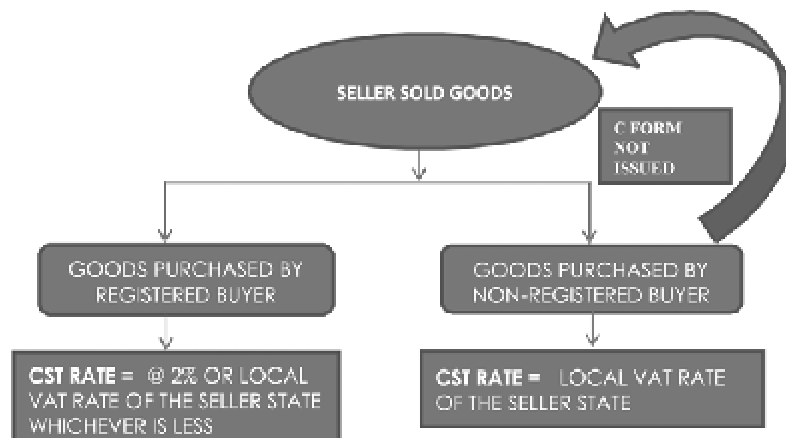
Benefits of Certificate of Registration

i) A certificate of registration provides the following benefits to the dealer:
   (a) By obtaining the requisite declaration forms from the department and using them, he can make interstate purchase @ 5%.
   (b) The dealer can also obtain form, which will enable him to claim total exemption in respect of subsequent sales, as laid down by section 6(2).

ii) Failure to get registered under the CST Act prevents a dealer from effecting interstate sale, even where the turnover is only ` 1.

RATES OF TAX IN THE COURSE OF INTER-STATE TRADE OR COMMERCE [Sec. 8(1) & 8(2)]

Incidence of central sales tax



If a sale or purchase takes place as per section 3(a) or 3(b) of the CST Act, 1956, then such sale or purchase falls within the ambit of the CST Act. Appropriate rate of tax will be levied on such taxable turnover based on the sale or purchase taken place between two registered dealers or between registered and unregistered dealer.

PURCHASE OF GOODS BY A REGISTERED DEALER [Sec. 8(3)]

Under section 8(3), a registered dealer can purchase goods as under:

i) Goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended:
   - (a) for re-sale by him or subject to any rules made by the Central Government in this behalf, or
   - (b) for use by him in the manufacture of processing of _goods for sale, or
   - (c) in mining, or
   - (d) in the generation or distribution of _electricity or any other form of power.

ii) Containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale or in the telecommunications network.

iii) Containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to above or for the packing of any containers or other materials specified in the certificate of registration referred to above.

Thus, the purpose for which the dealer purchases goods will have to conform to the purpose for which he was registered under the CST Act.

FURNISHING OF DECLARATION [Sec. 8(4)]

i) Section 8(4) provides that the provisions of Section 8(1) shall not apply to any sale in the course of interstate trade or commerce, unless the

dealer selling the goods furnishes to the prescribed authority in the prescribed manner :

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.

ii) However the declaration in prescribed Form, is required to be furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

POWER TO EXEMPT OR IMPOSE TAX AT CONCESSIONAL RATES [Sec. 8(5)]

Section 8(5) provides that ‗the State Government' may, on the fulfillment of the requirements laid down in Section 8(4) by the dealer, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein, direct that :

(a) No tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of interstate trade or commerce to a registered dealer or the Government, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in Section 8(1) or Section 8(2), as may be mentioned in the notification;

(b) In respect of all sales of goods or sales of such classes of goods, as may be specified in the notification, which are made, in the course of interstate trade or commerce to a registered dealer or the Government, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under the CST Act shall be payable or specified the tax on such sales shall be calculated at such lower rates than those specified in Section 8(1) or Section 8(2), as may be mentioned in the notification.

SALE FOR UNITS LOCATED IN SPECIAL ECONOMIC ZONE [Sec. 8(6)]

Section 8(6) provides that sale made by a dealer in the course of interstate trade or commerce to a registered dealer in any Special Economic Zone is not liable for tax subject to the following conditions:

i) The sale should be to a registered dealer in Special Economic Zone.

ii) The registered dealer has been purchasing the goods for the purpose of setting up operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, reengineering, packaging or for use as packing material or packing accessories in an unit located in any Special Economic Zone.

iii) The establishment of such unit is authorized by the Authority specified by the Central Government.

iv) The goods or class of goods shall be specified in the certificate of registration of such dealer.

v) The dealer selling the goods should obtain a declaration in the prescribed form duly filled and signed by the dealer in Special Economic Zone to whom such goods are sold.

vi) The above declaration should be furnished, by the dealer, who sold the goods to the prescribed authority.

DETERMINATION OF TAXABLE TURNOVER (Sec. 8A)

(A) Deduction from Aggregate of the Sale Prices [Sec. 8A(1)]

The following deductions are permitted for the aggregate of sales prices, in determining the turnover:

i) The amount arrived at by applying the following formula :

No deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer has been otherwise deducted from the aggregate of sale prices.

Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax.

ii) The sale price of all goods returned to the dealer by the purchasers of such goods within a period of 6 months from the date of delivery of the goods.

However, satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority competent to assess or, as the case may be, reassess the tax payable by the dealer under the CST Act; and

iii) Such other deductions as the Central Government may prescribe, having regard to the prevalent market conditions, facility of trade and interests of consumers.

(B) No Other Deduction from Aggregate Sale Prices [Sec. 8A(2)]

No other deductions are allowed from the aggregate of the sale prices except which are provided in Section 8A(2). To determine the turnover from the Turnover inclusive of CST (as calculated above), following formula shall be applied:

$$\text{Turnover} = \frac{(\text{Turnover inclusive of CST})}{(100 + \text{Rate of Tax})} \times 100$$

$$\text{CST} = \frac{(\text{Turnover inclusive of CST}) \times (\text{Rate of Tax})}{(100 + \text{Rate of Tax})}$$

LEVY & COLLECTION OF TAX (Sec. 9)

A. Section 9(1):

Nature of Transaction	State empowered to levy tax
i. Interstate sale transaction whether covered by Section 3(a) or 3(b).	State in which movement of goods commenced.

ii. Subsequent sale not 'exempt' u/s 6(2) effected by a registered dealer.	State from which the registered dealer obtained the relevant forms for claiming exemption.
iii. Subsequent sale not 'exempt' u/s 6(2) effected by an unregistered dealer.	State from which such subsequent sale has been effected by the unregistered dealer.

