C.V.O.CA'S NEWS & VIEWS

FOR MEMBERS / SUBSCRIBERS / VOL. 26 - NO. 12 JUNE 2023

From President's Desk...

Dear Professional Colleagues and Readers,

As I reach the end of my journey as president for the year 2022-23, I wanted to take a moment to express my deepest gratitude for everyone's unwavering support, dedication, and contributions to our vibrant community and our association. This is my final communication serves as an opportunity for me to reflect upon the remarkable achievements and cherished memories I have shared over the years as managing committee member, office bearer and finally president.

First and foremost, I would like to extend my heartfelt thanks to each and every member. It was your involvement, enthusiasm, and active participation in all the programs organised by the association. Your participation has made our association a thriving and welcoming environment for all. Whether it was just an attending the events or lending a helping hand, your collective efforts have truly made a difference.

I would also like to express my gratitude to my dedicated managing committee, the core group, and all those who have served in various leadership roles throughout the years. Your commitment to maintaining the excellence of our community has been unparalleled. Through your tireless efforts, we have accomplished numerous milestones and implemented initiatives that have positively impacted the lives of our KVO Community and members.

Furthermore, I extend my appreciation to the sponsors and supporters of various events, who have supported us wholeheartedly. Your generous contributions and partnerships have enabled us to host memorable events, enhance our amenities, and create a stronger sense of unity within our community.

In last one year, there have been many ups and downs, but the fun, the excitement of working together was never lost. In last one year, the team has achieved many milestones. As many as nine public program, one international trip, two RRC and finally the grand family event of Ramat-ji-Ramjat.

Although this may be my final communication, the memories I have created will forever remain in our hearts. I am confident that the bonds forged within this association will endure, transcending time and distance.

In closing, I wish the upcoming team, led by CA Jeenal Savla all the very best for the upcoming year and future endeavors. May the spirit of unity and togetherness continue to thrive within your hearts.

With heartfelt appreciation,

Thank you all..... Always in Gratitude

CA Amit Chheda

June 1, 2023

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SYMBOL OF NEW BHARAT

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FROM THE DESK OF CHAIRMAN

New parliament building was recently inaugurated by our hon'ble PM Shri Narendra Modi, as part of Central Vista Redevelopment Project, and is supposed to be one very modern yet inspired by rich Indian culture, history and heritage. It represents the emergence of new Bharat with its old glory. The new building will house larger Lok Sabha and Rajya Sabha. It will be interesting to know certain facts about the new parliament building:

- Bimal Hasmukh Patel, born on 31 August 1961 in Ahmedabad, Gujarat, is an architect, urbanist and academician who is the brains behind the new Parliament building. Bimal Patel studied architecture at the Centre for Environmental Planning and Technology (CEPT), Ahmedabad, in 1984 and completed his Master's degree in Architecture and City Planning in 1988. He received a PhD in City and Regional Planning in 1995 from the University of California, Berkeley. He completed his doctoral thesis under Marxist urban geographer Richard Walker. Incidentally, today Patel heads CEPT, the same institute that he studied from.

- New building's interiors have three national symbols as their main themes -- Lotus, Peacock and Banyan Tree. In the Lok Sabha chamber, the national bird Peacock is used as its theme, in Rajya Sabha chamber the national flower Lotus is its theme and in Central Lounge courtyard the national tree Banyan is its theme.

- Built using green construction techniques, the new building is supposed to reduce electricity consumption by 30 per cent, compared to the old one. Rainwater-harvesting and water-recycling systems have been included. It has been designed to be more space efficient, and meant to function for the next 150 years, according to the Ministry of Housing and Urban Affairs.

- The new building has a Constitution Hall, where the journey of Indian democracy has been documented.

- For the interior and exterior of the building, construction materials have been brought in from across the country, including sandstone from Sarmathura in Dholpur and granite from Lakha village in Jaisalmer, Rajasthan. Similarly, the wood used in the decor is from Nagpur and craftsmen from Mumbai have led the wooden architecture design. Bhadohi weavers from Uttar Pradesh have made the traditional hand-knotted carpets for the building.

- At all the entrances of the building, auspicious animals as guardian statues are exhibited, based on their importance in Indian culture and vaastu shastra. These include the elephant, the horse, the eagle, the swan, and mythical creatures shardula and makara.

- The new complex has 888 seats in the *Lok Sabha* chamber and 384 seats in the *Rajya Sabha* chamber. Unlike the old parliament building, it does not have a central hall. The Lok Sabha chamber able to house 1,272 members in case of a joint session.
- The Lok Sabha chamber at the new building also houses a Chola dynasty-era Sengol, a sceptre presented by Lord Mountbatten, the first governor-general of Independent India to the first prime minister Jawaharlal Nehru on the eve of the Indian independence.

Though the inauguration of the new parliament building was marred by political controversies and boycott by certain political parties, which were uncalled for, yet the event represents futuristic symbol of growing India and catering to the need to deal with bigger number of law makers once the freeze on delimitation comes to end in 2026. Also,

importantly the building showcases the India's rich culture, heritage and history, like installing of 'samudra manthan' sculpture, display depicting 'akhanda bharat', Chanakya, hast mudras, and so on.

India's new Parliament House embodies the nation's progress and aspirations. With its innovative design, modern amenities, and eco-friendly features, the new complex may be a marvel in its own, but more importantly, it is symbol of new, progressive, fast growing India that is on a path to lead the world in times to come.

Thank you all..... Always in Gratitude

CA Ketan Rambhia

PRESUMPTIVE TAXATION FOR BUSINESS OR PROFESSION UNDER SECTION 44 AD AND SECTION 44 ADA OF INCOME TAX ACT, 1961

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Presumptive Taxation under Section 44AD

To give relief to small sized taxpayer, the income tax act incorporated scheme of presumptive taxation. Under this scheme of Section 44AD and Section 44ADA, the taxpayers are exempted from maintaining books of account and getting it audited.

A person adopting the presumptive taxation scheme can declare income at a prescribed rate and, in turn, is relieved from tedious job of maintenance of books of account and also from getting the accounts audited.

Eligible Assessee :

The presumptive taxation scheme of section 44AD can be adopted by following person :

i. Resident Individual;

ii. Resident Hindu Undivided Family;

iii. Resident Partnership firm (Except LLP).

The scheme cannot be adopted by a Non-resident, Body of Individual, Association of Person, Limited Liability Partnership or Company.

The Scheme cannot be adopted by a person who has made any claim towards deductions under Section 10A/10AA/10B/10BA or under sections 80HH to 80RRB in the relevant year.

Eligible Business :

The persons in any businesses except following are not eligible for the benefit of the given relief:

1) the business of plying, hiring or leasing goods carriages referred to in Section 44AE;

2) a person who is carrying on any agency business (Section AD(6));

3) a person who is earning income in the nature of commission or brokerage (Section AD(6)). For example Insurance agents earn income by way of commission and, hence, they cannot adopt the presumptive taxation scheme of section 44AD ;

4) a person carrying on profession as referred to in section 44AA(1) is not eligible for presumptive taxation scheme (Section AD(6)).

So Eligible Business includes :

- Manufacturing
- Trading
- Wholesale
- Retail
- Job Work
- Service business
- Speculative/ Non speculative

The presumptive taxation scheme of section 44AD can be opted by the eligible persons, if the total turnover or gross receipts from the business do not exceed Three Crore Rupees where the amount or aggregate of the amounts received by the eligible assessee during the previous year, in cash, does not exceed five per cent of the total turnover or gross receipts of such previous year and also that the receipt of amount or aggregate of the amounts by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash. In other words, if the total turnover or gross receipt of the business exceeds Three Crore Rupees then the scheme of Section 44AD cannot be adopted.

The Finance Act, 2023 revised presumptive taxation limits under Section 44AD for FY 2023-24 (AY 2024-25) from Two Crore Rupees to Three Crore Rupees.

How to calculate the gross receipt or turnover?

Applicability of tax audit under section 44AB depends upon gross receipts, sales or turnover of an assessee, so the first and foremost thing is their calculations. As per 'Guidance Note on Terms Used in Financial Statement' published by the ICAI, the meaning of 'Turnover' shall be the aggregate amount for which sales are affected by an enterprise.

Total Turnover/ Gross Receipts – (Not defined in the Act)- ICAI —Guidance Note on Terms Used in Financial Statements , the expression —Sales Turnover (Item 15.01) has been defined.

As per this Section, the assessees have an option to choose either Mercantile or cash method of Accounting. Total Turnover is the amount received / receivable from clients in respect of sales of Previous Year. Gross Receipts are the amounts received from clients for the services provided or to be provided and does not include the value of material supplied by the client.

What are the receipts which forms part of Turnover :

1) GST, excise duty, Cess, and other Levy, if included in the Invoices / bills raised. (Depending on the Method of accounting followed by the assessee):
2) Sales of unusables empties and Packages;
3) Service Charges charged for delivery.

What are the receipts which does not form part of Turnover :

1) Sale of Property, Plant and Equipments;

2) Advance received from Customers, Deposits received or Retention money;

3) Any Security, retention or other deposit obtained from employees;

4) Interest Income or other similar receipts;

5) Value of Inventory.

Transactions of buying and selling units is a speculative activity (future goods unascertainable) where no physical delivery is taken or given – the amount of transactions as noted in the contract notes cannot be taken as turnover.

The value of the sale transactions of commodity carried out through MCX without taking delivery could not be considered as Turnover for the purpose of Section 44AB.

Where share broker does not sell goods of its constituents as his own and only charges commission for bringing two parties together to transactions of sale and purchase of shares, such transactions cannot amount to sale, turnover or receipt of share broker himself within meaning of Section 44AB.

When a person carries on several businesses, viz. wholesale and/or retail and or manufacture, the turnover or gross receipts of all the businesses are to be considered for the purposes of this section. Whether separate books or combined books are maintained by the assessee is not material. Combined turnover or gross receipts of all the businesses would form the basis for calculation of presumptive income.

In case Section 44AD and 44AE both are applicable. In the above said case, turnover of both the business shall not be clubbed and both the business shall be chargeable to tax u/s 44AD and 44AE of the Act respectively.

Example :

An Eligible Assessee is engaged in trading business of goods both in his own name and also as a consignee for another person. The Total Sales amount to Rs.1.30 Crore, Turnover Details are as follows:

Own Business Turnover = Rs.90 Lakh

Consignment Sales Turnover = Rs.40 Lakh

Whether Assessee can opt for Presumptive income computation or not?

For computing Turnover for 44AD, the turnover of sale of goods on his own name should alone to be considered i.e. Rs.90 Lakh. Here, the commission received on Consignment sales is liable for Tax Audit only when such commission exceeds the limit of Rs.1 Crore. Consignment Commission can be offered at any rate (Even below 8%), provisions of Section 44AD will not govern the commission income.

Manner of computation of taxable business income :

In case of a person adopting the provisions of section 44AD, income is computed on presumptive basis at the rate of 8% of the turnover or gross receipts of the eligible business for the year.