B. Section 9(2): Powers of Authorities of the Appropriate State under CST Act.

i) The authorities of the appropriate state are empowered to assess, re-assess, collect and enforce payment of any tax, including any penalty payable by a dealer under the CST Act as if it is a tax or penalty payable under the local sales tax law.

ii) For the aforementioned purpose, the authorities may exercise all or any of the powers they have under the general sales tax law of the State.

iii) All the provisions of the local sales tax law in relation to offences, penalties and penalties in lieu of prosecution shall, with necessary modifications, apply to offences under CST Act, except for the provisions of Section 10 and 10A of the Act.

C. Section 9A: Collection of Tax to be only by Registered Dealers-

Section 9A provides that no person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of interstate trade or commerce any amount by way of tax under the CST Act, and no registered dealer shall make any such collection except in accordance with the CST Act and the rules made thereunder.

PENAL PROVISIONS UNDER CST ACT (Sec. 10)

Section 10 of the CST Act, 1956 provides for levy of penalty as provided below :

Sec.	Offence	Penalty
10(a)	Issue of false certificate under Sections 6(2) or 6A(1) or 8 (4).	Simple imprisonment, which may be extended to six months, or with fine or with both.
10 (aa) 10(b)	Failure to get registered under Section 7. Falsely represents that to purchase of goods of such class which are not covered by his registration certificate.	Fine of ` 50 per day till the offence continues. Upto 1.5 times of the tax due.
10 (c)	Purchase of goods without having a registration certificate.	Upto 1.5 times of the tax due.
10 (d)	Purchase of goods for the purpose mentioned in Section 8 (3) but failure to make use of goods for any such specified purpose.	Upto 1.5 times of the tax due.
10	Having possession of any prescribed	Upto 1.5 times of the tax due.

(e)	form, which has not been obtained as per prescribed procedure.	
10 (f)	Collecting any amount of tax in contravention of the provision of Section 9A.	Upto 1.5 times of the tax due.

IMPOSITION OF PENALTY IN LIEU OF PROSECUTION (Sec. 10A)

i) Section 10A(1) provides that if any person purchasing goods is guilty of an offence under section -10(b), (c) or (d), the authority who granted to him or, as the case may be, is competent to giant to him a certificate of registration may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under Section 8(2) in respect of the sale to him of the goods, if the sale had been one falling under that provision.

ii) No prosecution for an offence under section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under Section 10A.

iii) Section 10A(2) provides that the penalty imposed upon any dealer shall be collected by the Government of India in the manner provided in Section 9(2) :

Nature of offence	Manner of collection
Offence u/s 10(b) or 10(d)	Collected in the State in which the dealer purchasing the goods obtained in form prescribed u/s 8(4) (a) in connection with the purchase of such goods
Offence u/s 10(c)	Collected in the State in which the person purchasing the goods should have registered himself if the offence had not been committed.

6.21 COGNIZANCE OF OFFENCES (Sec. 11 & 12)

1. No Court shall take cognizance of any offence punishable under the CST Act or the rules made thereunder except with the previous sanction of : (a) The Government within the local limits of whose jurisdiction the offence has been committed or (b) Such officer of that Government as it may, by general or special order, specify in this behalf.
2. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.
3. All offences punishable under the Act shall be cognizable and bailable.
4. However, no suit, prosecution or other legal proceeding shall lie against any officer of Government for anything which is in good faith done or intended to be done under the Act or the rules made thereunder.

GOODS OF SPECIAL IMPORTANCE (Sec. 14)

The following categories of goods are declared as goods of special importance in interstate trade or commerce:

(a) Cereals (paddy, rice, wheat, maize, barley etc.)
(b) Coal (including coke in all its forms but excluding charcoal)
(c) Cotton of all kinds, cotton fabrics, cotton yarn
(d) Crude oil (including crude petroleum oils and mineral oils)
(e) Hides and skins (whether in a raw or dressed state)
(f) Jute
(g) Oilseeds (Peanut, Til, Cotton seed, Soya bean, etc)
(h) Pulses (Black gram, Green gram etc.)
(i) Man-made fabrics
(j) Sugars
(k) Tobacco (including unmanufactured tobacco, cigars, cigarettes etc.)
(l) Woven fabrics of wool
(m) Iron and steel (including pig & cast iron, steel semis, bars, plates, discs, rings, forgings and castings etc)

Restrictions and Conditions with reference to Declared Goods :

Section 15 provides that every sales tax law of a State shall imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions:

i) The tax payable under the Sales tax law in respect of sales inside the State shall not exceed 4%. Thus, the maximum rate of tax on declared goods for interstate or local sales shall be only 4%.
ii) Where local sales tax has been levied in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of interstate trade or commerce, and CST having been paid thereupon, the local sales tax paid shall be reimbursed to the seller making the interstate sale.
iii) Where a tax has been levied under the State law in respect of the sale or purchase inside the State of any paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.
iv) Where a tax on sale or purchase of paddy is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purposes of section 5(3), the paddy and rice shall be treated as a single commodity.
v) Each of the pulses referred to in Section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under State law.

Analysis of section 14 & 15

i) While section 14 declares certain goods to be of special importance, Section 15 places restriction on the tax that can be levied on such declared goods.
ii) One of the primary conditions laid down by section 15 is that on the declared goods the sales tax shall not be levied in excess of 4%. Further, Sales tax will not be levied at more than one stage.

iii) Secondly where under the local sales tax law tax has been levied on sale or purchase of goods within a state and where such goods are subsequently sold in the course of interstate sale and sales tax has been paid on such a sale, the local sales tax paid will have to be refunded to the dealer, making the Interstate sale.

iv) Also, where there are more than one enactments levying tax like sales tax, surcharge, turnover, additional tax etc. on the sale of goods, the aggregate of the multiple rates shall not exceed 4%.

v) When declared goods are sold in the same condition in which they are purchased without any further manufacture or processing, the subsequent sale will be exempted from tax. ―Single point Sales Tax‖ exemptions can be claimed only if the declared goods purchased, are sold subsequently in the same form.