In order to promote digital transactions and to encourage small unorganized business to accept digital payments, section 44AD is amended with effect from the Assessment Year 2017-18 to provide that income shall be computed at the rate of 6% instead of 8% if turnover/gross receipt is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed during the previous year or before the due date of filing of return under section 139(1).

Mode of Receipt	Presumptive Rate of Turnover
Cash	8%
Other than Cash i.e. Digital Payment/ account payee cheque/ account payee bank draft / electronic clearing system through a bank account / through such other electronic mode	6%

Hence, in case of a person adopting the provisions of section 44AD, income will not be computed in normal manner as discussed earlier (i.e., Turnover **less** Expenses) but will be computed @ 6% or 8%, as the case may be, of the turnover or gross receipt.

However, a person may voluntarily disclose his business income at more than 8% or 6%, as the case may be, of turnover or gross receipt.

The Central Board of Direct Taxes has prescribed other electronic modes to provide for the followings as an acceptable electronic mode of payments:

a) Credit Card;

b) Debit Card;

c) Net Banking;

d) IMPS (Immediate Payment Service);

e) UPI (Unified Payment Interface);

f) RTGS (Real Time Gross Settlement);

g) NEFT (National Electronic Funds Transfer), and

h) BHIM (Bharat Interface for Money) Aadhaar Pay.

For this purpose, a new Rule 6ABBA with the heading ‗Other electronic modes is introduced in the Income Tax Rules, 1962. This rule has been given a retrospective effect and will come into force from 1st September 2019 even though the notification was issued on 29th January 2020.

Presumptive income computed as per the prescribed rate is the final income and no further expenses will be allowed or disallowed :

In case of the presumptive taxation scheme of Section 44AD, the provisions of allowance/disallowances as provided for under the Income-tax Act will not apply and income computed at the presumptive rate of 6% or 8% will be the final taxable income of the business. In other words, the income computed as per the prescribed rate will be the final taxable income of the business and no further expenses will be allowed or disallowed.

While computing income as per the provisions of section 44AD, separate deduction on account of depreciation is not available. However, the written down value of any asset used in such business shall be calculated as if depreciation as per Section 32 is claimed and has been actually allowed.

Section 40 begins with "Notwithstanding anything to the contrary in Sections 30 to 38". It is to be noted that Section 40 is clothed in a negative language and it says that certain amounts shall not be deducted while computing income under the head "profits & gains of business or profession", whereas Section 44AD begins with "notwithstanding anything to the contrary contained in Section 28 to 43C".

On analysis of both the sections, the amplitude of non-obstante clause of Section 44AD is higher than the non-obstante clause of Section 40. Section 40 relates to disallowance of certain expenses due to non-deduction of TDS or non-deduction/ non-payment of equalisation levy, remuneration/ interest by firm to partners in excess of allowed etc.

Therefore, these expenses would not be disallowed even if TDS has not been deducted. However, the assessee may be deemed as assessee in default as per Section 201 as Section 44AD override provisions of Section 28 to 43C but not the provisions of TDS.

Example: Mr. Saurav declaring income u/s 44AD has made payment of interest to non-resident. However, no TDS has been deducted. Whether the expense will be disallowed u/s 40(a)?

The interest expense will not be disallowed as sec 44AD overrides sec 40(a). The assessee was required to deduct TDS as per sec 195. Although, he has not deducted the TDS, expense will not be disallowed. However, he may be considered as assessee in default as per sec 201 and other penal provisions may be applicable as sec 44AD does not override TDS provisions.

The provisions of Section 40A are not related to statutory dues and such other dues. It just imposes restrictions on payments and disallows amount which is not paid as per the provisions of the Act. It is also to be noted that provisions of Section 40A of the Act are with regard to allowability of expenditure which has been actually incurred and claimed by the assessee from Section 30 to 38 of the Act. Therefore, if the assessee declares income as per the provisions of Section 44AD of the Act, no disallowance shall be made u/s 40A of the Act.

Income higher than presumptive Income :

The presumptive income is the minimum income to be offered for tax. If an assessee claims that he has earned a higher income, he must offer such higher income earned o tax.

Income lower than presumptive income :

If an assessee has actually earned income lesser than the presumptive income, he may still opt to pay tax on the basis of presumptive income.

However, if he opts to declare lower income (higher than the minimum amount not chargeable to tax), he must maintain books of account and get the same audited as per Section 44AB.

In that case, he would not declare presumptive income. Hence, he will not be eligible to claim benefit of section 44AD for another five assessment years thereafter. In other words, presumptive tax Scheme will not be applicable for all those five years. He will have to compute his income as per Sections 28 to 43C and comply with requirements of maintaining books and audit thereof under sections 44AA and 44AB, respectively.

E.g. If in A.Y. 2022-23 and 2023-24 the Assessee declared income u/s. 44AD and in A.Y. 2024-25 he opts out of this presumptive taxation scheme (as his profit is lower than 8%) and files return by maintaining books of account u/s. 44AA, then he shall not be eligible to presumptive taxation scheme under 44AD till A.Y. 2029-30.

Further, he is required to keep and maintain books of account and he is also liable for tax audit as per Section 44AB from the AY in which he opts out from the presumptive taxation scheme. If his total income exceeds maximum amount not chargeable to tax.

Payment of Advance tax :

Person opting for the presumptive taxation scheme under Section 44AD is liable to pay whole amount of advance tax on or before 15th March of the previous year. If he fails to pay the advance tax by 15th March of previous year, he shall be liable to pay interest as per Section 234C. Any amount paid by way of advance tax on or before 31st day of March shall also be treated as advance tax paid during the financial year ending on that day.