LIABILITY OF LIQUIDATOR OF COMPANY IN LIQUIDATION (Sec. 17)

i) Notice of Appointment of Liquidator/Receiver : Every person-

(a) Who is the liquidator of any company, which is being wound up, whether under the orders of a Court or otherwise; or

(b) Who has been appointed the receiver of any assets of a company, shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the appropriate authority.

ii) Notification by Appropriate Authority: On receipt of notice from the Liquidator

- (a) The appropriate authority should notify to the liquidator the amount, which in the opinion of the appropriate authority would be sufficient to provide for any tax which is then or is likely thereafter to become payable by the company.
- (b) The above intimation should be made within 3 months of the receipt of notice of appointment.
- (c) The appropriate authority is empowered to make such inquiry or call for such information, as it may deem fit, for arriving at the tax liability.
- (d) The Company‘s liability under the CST Act, upto the date of winding up, shall be notified to the liquidator, in writing.

iii) Duties of Liquidator: The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority. On being so notified, he shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands.

iv) However, the Liquidator can part with such assets or properties of the Company for the following purposes:

- (a) Compliance with any order of a Court;
- (b) Payment of the tax payable by the Company under the CST Act;
- (c) Payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation;
- (d) Meeting reasonable costs and expenses of the winding up.

v) Personal Liability of Liquidator: The liquidator shall be personally liable for the payment of the tax, which the company would be liable to pay, if he: (a) fails to give the notice, as provided or (b) fails to set aside the amount as required by, or (c) parts with any of the assets of the company or the properties in his hands in contravention of the provisions.

vi) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

vii) Effect of these Provisions: The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

LIABILITY OF DIRECTORS OF PRIVATE COMPANY IN LIQUIDATION (Sec. 18)

i) Directors of a private company shall be jointly & severally liable for tax due under the CST Act if the following conditions are fulfilled:

  (a) The private company is wound up after the commencement of the CST Act.
  (b) Any tax assessed on the Company under the CST Act for any period, whether before or in the course of or after its liquidation, cannot be recovered.
  (c) The person was a director of the private company at anytime during the period for which the taxes due.

ii) The Director shall not be jointly and severally liable for the payment of such tax if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

CENTRAL SALES TAX APPELLATE AUTHORITY [Sec. 19]

i) Section 19 provides that the Central Government shall constitute an Authority, to be known as ‗the Central Sales Tax Appellate Authority,‖ which would settle inter-State disputes failing under Section 6A read with Section 9 of the CST Act.

ii) Composition of Authority: The Authority shall consist of the following Members appointed by the Central Government:

Member	Qualification
A Chairman	Retired Judge of the Supreme Court, or a retired Chief Justice of a High Court
An officer of the Indian Legal Service	Is or qualified to be, an Additional Secretary to the Government of India
An officer of a State Government	Not below the rank of Secretary or an officer of the Central Government not below the rank of Additional Secretary, who is an expert in sales tax matters

iii. Staff & Officers: The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

iv. Terms & Conditions: The salaries and allowances payable to, and the terms and conditions of service of, the Chairman and Members shall be such as may be prescribed.

APPEALS [Sec. 20]

i) This section shall apply to appeals filed by the aggrieved dealer against any order of the assessing authority made under Section 6A or Section 9 of the CST Act.
ii) The appeal shall be filed by the aggrieved dealer within 45 days from the date on which the order is served on him.
iii) However, the Authority may entertain any appeal after the expiry of 45 days, but not later than 60 days from the date of such service, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
iv) The application shall be made in quadruplicate and be accompanied by a fees of ` 5,000.

PROCEDURE ON RECEIPT OF APPEAL (Sec. 21)

i) On receipt of an appeal, the Authority shall cause a copy thereof to be forwarded to the Assessing Authority concerned as well as to each State Government concerned with the appeal and to call upon them to furnish the relevant records.
ii) The Authority shall adjudicate and decide upon the appeal filed against an order of the assessing authority.
iii) The Authority, after examining the appeal and the records called for either allow or reject the appeal.
iv) The appeal shall not be rejected without giving the appellant dealer a reasonable opportunity of being heard. v. Whether an appeal is rejected or accepted, reasons for such rejection or acceptance shall be given in the order.
v) The order shall be passed by the Authority within 6 months from the receipt of the appeal.
vi) A copy of every order shall be sent to the appellant and to the assessing authority.

POWERS OF THE CST APPELLATE AUTHORITY (Sec. 22 & 23)

Section 22:

i) The Authority shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:
    (a) Enforcing the attendance of any person, examining him on oath or affirmation;
    (b) Compelling the production of accounts and documents;
    (c) Issuing commission for the examination of witnesses;
    (d) The reception of evidence on affidavits;
    (e) Any other matter which may be prescribed.
ii) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code.

Section 23 :

The Authority shall have the power to regulate its own procedure in all matters arising out of the exercise of power under the CST Act.

AUTHORITY FOR ADVANCE RULINGS (Sec. 24)

The Authority for Advance Rulings constituted under section 245-0 of the Income-tax Act, 1961 shall be the authority under the CST Act till such time an authority is constituted under Section 19. On and from the date of the constitution of the Authority in under the CST Act, the proceedings pending with the Authority for Advance Rulings under Section 245-0 shall be transferred to the Authority under Section 19.

TRANSFER OF PENDING PROCEEDINGS (Sec. 25)

Section 25 provides that on and from the date when the Authority is constituted under Section 19, every appeal arising out of the provisions contained in Chapter VI :

(a) Which is pending immediately before the constitution of such Authority before the appellate authority constituted under the general sales tax law of a State or of the Union territory, as the case may be; or

(b) Which would have been required to be taken before such appellate Authority; shall stand transferred to such Authority on the date on which it is established.

APPLICABILITY OF ORDER PASSED (Sec. 26)

An order passed by the Authority shall bt, binding on each State Government concerned, the assessing authorities and other authorities created by or under any law relating to general sales tax, in force for the time being in any State or Union territory.

FORMS

Form A	This form is prescribed for application to get registered u/s 7 of CST Act. Details such as name, status, place of business, warehouses, nature of business, nature and purpose of goods to be dealt, goods to be bought from outside the state etc., are required to be furnished.
Form B	Certificate of registration shall be issued by the authority in this form. The certificate of registration should be kept in the principal place of business an copies thereof in the branches inside the appropriate state
Form C	Registered dealers are entitled to certain exemptions under CST Act, 1956. Form C is used by a purchasing dealer to get the goods at confessional rate of duty and is issued in favour of the dealer who effects interstate sale. It is obtained from the sales tax authorities in the state in which the purchasing dealer is registered. It contains particulars such as name of purchasing dealer, sales tax registration no., its validity, details of goods obtained (whether for resale, manufacture, processing or as packing material), name and address of the seller etc.

Form D	Abolished w.e.f. 1.4.2007
Form EI & E II	In case of subsequent sale in the course of Interstate sale, the dealer effecting subsequent sale can avail exemption by submitting Form C issued by his customer and by submitting Form E-1, issued by his seller. Form, E-I & E-II etc. are printed by the Sales Tax department and are supplied to the registered dealer for their use. Form E-II will have to be issued, in case there are more than one subsequent sale. Thus, it should be noted that Form E-I can be issued by the first seller alone. Form E-II & E-III will have to be submitted by those selling dealer (other than the first dealer) to their purchaser, who can avail of the exemption under section 6(2), subject to the condition that Form C is submitted as well.
Form F	Form by branch / consignment agent for goods received on stock transfer
Form G	Indemnity bond when C form lost
Form H	Certificate of Export
Form I	Certificate by SEZ unit

(b) The impact of VAT on CST:

(i) If goods are purchased from another state, Input Tax Credit (ITC) of CST paid in other state will not be granted by the State where the goods are consumed or sold.

(ii) If goods are sent to another State on stock transfer basis, only restricted input credit will be given. It means up to @2% tax paid on inputs ITC not allowed.

B. TAMIL NADU GENERAL SALES TAX ACT

Tamil Nadu (the erstwhile State of Madras) was the first State in India which introduced Sales Tax in 1939. The 1939 Act was repealed and replaced by the Tamil Nadu General Sales Tax Act, 1959 with effect from 1.4.1959. Till December 2006 the following enactments for the levy of sales tax are in force in the State.

A. Tamil Nadu General Sales Tax Act, 1959.
B. Tamil Nadu Additional Sales Tax Act, 1970.
C. Tamil Nadu Sales Tax (surcharge) Act, 1971.
D. Central Sales Tax Act, 1956.

VAT was first introduced in India in 1986. Originally it was known as Modified Value Added Tax (MODVAT), this tax system was introduced at central level with the aim to allow manufacturers to obtain reimbursement of the excise duties paid on goods. Initially the scope was confined to raw materials and components; in 1994, it was extended to include capital goods. In April 2000 MODVAT was renamed CENVAT and new recovery opportunities were introduced.

In April 2005 the central government announced introduction of state level VAT system and in the first spell 21 states implemented the VAT System. In April 2006 VAT was implemented in Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh and Rajasthan. Later VAT was also implemented in Tamil Nadu, Pondicherry and UP. Tamil Nadu Value Added Tax Act 2006 has come into effect from 1st January 2007. VAT is a multi-stage tax on goods that is levied across various stages of production and supply with credit given for tax paid at each stage of Value addition. VAT is the most progressive way of taxing consumption rather than business.

1. Meaning of VAT?

VAT is a multi point levy where the tax paid on local purchases from the registered dealer can be set off against the tax payable on the sale of goods, other than special goods.

2. The method of calculation of determining the tax liability under the present Sales Tax system different from this method

In the present Sales tax system, tax liability of a dealer for a particular period is determined using the multiplication method i.e. The taxable turnover of a dealer for a particular period is multiplied by the rate of tax applicable to that turnover. In VAT, the method adopted is Input Tax Credit method as stated above. This is the only difference between the present Sales Tax system and the VAT.

3. Taxes that were replaced by VAT

General Sales Tax, Resale Tax, Surcharge, Additional Sales Tax will be replaced by VAT. The Central Sales Tax Act, 1956 regulating the inter-state transactions of sale and purchase will continue. The Entry Tax on Vehicles and Goods will continue.

4. Rates of tax under VAT

At the time of introduction VAT in Tamil Nadu the rates were 1%, 4% and 12.5% on goods eligible for input tax credit. Later it was revised to 1%, 5% and 14.5%.

5. Special rate of tax other than above 3 rates?

There are special rates of tax on certain goods which are kept out of VAT. No input tax credit is allowable for these goods. (e.g) Petrol.

6. Who are dealers under VAT?

A dealer is a person who purchases, sells, supplies or distributes the goods in the course of his business for valuable consideration. The VAT Act includes:

1) Local authority, Company, Hindu undivided family, Association of persons, Firm
2) Casual trader, factor, commission agent, delcredere agent, auctioneer, local branch of the firm or company situated outside the State
3) Person who effects transfer of property in goods other than by way of sale
4) dealer in hire purchase, works contract, person who transfers right to use the goods
5) Dealer in eatables including food and drinks (ie., hotels, restaurants and sweet stalls).
6) Port Trust, Railway Administration, Shipping, Transport and Construction Companies, Air Transport Corporation and Airlines.
7) Any person holding permit for transport vehicles
8) Tamil Nadu State Road Transport Corporation
9) Customs Department, Insurance Company, Advertising Agencies
10) Corporation or Companies of State and Central Governments

7. Who are liable for Registration?

1) Those dealers whose total turnover in respect of purchase and sales in the State is more than ` 10 lakhs for a year are to get registered under the Act.
2) The other dealers whose total turnover for a year is more than ` 5 lakhs shall get registered.
3) Casual Traders, agent of non-resident dealer and dealers in jewellery irrespective of quantum of turnover shall obtain registration.
4) Those dealers who intend to commence the business, on option, may obtain registration.

8. What is the Registration fee?

The registration fee is ` 500/- for principal place of business and ` 50/- for each additional place of business. (Branches, Godowns). No Security Deposit is necessary for Registration, for dealers. There is no renewal of registration under VAT and it is permanent till it is cancelled by

the Department or on stoppage of business when reported by the dealer. No security deposit is necessary for Registration.

9. Who is the registering authority?

Head of the assessment circle in whose jurisdiction the dealer‘s principal place of business is situated.

10. What is TIN?

The registration number allotted to the dealers is popularly known as TIN i.e. Taxpayer Identification Number. This is a eleven digit number to be quoted in all VAT transactions and correspondence

11. Whether dealer registered under Tamil Nadu General Sales Tax Act, 1959 has to apply for TIN?

All registered dealers under TNGST Act 1959 whose registration is in force shall be provided with TIN automatically without any fee. But after receipt of TIN, the dealers have to file application for obtaining

certificate of registration under VAT. Dealers may get TIN, download application and file the details of the application online in the websites _www.tnsalestax.com, or www.tnsalestax.gov.in or www.tnvat.gov.in to speed up the process of registration

12. How to apply for registration?

On Introduction of VAT, a new dealer shall file an application in the specified form along with fee as detailed above to the registering authority in whose jurisdiction, his principal place of business is situated with a sufficiently stamped self addressed enveloped, with necessary documents required in the application form.