Lower Rate of Income in Different Scenarios :

As per the proviso to 44AD(1), income can be declared as 6% of the turnover if the payment is received digitally or through banking channel before the due date of return filing u/s 139(1). However, many a times due date for return filing is extended or sometimes it may happen that assessee files his return after due date or he has filed return earlier than the due date, whether the assessee can claim 6% of turnover as his income under these scenarios.

Case 1- Due date of return filing is extended

The due date of return filing u/s 139(1) is extended by the Income Tax Department due to different reasons such as natural calamities, pandemic, technical glitches etc. The extended date becomes the due date u/s 139(1) of the Act for that assessment year. Therefore, any payment received through banking channel/ digitally up to the extended due date u/s 139(1) of the Act shall be eligible for claiming 6% of turnover as income.

Case 2- If the assessee files his return after the due date of return

The proviso to Section 44AD(1) of the Act requires payment to be received up to due date of return filing. Any payment received even digitally/ through banking channel after the due date of return filing shall not be eligible for lower rate of income i.e 8% of turnover or higher shall be assumed as income.

Example: Suppose the due date for filing return u/s 139(1) for the A.Y. 2022-23 is 31st July 2022 and the assessee files his return on 26th December 2022. Whether receipts through banking channel/ digitally up to 26th December 2022 will be eligible for claiming 6% of turnover as profits? The receipts through banking channel/ digitally up to 31st July 2022 shall be eligible for claiming 6% of turnover as profits. The payments received after the due date i.e 31st July 2022 shall not be eligible for lower rates and these payments received after the due date of filing return will not be given the benefit of 6% of turnover.

Case 3- If the assessee files his return before the due date of return

When the assessee files his return before the due date u/s 139(1) of the Act, he would have considered the facts on the date of filing of return and not assumed the facts beyond that date. The receipts through banking channel/ digitally up to date of return filing are considered for lower rate of income and the amount not received yet shall be considered for 8% of turnover as profits. The interesting issue here is what about the payments received through banking channel/ digitally after the date of return filing but before the due date of return filing. Whether these will be considered for 8 % of turnover or 6% of turnover as profits? If 6% is to be considered whether the return can be revised?

Example: Mr. Raj has a turnover of Rs. 80 Lakh for the A.Y. 2022-23. The due date of return filing is 31st July 2022. He files his return on 15th May 2022. He has received the following payments by account payee cheque:

Up to 31st March 2022	Rs. 50,00,000
Up to 15th May 2022	Rs. 15,00,000
From 16th May 2022 to 31st July 2022	Rs. 10,00,000
Received after 31st July 2022	Rs. 5,00,000

Mr. Raj has filed return on 15th May 2022. Till that date, payments to the extent of Rs.65,00,000 has been received by account payee cheque. Mr. Raj can declare profits from business as:

6% of Rs. 65,00,000 = Rs. 3,90,000

8% of Rs. 15,00,000 (80L – 65L) = Rs. 1,20,000

Total profits = Rs. 5,10,000

Mr. Raj has received Rs. 10,00,000 after date of return filing but before due date of return filing. Mr. Raj can claim 6% of Rs. 10,00,000 as profits by revising the return. There is no doubt that the return can be revised u/s 139(5) before the end of assessment year or up to completion of assessment whichever is earlier. But as per the provisions of Section 44AD of the Act, the income claimed by Mr. Raj in his Income Tax Return will be final and subsequently by revising return, the same cannot be reduced.

The assessee has to maintain complete records about the receipts from customers, whether they are received in cash or through banking channel/ digitally and whether they are received up to due date of return filing or not. Further, the record maintenance is for two financial years.

Presumptive Tax for Professionals Under Section 44ADA

The presumptive taxation scheme of section 44ADA is designed to give relief to small taxpayers engaged in specified profession

Eligible Assessee:

i. An Individual,

ii. Partnership firm (Other than LLP who is resident in India and engaged in a profession referred to in sub-section (1) of section 44AA.

A person resident in India engaged in following professions can take advantage of presumptive taxation scheme of section 44ADA:

1) Legal;
2) Medical;
3) Engineering or architectural;
4) Accountancy;
5) Technical consultancy;
6) Interior decoration;
7) Any other profession as notified by CBDT.

The Finance Act, 2021 has amended provisions of Section 44ADA to define eligible assessee. w.e.f. Assessment Year 2021-22, the benefit of Section 44ADA is eligible only in case of assessee who is an:

a) Individual; and

b) Partnership firm other than a Limited Liability Partnership as defined under clause (n) of sub-section (1) of Section 2 of Limited Liability Partnership Act, 2008

Engaged in Profession referred to in sub-section (1) of Section 44AA and gross receipts in the previous year does not exceed an amount of Seventy Five lakh rupees where the amount or aggregate of the amounts received by the eligible assessee during the previous year, in cash, does not exceed five per cent of the total turnover or gross receipts of such previous year and also that the receipt of amount or aggregate of the amounts by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash. (50% of Total Gross Receipts or more and No Deductions will applicable u/s 30 to 38.

The Finance Act, 2023 revised presumptive taxation limits under Section 44ADA for FY 2023-24 (AY 2024-25) from Fifty Lakh Rupees to Seventy Five Lakh Rupees.

Manner of computation of taxable income

In case of a person adopting the provisions of Section 44ADA, income will be computed on presumptive basis, i.e. @ 50% of the total gross receipts of the profession. However, such person can declare income higher than 50%.

In other words, in case of a person adopting the provisions of Section 44ADA, income will not be computed in normal manner but will be computed @50% of the gross receipts.