13. How is the certificate of registration issued?

The registered authority shall acknowledge the receipt of application filed by the dealer. Thereafter, he shall issue certificate of registration within 30 days from the date of receipt of application. In order to speed up the process of registration one can utilise the e-services through web sites of the department www.tnsalestax.com, or www.tnsalestax.gov.in or www.tnvat.gov.in

14. What is exempted sale?

An exempted sale is a sale on which no tax is levied, and no Input Tax Credit is allowed.

15. What is zero rated sale?

Zero rate sale is a sale for which no tax is levied but the tax paid on local purchases is refunded to dealer who effected that sale. The Value Added Tax Act specified the zero rated sales as:

a) Export Sec.5(1)
b) Sale in the course of export 5 (3) of CST Act, 1956] (i.e.) Sale to Exporters
c) Sale to International organizations d) Sale to SEZ

16. Is there any provision for compounding system of tax under VAT?

Yes there is. It is available for, on their option:

1) The dealers who effects second and subsequent sale in the State. The Act provides tax not exceeding 1% as notified by Government on the turnover for the above dealers whose total turnover for a year is less than ` 50 lakhs. Government have notified this rate as 0.5%
2) The Works contractors may opt to pay at compounded rates at 2% (civil), 4% (others) instead of paying tax at the rate prescribed for the goods involved.
3) The hotels, restaurants and sweet stalls may opt to pay tax at compounded rate prescribed in the Act at slab rates where total turnover is not less than ` 10 lakhs but not more than ` 50 lakhs.

No Input tax credit is allowable to those dealers who have opted for compounded system.

17. Whether the dealers must maintain detailed accounts under VAT as in TNGST regime?

The details of accounts to be maintained are available in the Rules

18. Whether dealers paying tax on composition basis have to maintain detailed accounts?

Not necessary

(a) The dealers who opted to pay tax on his total turnover not exceeding ` 50 lakhs are to maintain purchase and sales accounts alone.
(b) The dealers in hotels and restaurants are to maintain purchase and sales accounts alone.
(c) The works contractors are to maintain the accounts showing the details of contract and payments received alone.

19. How the returns are to be filed?

Every dealer who is liable to pay tax under this Act shall file return on or before 20th of the succeeding month to Assessing authority in whose jurisdiction the principal place of business is located along with statement of purchases and sales effected by him during the month in the Form specified in Rules. Every dealer whose taxable turnover in the preceding year is Two hundred crores of rupees and above shall file return on or before 12th of succeeding month along with statement of purchases and sales effected by him during the month. The returns shall be filed either electronically or by ICR forms. The returns so filed shall be accompanied with proof of payment. The category of dealers to file returns either electronically or by ICR forms may be notified by the Commissioner as per VAT rules.

20. What is the mode of payment of tax?

(i) by remittance into a State Bank of India or any other bank authorised by Government from time to time (or)
(ii) by remittance in cash into a Government Treasury or to the assessing authority or other officer empowered to make the demand or authorised to make the collection (or)

(iii) by means of a crossed cheque in favour of the assessing authority drawn on any one of the banks situated within the city / town where office of the assessing authority is situated (or)

(iv) by means of a crossed demand draft or a banker's cheque drawn in favour of the assessing authority (or)

(v) by any other mode as authorised by the Government from time to time.

21. How is the assessment made?

All the assessments are self-assessments as all returns filed are to be accepted. The dealers need not appear before assessing authority or produce the accounts for annual assessments. The assessing authority shall accept the returns filed by the dealer and pass assessment order after the assessment year is over. The orders shall be served on dealers in the manner prescribed in Rules.

22. What is self-assessment?

Self determination of tax liability by dealer through periodical returns prescribed in the Act is called Self-assessment.

23. Will there be any random check of accounts?

Yes. The Commissioner of Commercial Taxes, may select assessments not exceeding 20% of total self assessments in the State for detailed check of accounts. The details of such selection shall be placed on notice board in the assessment circle and in the department websites The accounts which are selected for detailed check shall be called and checked by assessing authority. After check, the assessing authority either accept and confirm the self assessment already passed or revise the assessment.

24. What are inputs?

Input means all purchases by a dealer in the course of his business, including capital goods. These goods may be meant for re-sale or use in manufacture, processing of other goods or packing of goods manufactured.

25. What is industrial input?

The industrial inputs are those goods which are notified by Government and generally go into manufacture of other goods and they are taxable at 4%.

26. What is input tax?

Input tax is the amount of tax paid on local purchases by a registered dealer to another registered dealer.

27. What is output?

Output means sale of goods made by a registered dealer to other registered dealers and Consumers in the course of his business.

28. What is output tax?

Output tax is tax collected on sale of goods from the buyer. The output tax is calculated by applying the rate of tax on taxable turnover of these goods.

29. What is Tax invoice?

Tax invoice is popularly known as bill, which should contain details of sale such as name and address of the purchaser with his TIN, name of goods, quantity of goods sold, its value etc. and tax rate and amount charged separately. This invoice / bill is to be issued in duplicate, the original for purchaser and duplicate to be retained by the selling dealer.

30. What is input tax credit?

Input tax credit is an aggregate total amount of tax paid by a registered dealer on the total purchases made by him within the State from other registered dealers (for a particular period.); but not eligible in some cases. The input tax credit includes the purchase tax paid under Section 12 of the VAT Act. The input tax credit can be adjusted against the tax payable by the purchasing dealer on his sales. The dealers are not eligible for input tax credit on all inputs. There are certain restrictions and conditions on eligibility of input tax credit. They are given in detail under TNVAT Act, 2006.

31. How is input tax credit claimed?

Input tax credit shall be claimed only on the basis of original purchase tax invoice issued by registered selling dealer.

A registered dealer can claim input tax credit on his purchases, if he holds a valid "Tax Invoice" / bill at the time of furnishing his return to assessing authority.

32. Whether input tax credit can be claimed , if the original invoice is lost ?

Yes. It can be claimed on the basis of duplicate / carbon copy of the invoice obtained from selling dealer.