A person who adopts the presumptive taxation scheme is deemed to have claimed all deduction of expenses. Any further claim of deduction is not allowed after declaring profit @ 50%.

While computing income as per the provisions of section 44ADA, separate deduction on account of depreciation is not available.

However, the written down value of any asset used in such profession shall be calculated as if depreciation as per Section 32 is claimed and has been actually allowed.

Payment of Advance tax :

Any person opting for the presumptive taxation scheme under section 44ADA is liable to pay whole amount of advance tax on or before 15th March of the previous year. If he fails to pay the advance tax by 15th March of previous year, he shall be liable to pay interest as per section 234C.

Maintenance of books of account :

In case of a person engaged in a specified profession as referred in section 44AA(1) and opts for presumptive taxation scheme of section 44ADA, the provision of section 44AA relating to maintenance of books of account will not apply. In other words, if a person opt for the provisions of section 44ADA and declares income @50% of the gross receipts, then he is not required to maintain the books of account in respect of specified profession.

Provisions to be applied if a person does not opt for the presumptive taxation scheme of section 44ADA and declares his income from profession at lower rate (i.e. less than 50%)

A person can declare income at lower rate (i.e. less than 50%), however, if he does so, and his income exceeds the maximum amount which is not chargeable to tax, then he is required to maintain the books of account as per the provisions of section 44AA and has to get his accounts audited as per section 44AB.

Tax Audit Limit for Professionals :

Gross receipt Limit for Previous Year	Profit (in %)	Is tax audit Applicable?	Tax Audit Section
More than 50 Lakh	Any	Applicable	Section 44AB (b)
Up to 50 Lakh	50% or More (Section 44ADA)	No	Not Applicable
Up to 50 Lakh	Less than 50% (Section 44ADA)	Applicable	Section 44AB (d)

PRECAUTIONS WHILE FILING INCOME TAX RETURN AND CHANGES IN NEW ITR

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Filing of income tax return is mandatory if the Total Income of an Individual exceeds the maximum amount which is not chargeable to income-tax

It is also mandatory to file Income Tax Returns in the following cases:-

- If a person is a resident and ordinary resident in India:-
  a) Who holds any asset (including any financial interest in any entity) located outside India; or
  b) is a beneficiary of any asset (including any financial interest in any entity) located outside India; or
  c) Who has signing authority in any account outside India; or
- If an Individual has deposited greater than Rs.1 crore in aggregate in his Bank Current Accounts; or
- If an Individual has deposited greater than Rs.50 lakhs in one or more saving bank accounts; or
- If an Individual has incurred expenditure greater than Rs.2 lakhs for Foreign travel; or
- If an Individual has incurred expenditure greater than Rs.1 lakhs towards electricity consumption; or
- If Total Sales, Turnover or Gross Receipts exceeds Rs.60 Lakhs; or
- If Total Gross Receipts in the Profession exceeds Rs.10 Lakhs; or
- If Total Tax Deducted and Collected at Source (TDS / TCS) is Rs.25,000 or more (Rs.50,000 in case of resident senior citizen)

Also, as per section 206AB and section 206CCA non-filers of income tax will be liable to higher rate of tax deduction and tax collection.

A. New Regime and Old regime :

- Choose Regime carefully :
  - Individuals with income (other than income from business & profession) can change their option of being taxed under the old or new tax regime every year. This option must be exercised when filing the income tax return and can be changed every year, provided **the income tax return is filed within the due date**.
  - However, for individuals with income from business and profession, the tax regime opted for in the previous tax returns also applies to the subsequent years. The tax regime can be changed **only once** in their lifetime by submitting an application in prescribed Form 10IE, on or before the due date of filing the income tax return under Section 139 (1) of the Act.

- Filing of Form 10 IE :
  - Form 10IE is a declaration made by the return filers for choosing the 'New Tax Regime'. Individuals having income from business & profession must submit form 10IE before switching from old regime to new and vice versa.
  - For individuals and Hindu Undivided Families (HUFs), who do not have to get their accounts audited, the due date for filing Form 10 IE is 31st July 2023 and for individuals and HUFs who are required to get their accounts audited, the due date for filing Form 10 IE is 30th September 2023.
  - Form 10IE should be filed before filing Income Tax Return.
- Belated and Revised Return :
  - One cannot file a belated tax return under the new tax regime. If one is filing a tax return after the due date of the return, it has to be filed under the old regime. Likewise, if one files a revised belated return, then also one cannot opt for a new tax regime.
  - Besides, where one has a business income, then form 10-IE has to be filed before the due date of filing ITR for switching to the new tax regime. Also, if such a taxpayer has filed an original return under the new tax regime, he/she will have to file a revised return under the new tax regime. That's because Form 10IE cannot be withdrawn during the year.
- Disclosure of information if the assessee opted out from the alternative tax regime under Section 115BAC:
  - An Individual or HUF can opt for an alternative tax regime under Section 115BAC. In the case of the assessee having income from business or profession, the option, once exercised, is allowed to be withdrawn only once for a previous year other than the year in which it was exercised. Once such option has been withdrawn, the assessee shall never be eligible to exercise the option under this section, except where such person ceases to have any income from business or profession. To opt out from the regime, Form No. 10-IE shall be furnished electronically either under a digital signature or electronic verification code.
  - The new ITR forms seek details if the assessee has ever opted out of Section 115BAC in earlier years. If the taxpayer has opted out, he is required to give details of the following:

  (a) Assessment Year in which said option is opted out;

  (b) Date of filing; and

  (c) Acknowledgement number of Form 10-IE.

B. Reconcile from AIS, TIS, and Form 26AS :

- Compare TDS and Income information:

  AIS and TIS have become great sources of information that earlier even the assessee were not ready to provide. However, one cannot prepare income tax returns solely from AIS and TIS. Comparing the income details with AIS and TIS is a must. Even a minor difference in the sale value of equity sold has invited the notice from the income tax department last year.

- Confirm tax payments: Check if the tax payments mentioned in the AIS and TIS match the tax credits reflected in Form 26AS. Earlier, importing form 26AS to our return filing software was sufficient to get the details of taxes paid in the computation of income however, in **AY 2023-24, advance tax paid is not getting reflected in form 26AS**. However, it is getting reflected in form AIS. Thereby confirming the tax payments from form AIS.

C. Schedule AL :

- This schedule is to be filled mandatorily by individuals and Hindu Undivided Families (HUF) if their total income after all the deductions exceeds INR 50 lacs, and they have not engaged in any business or profession during the financial year. Here must provide details of immovable assets, financial assets, and movable assets held by the assessee and all the corresponding liabilities.
- However, for those engaged in business/profession who are required to furnish their Balance Sheet, the assets that have already been included in the balance sheet are not required to be disclosed again. Only the assets that have not been disclosed in the Balance Sheet are required to be reported in this Schedule. The above requirements are applicable for those filing ITR 2 and ITR 3.
- Note that non-residents and not ordinarily resident individuals must provide details of their assets situated in India.
- Must disclose the details of all immovable property acquired through gifts or as inheritance as well. The cost for the same shall be The cost for which the previous owner had acquired it and any subsequent cost of improvement incurred either by the previous owner or the taxpayer can also be added. (b) Where the cost of such asset is not ascertainable, and a wealth tax return was also not filed for that asset, then the value may be estimated at the circle rate or bullion rate as on the date of acquisition by the assessee, and any subsequent cost of improvement can also be added.
- If the assessee is a partner of a firm or a member of an AOP, then his/her interest held in the assets of a firm or AOP needs to be disclosed with the PAN of the entity

D. Return cannot be filed in ITR-1 if it is being filed due to the reason of depositing more than Rs. 1 crore in the current account [ITR 1]:

- The seventh proviso to Section 139 provides that any person, who is otherwise not required to file the return, shall file the return of income during the previous year:

(a) He has deposited more than Rs. 1 crore in one or more current accounts maintained with a bank or a cooperative bank;

(b) He has incurred more than Rs. 2 lakhs for himself or any other person for travel to a foreign country;

(c) He has incurred more than Rs. 1 lakh towards payment of electricity bill; or

(d) He fulfills such other conditions as may be prescribed.

- If a person falls under any of the points mentioned above, filing of return shall be mandatory for him, irrespective of the fact that he is not liable to file the return of income. Return can be filed in ITR forms 1 to 4 depending upon the nature of income he is earning. **However, the option to file a return in ITR-1 by an individual, who has deposited more than Rs. 1 crore in one or more current accounts, has been removed for the Assessment Year 2023-24.**

E. New Schedule for income from transfer of virtual digital assets:

Virtual Digital Asset (VDA) covers crypto assets, Non-fungible tokens (NFTs), and any other digital asset, and it does not cover Indian currency, CBDCs, Foreign currency, and notified digital assets. The Finance Act, 2022 introduced a new flat rate scheme for the taxation of income arising from the transfer of Virtual Digital Assets ('VDA') with effect from the assessment year 2023-24. Every transfer of virtual digital assets on or after 01-04-2022 shall be covered under this scheme. Further, Section 194S requires the deduction of tax from the payment of consideration on the transfer of VDA.

To bring the necessary changes to the new ITR Form, Schedule VDA has been added. The Schedule asks for details like the date of acquisition, date of transfer, head under which income is to be taxed, cost of acquisition in case of gift, and consideration received. Taxable income will be recorded in Schedule CG (Capital Gains) or Schedule BP (Business Income) based upon the classification of income under the head of capital gains or business income.

F. ARN (Donation Reference Number) :

ARN is to be mentioned if the donation is eligible for Section 80G deduction. As per Section 80G of the Income Tax Act 1961, any assessee who has paid any sum by way of donation is eligible to claim a deduction under this section to the extent of 50% to 100% of the donation made. For certain donations, the deduction is allowed subject to the qualifying limit. In the new ITR forms, a new column has been inserted to disclose ARN (Donation Reference Number) in case the donation is made to entities wherein a 50% deduction is allowed subject to the qualifying limit.

G. Disclosure of 'Advances' in the balance sheet and Investments made in specified modes:

The Balance Sheet Schedule of ITR-3 has been amended to incorporate disclosures related to 'Advances'. It seeks the following two details:

(a) Advances from persons specified in Section 40A(2)(b); and

(b) Advances from others.

Earlier, the details of investments made under Section 11(5) were to be provided in Schedule J'. Now, the form seeks only the details of corpus investment/deposits made under Section 11(5).

H. Schedule Foreign Assets:

- A "resident & ordinarily resident taxpayer" holding foreign assets or foreign interest at any time during the relevant accounting period needs to necessarily disclose the same in the ITR form. Therefore, a foreign asset or interest held even for a single day during the year triggers the reporting requirement.
- There is a stiff cost to such non-disclosures, as many are discovering: a penalty of ₹10 lakhs a year under the Black Money Act (BMA) - so if a bank account was opened five years ago and has remained a 'secret' since then, the basic fine will be ₹50 lakhs if the assessee is unable to convince tax authorities
- So the persons who would need to make disclosures under this schedule would be persons who have invested abroad or acquired assets using the Liberalized Remittance Facility, employees who have been granted and have exercised stock options and been allotted shares of foreign companies, NRIs who have returned to India and have retained assets abroad, as well as expatriates who have been in India for more than two years and have therefore become resident and ordinarily resident in India.