33. Is this benefit available to the dealers who opt to pay tax at a Compounded rate? No.

34. What are the transactions not eligible for input tax credit?

(a) Sale of exempted goods
(b) purchase of goods from outside the State
(c) goods purchased in the course of business, but used for personal facility of proprietor, partner or director
(d) goods damaged in transit
(e) goods stolen, destroyed or lost
(f) goods sold in the course of inter-state sale without support of C form
(g) goods transferred to outside the State for sale either by branch or agent without support of Form F
(h) goods returned

35. Can a dealer claim Input Tax Credit for goods sold in Inter- State trade?

Yes. It can be claimed only when those sales are effected to the Registered dealers of other State against Form C.

36. Whether claim of input tax credit is on a one to one basis?

No. The tax paid on purchases in a period can be deducted from tax payable on sale, whether such goods is sold or not during that particular period.

37. Will there be Input Tax Credit for all purchases?

No, It will be available only for local purchases from registered dealers, but not on goods taken for self-use/given as samples, gifted, lost in theft, fire, damaged or destroyed/all automobiles including two wheelers, three wheelers and their spare parts for repair or maintenance, air-conditioning units, refrigerators.

38. Whether the goods held in closing stock are eligible for input tax credit?

Yes. A registered dealer is entitled for input tax credit for goods held in closing stock on the previous date of the commencement of VAT Act 2006. The goods should have been purchased within one year prior to commencement of the Act (closing stock relating to purchases locally made during the period January 2006 to December 2006) from registered dealer – where tax amount with rate of tax are shown separately in purchase invoices

39. Is there any time-limit to claim the Input Tax Credit?

Yes. In the case of goods held in Closing stock on 31.12.2006,the time-limit is within 30 days from the date of commencement of the VAT Act, that is, before 1.2.2007.In the case of other goods it is three years.

40. What is the procedure to be adopted to claim input tax credit for the goods held in closing stock ?

A registered dealer who claims input tax credit for the goods held in closing stock shall furnish details of inventory with details of input tax paid to the assessing authority within thirty days from the date of the commencement of the Act along with Photostat copy of the related purchase invoices / bills in the prescribed form. The dealer can take the credit and deduct it from tax payable on sale immediately from January 2007. The dealer shall adjust the credit within six months. After adjustment, if there is tax credit available, the same shall lapse to Government, after six months. The assessing authority, after receipt of inventory and after verification of the genuineness of the claim shall pass order determining the quantum of input tax credit eligible for the dealer within 3 months.

41. What is meant by Capital Goods?

Capital goods are, in general, the movable assets like Plant and machinery used in industry, for manufacture of goods ,but do not mean goods (stock- in- trade) for sale.

42. What are Capital Goods under the VAT Act?

Capital goods‖ means, –

a) plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products;
b) Pollution control, quality control, laboratory and cold storage equipment;
c) Components spare parts and accessories specified at (a) and (b) above;
d) moulds, dies, jigs and fixtures,
e) refractors and refractory materials,
f) tubes, pipes and fittings thereof; and
g) Storage tanks used in the State for the purpose of manufacture, processing, packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the Government.

43. Are capital goods held in closing stock eligible for input tax Credit ?

No.

44. Will there be Input Tax credit for all Capital Goods?

Yes, but not for all. Goods notified by the Government are not eligible for Input Tax Credit which are under the negative list and not eligible for the Capital Goods purchased before 1.1.2007

45. How the Input Tax Credit-has to be claimed and availed for Capital Goods?

Every registered dealer while submitting monthly returns to the assessing authority/can claim the Input Tax Credit paid for all local purchases made from registered dealers on the basis of Original Tax Invoices in those returns itself for Capital Goods, after the commencement of commercial production. They can deduct the same from the Output tax, if any, payable on the local sales or inter-State sales in those monthly returns. In the first year of commencement of commercial production, 50% of the input tax credit not exceeding 50% can be availed and the rest in the second or third year. But fees condition is not applicable to parts and accessories. At the end of the third year, any credit not availed will be lapsed to Government.

46. Is Input Tax credit available for all?

No. Input Tax credit is not available for Capital Goods used for manufacture of goods which are exempted from tax.

47. Will there be Input Tax credit for Capital Goods used in Lease or Works Contract?

Yes, but not for the dealers who have opted to pay tax under compounding system.

48. What is the rate of tax for Capital Goods?

The rate of tax is 4% vide item no.

49. What is reversal of input tax credit?

Reversal of Input Tax Credit means reduction of Input Tax Credit to nullify input tax credit wrongly claimed and availed.

50. When the input tax credit has to be reversed?

(1) Input tax credit was availed but subsequently the related goods have been stolen or damaged or destroyed.
(2) Input tax credit was claimed but subsequently it has been detected that related purchases are from bogus traders (bill traders).
(3) Input tax credit was availed but related goods have been given as free sample or gift to others.
(4) Input tax credit availed but subsequently the related goods are used to provide facility to the proprietor / partner / director. of the concern.

51. How will the refund be issued to the exporters (dealers who effect zero rate sale)

The dealer who claims refund due to zero rate sales may file an application in Form D1 to the assessing authority along with copies of the purchase invoices of related goods. After verification the assessing authority will issue refund within 90 days from the date of receipt of application in Form D1. If the excess amount is not refunded within ninety days, whatever may be the reason, the assessing authority will issue refund along with interest at the rate prescribed in the Act. If the dealers, do not claim refund within 180 days from the date of export or before the end of the financial year, whichever is later, the amount to be refunded shall lapse to Government.

52. Whether there will be any change in appeal procedure to the earlier TNGST Act?

No. The appeal procedure detailed in Tamil Nadu General Sales Tax Act will continue in VAT also.

53. Whether deferral and waiver will continue?

Yes, by application for continuance to the Assistant Commissioner concerned. Waiver unit may opt for deferral on application

54. What will be the role of Enforcement Wing in VAT system? Enforcement Wing will function as Audit Wing and do detection of wrong claim of Input Tax Credit under VAT system.

55. What is the remedy when the Assessing Authority makes provisional order disallowing the Input Tax Credit, on scrutiny of monthly return(s)?

A revision petition may be filed to the Deputy Commissioner concerned, as in the TNGST Act, 1959.

GOODS AND SERVICES TAX (GST) ACT

Concept of GST

The introduction of Goods and Services Tax (GST) would be a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, it would mitigate cascading or double taxation in a major way and pave the way for a common national market. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated to be around 25%-30%. Introduction of GST would also make Indian products competitive in the domestic and international markets. Studies show that this would have a boosting impact on economic growth. Last but not the least, this tax, because of its transparent and self-policing character, would be easier to administer.

Genesis

The GST was first mooted by the then Union Finance Minister in his Budget for 2007-08. Initially, it was proposed that GST would be introduced from 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States sofar.

GST and Centre-State Financial Relations

Currently, fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on sale of goods. In case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the originating States. As for services, it is the Centre alone that is empowered to levy service tax. Since the States are not empowered to levy any tax on the sale or purchase of goods in the course of their importation into or exportation from India, the Centre levies and collects this tax as additional duties of customs, which is in addition to the Basic Customs Duty. This additional duty of customs (commonly known as CVD and SAD) counter balances excise duties, sales tax, State VAT and other taxes levied on the like domestic product. Introduction of GST would require amendments in the Constitution so as to concurrently empower the Centre and the States to levy and collect the GST.

The assignment of concurrent jurisdiction to the Centre and the States for the levy of GST would require a unique institutional mechanism that would ensure that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needs to have Constitutional force.

Constitution (One Hundred and First) Amendment Act, 2016

To address all these and other issues, the Constitution (122ndAmendment) Bill was introduced in the 16thLok Sabha on 19.12.2014. The Bill provides for a levy of GST on supply of all goods or services except for Alcohol for human consumption. The tax shall be levied as Dual GST separately but concurrently by the Union (central tax - CGST) and the States (including Union Territories with legislatures) (State tax - SGST) / Union territories without legislatures (Union territory tax- UTGST). The Parliament would have exclusive power to levy GST (integrated tax - IGST) on inter-State trade or commerce (including imports) in goods or services. The Central Government will have the power to levy excise duty in addition to the GST on tobacco and tobacco products. The tax on supply of five specified petroleum products namely crude, high speed diesel, petrol, ATF and natural gas would be levied from a later date on the recommendation of GST Council.

A Goods and Services Tax Council (GSTC) shall be constituted comprising the Union Finance Minister, the Minister of State (Revenue) and the State Finance Ministers to recommend on the GST rate, exemption and thresholds, taxes to be subsumed and other features. This mechanism would ensure some degree of harmonization on different aspects of GST between the Centre and the States as well as across States. One half of the total number of members of GSTC would form quorum in meetings of GSTC. Decision in GSTC would be taken by a majority of not less than three-fourth of weighted votes cast. Centre and minimum of 20 States would be required for majority because Centre would have one-third weightage of the total votes cast and all the States taken together would have two-third of weightage of the total votes cast.4.2 The Constitution Amendment Bill was earlier passed by the Lok Sabha in May, 2015. The Bill was referred to the Select of Rajya Sabha on 12.05.2015. The Select Committee had submitted its Report on the Bill on 22.07.2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter by Lok Sabha in August, 2016. Further the bill had been ratified by required number of States and received assent of the President on 8thSeptember, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16th September, 2016.

Goods and Services Tax Council (GSTC)

The GSTC has been notified with effect from 12th September, 2016. GSTC is being assisted by a Secretariat. Thirteen meetings of the GSTC have been held so far. The following decisions have been taken by the GSTC:

(i) The threshold exemption limit would be ` 20 lakh. For special category States enumerated in article 279A of the Constitution, threshold exemption limit has been fixed at ` 10 lakh.

(ii) Composition threshold shall be ` 50 lakh. Composition scheme shall not be available to inter-State suppliers, service providers (except restaurant service) and specified category of manufacturers.

(iii) Existing tax incentive schemes of Central or State governments may be continued by respective government by way of

reimbursement through budgetary route. The schemes, in the present form, would not continue in GST.

(iv) There would be four tax rates namely 5%, 12%, 18% and 28%. Besides, some goods and services would be under the list of exempt items. Rate for precious metals is yet to be fixed. A cess over the peak rate of 28% on certain specified luxury and sin goods would be imposed for a period of five years to compensate States for any revenue loss on account of implementation of GST. The Council has asked the Committee of officers to fit various goods and services in these four slabs keeping in view the present incidence of tax.

(v) The five laws namely CGST Law, UTGST Law, IGST Law, SGST Law and GST Compensation Law have been recommended.

(vi) In order to ensure single interface, all administrative control over 90% of taxpayers having turnover below ` 1.5 crore would vest with State tax administration and 10% with the Central tax administration. Further all administrative control over taxpayers having turnover above ` 1.5 crore shall be divided equally in the ratio of 50% each for the Central and State tax administration.

(vii) Powers under the IGST Act shall also be cross-empowered on the same basis as under CGST and SGST Acts with few exceptions.

(viii) Power to collect GST in territorial waters shall be delegated by Central Government to the States.

(ix) Formula and mechanism for GST Compensation Cess has been finalised.

(x) Four rules on input tax credit, composition levy, transitional provisions and valuation have been recommended. Further five Rules on registration, invoice, payments, returns and refund, finalized in September, 2016 and as amended in light of the GST bills introduced in the Parliament, have also been recommended.

(xi)

SALIENT FEATURES OF GST

The salient features of GST are asunder:

(1) GST would be applicable on ―supply‖ of goods or services as against the present concept of tax on the manufacture of goods or on sale of goods or on provision of services.

(2) GST would be based on the principle of destination based consumption taxation as against the present principle of origin based taxation.

(3) It would be a dual GST with the Centre and the States simultaneously levying it on a common base. The GST to be levied by the Centre would be called Central GST (CGST) and that to be levied by the States [including Union territories with legislature] would be called State GST(SGST). Union territories without legislature would levy Union territory GST (UTGST).

(4) An Integrated GST (IGST) would be levied on inter-State supply (including stock transfers) of goods or services. This would be collected by the Centre so that the credit chain is not disrupted.

(5) Import of goods would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties.

(6) Import of services would be treated as inter-State supplies and would be subject to IGST.

(7) CGST, SGST /UTGST& IGST would be levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the GSTC.

(8) GST would replace the following taxes currently levied and collected by the Centre:
   a) Central Excise Duty;
   b) Duties of Excise (Medicinal and Toilet Preparations);
   c) Additional Duties of Excise (Goods of Special Importance);
   d) Additional Duties of Excise (Textiles and Textile Products);
   e) Additional Duties of Customs (commonly known as CVD);
   f) Special Additional Duty of Customs (SAD);
   g) Service Tax;
   h) Cesses and surcharges insofar as they relate to supply of goods or services.