- The shares of a foreign company, or units of a foreign mutual fund are regarded as foreign assets, irrespective of from whom they are purchased.
- **Crypto currencies stored in a foreign crypto-wallet would also be regarded as foreign assets.**
- One point to note is that taxpayers are also required to state the country in which the asset is held. That may not necessarily be the same country in which the asset was acquired. For instance, if we hold shares of a US company acquired on the Singapore Stock Exchange, the country in which the asset is held would have to be disclosed as USA, and not Singapore. This is because it is the US company that would report the fact of having an Indian shareholder under FATCA.
- The reporting of foreign currency or assets in the ITR of FY 2022-23 will depend upon the accounting periods of the foreign country as below:
  - 1st January 2022 – 31st December 2022: If the foreign assets, foreign accounts, etc. are acquired between 1st January 2022 – 31st December 2022, and the assets/accounts belong to the foreign country/jurisdiction where calendar year is considered for the closing of accounts and return filings.
  - 1st April 2022 – 31st March 2023: If the foreign assets, foreign accounts, etc. are acquired between 1st April 2022 – 31st March 2023, and the assets/accounts belong to the foreign country/jurisdiction where the financial year is considered for the closing of accounts and return filings.
  - That period of 12 months, ending on any day succeeding 1st April 2022, in respect of foreign assets, accounts held in the foreign country/jurisdictions where the other 12 months accounting or tax filing period is adopted.
  - For instance, assuming the resident individual acquires a foreign asset in July 2022 from the foreign country. And the said foreign country follows the calendar year for tax filing and closing of accounts. Then, the resident individual will be required to report the same in the income tax return of the FY 2022-23. However, for the foreign assets acquired in February 2023, the taxpayer shall report it in the income tax return of FY 2023-24.

I. Submission of Feedback on E-Campaign:

- Under this E-Campaign, the Income Tax Department sends email/ SMS to identified taxpayers to verify their financial transactions related information received by the IT Department from various sources such as Statements of Financial Transactions (SFT), Tax Deduction at Source (TDS), Tax Collection at Source (TCS), etc. The department has collected information related to GST, Exports/ Imports, and transactions in securities, derivatives, commodities, and mutual funds under an information triangulation setup.
- The income tax department has launched an e-campaign for the voluntary compliance of income tax for the convenience of taxpayers. The campaign focuses on the Assessee/Taxpayer who is either:-

  i. Non-filers of income tax returns.

  ii. Have discrepancies/deficiencies in their returns

From the options, the Individual is required to select the most appropriate response from below:

- Information is correct

- Information is not fully correct

- Income is not taxable

- Information relates to other PAN/year

- Information is duplicate/included in other displayed information

- Information is denied

- So, in case we are in disagreement with the transactions reported to the income tax department taxpayer should submit a response to the same so that there will not be an evident mismatch between ITR filed and online available information.

Conclusion :

Compliance with tax laws is a key focus, and thereby there is need to disclose all transactions, assets, and foreign income/assets as required by tax regulations. Maintaining proper documentation and records is advised to support the information provided in the tax return.

Verification of the income tax return within the prescribed due date is the last but most important step to complete the process of ITR filing. Let us all have a happy and stress free filing season.

ANNUAL INFORMATION STATEMENT (AIS) VS FORM 26AS

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"You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete."

- Buckminster Fuller, American Architect

Form 26AS is an annual tax statement containing details of taxpayer with respect to TDS deducted on his income, payment of taxes for the FY, etc. It is a primary tax passbook for the taxpayer which is used extensively while filing ITR. Form 26AS was named as annual tax statement under section 203AA of the Income Tax Act, 1961 (the Act).

In Budget 2020, it was proposed to replace Form 26AS with a new tax statement by replacing section 203AA and inserting new section 285BB of the Act to be applicable from 1st June, 2020. With the objective to make the statement more comprehensive, CBDT vide Notification No 30/2020 dated 28th May, 2020 inserted Rule 114-I and replaced rule 31AB, thereby introducing a new tax statement named Annual Information Statement (AIS) in the Form 26AS.

AIS displays information with respect to TDS deducted / TCS collected, specified financial transactions, payment of taxes made by the taxpayer, demand and refund details and other information such as GST turnover, GST purchases, etc. Taxpayer can also give feedback to the information displayed in the AIS. The feedback provided by taxpayer will be captured in the AIS and reported value and modified value (i.e. value after feedback) will be shown separately. The feedback given will be considered to update the derived value (i.e value after feedback) in Taxpayer Information Summary (TIS). This derived value will be used for prefilling of Return.

The format of AIS is as under:

Part A

Permanent Account Number, Aadhaar Number, Name, Date of Birth/ Incorporation/ Formation, Mobile No., Email Address, Address.