(9) State taxes that would be subsumed within the GST are:
   (a) State VAT;
   (b) Central Sales Tax;
   (c) Purchase Tax;
   (d) Luxury Tax;
   (e) Entry Tax (All forms);
   (f) Entertainment Tax (except those levied by the local bodies);
   (g) Taxes on advertisements;
   (h) Taxes on lotteries, betting and gambling;
   (i) State cesses and surcharges insofar as they relate to supply of goods or services.

(10) GST would apply to all goods and services except Alcohol for human consumption.

(11) GST on five specified petroleum products (Crude, Petrol, Diesel, ATF & Natural gas) would be applicable from a date to be recommended by the GSTC.

(12) Tobacco and tobacco products would be subject to GST. In addition, the Centre would continue to levy Central Excise duty.

(13) A common threshold exemption would apply to both CGST and SGST. Taxpayers with an annual turnover of ` 20 lakh (` 10 lakh for special category States as specified in article 279A of the Constitution) would be exempt from GST. A compounding option (i.e. to pay tax at a flat rate without credits) would be available to small taxpayers (including to specified category of manufacturers and service providers) having an annual turnover of up to ` 50 lakh. The threshold exemption and compounding scheme would be optional.

(14) The list of exempted goods and services would be kept to a minimum and it would be harmonized for the Centre and the States as well as across States as far as possible.

(15) Exports would be zero-rated.

(16) Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST/UTGST paid on inputs may be used only for paying SGST/UTGST. In other words, the two streams of input tax credit (ITC) cannot be cross utilized, except in specified circumstances of inter-State supplies for payment of IGST. The credit would be permitted to be utilized in the following manner:
   a) ITC of CGST allowed for payment of CGST & IGST in that order;
   b) ITC of SGST allowed for payment of SGST & IGST in that order;
   c) ITC of UTGST allowed for payment of UTGST & IGST in that order;
   d) ITC of IGST allowed for payment of IGST, CGST & SGST/UTGST in that order. ITC of CGST cannot be used for payment of SGST/UTGST and vice versa.

(17) Accounts would be settled periodically between the Centre and the State to ensure that the credit of SGST used for payment of IGST is transferred by the originating State to the Centre. Similarly the IGST used for payment of SGST would be transferred by Centre to the destination State. Further the SGST portion of IGST collected on B2C supplies would also be transferred by Centre to the destination State. The transfer of funds would be carried out on the basis of information contained in the returns filed by the taxpayers.

(18) Input Tax Credit (ITC) to be broad based by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business.

(19) Electronic filing of returns by different class of persons at different cut-off dates.

(20) Various modes of payment of tax available to the taxpayer including internet banking, debit/ credit card and National Electronic Funds Transfer (NEFT) / Real Time Gross Settlement (RTGS).

(21) Obligation on certain persons including government departments, local authorities and government agencies, who are recipients of supply, to deduct tax at the rate of 1% from the payment made or credited to the supplier where total value of supply, under a contract, exceeds two lakhs and fifty thousand rupees (` 2.5 lac).

(22) Refund of tax to be sought by taxpayer or by any other person who has borne the incidence of tax within two years from the relevant date.

(23) Obligation on electronic commerce operators to collect _tax at source‘, at such rate not exceeding one per cent. (1%) of net value of taxable supplies, out of payments to suppliers supplying goods or services through their portals.

(24) System of self-assessment of the taxes payable by the registered person.

(25) Audit of registered persons to be conducted in order to verify compliance with the provisions of Act.

(26) Limitation period for raising demand is three (3) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short-payment or non-payment of tax or erroneous refund and its adjudication in normal cases.

(27) Limitation period for raising demand is five (5) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short-payment or non-payment of tax or erroneous refund and its adjudication in case of fraud, suppression or willful misstatement.

(28) Arrears of tax to be recovered using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person.

(29) Officers would have restrictive powers of inspection, search, seizure and arrest.

(30) Goods and Services Tax Appellate Tribunal would be constituted by the Central Government for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. States would adopt the provisions relating to Tribunal in respective SGST Act.

(31) Provision for penalties for contravention of the provision of the proposed legislation has been made.

(32) Advance Ruling Authority would be constituted by States in order to enable the taxpayer to seek a binding clarity on taxation matters from the department. Centre would adopt such authority under CGST Act.

(33) An anti-profiteering clause has been provided in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers.

(34) Elaborate transitional provisions have been provided for smooth transition of existing taxpayers to GST regime.

Benefits of GST

7. (A) Benefit for the Indian Nation as a whole

i) Will help to create a unified common national market for India, giving a boost to Foreign investment and ―Make in India‖ campaign;

ii) Will prevent cascading of taxes as Input Tax Credit will be available across goods and services at every stage of supply;

iii) Harmonization of laws, procedures and rates of tax;

iv) It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth;

v) Ultimately it will help in poverty eradication by generating more employment and more financial resources;

vi) More efficient neutralization of taxes especially for exports thereby making our products more competitive in the international market and give boost to Indian Exports;

vii) Improve the overall investment climate in the country which will naturally benefit the development in the states;

viii) Uniform SGST and IGST rates will reduce the incentive for evasion by eliminating rate arbitrage between neighboring States and that between intra and inter-state sales;

ix) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption, which in turn means more production thereby helping in the growth of the industries . This will create India as a ‖ Manufacturing hub‖.

(B) Ease of Doing Business

i) Simpler tax regime with fewer exemptions;
ii) Reductions in the multiplicity of taxes that are at present governing our indirect tax system leading to simplification and uniformity;
iii) Reduction in compliance costs - No multiple record keeping for a variety of taxes - so lesser investment of resources and manpower in maintaining records;
iv) Simplified and automated procedures for various processes such as registration, returns, refunds, tax payments, etc;
v) All interaction to be through the common GSTN portal- so less public
vi) interface between the taxpayer and the tax administration;(vi) Will improve environment of compliance as all returns to be filed online, input credits to be verified online, encouraging more paper trail of transactions;
vii) Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will lend greater certainty to taxation system;
viii) Timelines to be provided for important activities like obtaining registration, refunds, etc;
ix) Electronic matching of input tax credits all-across India thus making the process more transparent and accountable.

(C) Benefit to Consumers:

i) Final price of goods is expected to be lower due to seamless flow of input tax credit between the manufacturer, retailer and service supplier;
ii) It is expected that a relatively large segment of small retailers will be either exempted from tax or will suffer very low tax rates under a compounding scheme- purchases from such entities will cost less for the consumers;
iii) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption.

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