Part B

1. Information relating to tax deducted or collected at source
2. Information relating to specified financial transaction (SFT)
3. Information relating to payment of taxes
4. Information relating to **demand and refund
5. Information relating to **pending proceedings
6. Information relating to **completed proceedings
7. Any other information in relation to sub-rule (2) of rule 114-I

***Demand & Proceedings Feature have not yet been made available*

The Central Government recently updated and made adjustments to forms and return formats. As a part of this, changes were made in Form 26AS as well. From AY23-24, Form 26AS on TRACES portal will display only TDS / TCS related data. Other details would be available in the AIS at e-filing portal. However, for data prior to AY23-24, there would be no changes in Form 26AS. A comparison between the old and the new format of 26AS is as follows:

Prior to AY23-24	From AY23-24 onwards
Part I: Details of TDS	Part I: Details of TDS
Part II: Details of TDS for 15G / H	Part II: Details of TDS for 15G / H
Part A2: Details of TDS on Sale of Immovable Property us 194IA / Rent of Property us 194IB / Payment to Resident Contractors & Professionals us 194M (For Seller / Landlord of Property / Payee of resident contractors & professionals)	*Part III: Details of Transactions under Proviso to Section 194B / 1st Proviso to section 194R(1) / Proviso to section 194S(1)
Part B: Details of TCS	Part IV: Details of TDS us 194IA / 194IB / 194M / *194S (For Seller / Landlord of Property / Payee of resident contractors & professionals / *Payee of Virtual Digital Asset)
**Part C: Details of Tax Paid (other than TDS /	Part V: Details of TCS
Part D: Details of Paid Refund	Part VI: Details of Paid Refund (For which source is CPC / TDS. For other details, refer AIS)
**Part E: Details of SFT Transaction	Part VII: Details of TDS us 194IA / 194IB / 194M / *194S (For Buyer / Tenant of Property / Payer of resident contractors & professionals / *Payer of Virtual Digital Asset)
Part F: Details of TDS on Sale of Immovable Property us 194IA / Rent of Property us 194IB / Payment to Resident Contractors & Professionals us 194M (For Buyer/ Tenant of Property / Payer of resident contractors & professionals)	Part VIII: TDS / TCS Defaults (Processing of Statements)
Part G: TDS / TCS Defaults (Processing of Statements)	
**Part H: Details of Turnover as per GSTR-3B	

**Newly added in Form 26AS, **Removed from 26AS*

So 26AS has been diluted to displaying only TDS / TCS related information. In comparison with AIS, it is highly preferable for taxpayer to refer Form 26AS for TDS / TCS information over AIS because 26AS, in addition to displaying general deduction / collection details, also displays the status of processing of TDS returns filed by the deductor. In case of default in such TDS returns, 26AS will display the status using the relevant nomenclature in the “Status of Booking” column. Further, whether the default has been corrected through a correction return will be displayed in the “Remarks” column. This makes identification of defaults and tracking its correction easier for taxpayers while reconciling amounts with their accounting books.

AIS only displays the general deduction / collection details. In case of any default in TDS / TCS return filed by deductor / collector, the option to give feedback on the line item against the deductor will be “Inactive”. The said line item will be “Active” for giving feedback once the deductor corrects the default. However, for all other data such as SFT Information, Demand and Refund and Other Information, AIS has to be referred while filing ITR.

Feedback Processing on AIS

Is it mandatory to give feedback on AIS?

No. It is not mandatory for taxpayers to give feedback on all line items of data. However, in case any information does not match with the taxpayer's books or does not pertain to him, then it is strongly advised to give feedback against such incorrect or wrong line items before filing ITR. If it is not possible to give feedback before filing ITR, taxpayer must ensure that the same is done after filing ITR but before processing of return. In case no feedback is given against wrong information and the ITR has been filed without considering the same, taxpayer may receive 'e-campaign notice' on the Compliance portal for response.

What is e-campaign?

E-campaign program approaches the taxpayer to provide feedback on information collected from various sources. The e-campaigns can be related to: a) Non-filing of return; b) Certain significant / high-value transactions entered by the taxpayer.

Non-filing of return: A taxpayer who has not filed return of income for a specific assessment year and having potential tax liability and being under obligation to file return of income, is selected under this e-campaign for getting feedback, explanation and responses on queries.

Significant Transactions: Transactions reported to the Income Tax department during a financial year that are considered not in line with the profile of the taxpayer based on pre-defined rules are displayed to the taxpayer for feedback.

High-Value Transactions: Certain transactions of the taxpayer reported in their ITR which have been found to be inconsistent with the information received from the third party for a specified Assessment Year are displayed to the taxpayer for feedback.

How to reply to e-campaign notices?

E-campaign notice can ask for feedback on certain marked line items on AIS. The line items will be marked as “Expected” and are required to be given feedback to. The notice can also ask for further explanations or answers to the line items on the 'e-campaign' tab on Compliance Portal.

E-Verification Scheme, 2021

After the taxpayer has given feedback, the relevant data is analysed by the CIT (e-verification) under the Director General (Systems) of IT Department and is sent to the reporting entity / third person for confirmation. If the data is disputed even by the reporting entity, then the data is subjected to risk management strategy of IT department and high-risk cases are selected under e-verification scheme. Taxpayer will be asked to submit evidence and supporting documents on the Compliance Portal vide notice issued u/s 133(6) of the Act to the taxpayer.

Use of AIS Utility

For Sale of Securities Transaction

AIS Utility is a helpful tool for comparing amounts of sale of securities between taxpayer's books and AIS. Amounts between books and AIS might not match as the details of sale of securities are uploaded by depositories or registered transfer agents.

If in case securities of taxpayer are transferred from one DMAT to another DMAT and are sold subsequently, then the holding period of the securities is displayed as 'Short Term' which is incorrect. Inherently, AIS does not consider the holding period prior to transfer of securities to another DMAT. Also, in AIS, date of transactions are displayed as the date on which the securities are debited from the DMAT account and not the actual date of transaction. Therefore, amounts between books and AIS won't match. However, a comparison can be made keeping a reasonable margin of difference.

In AIS Utility, the said data can be extracted in csv excel format. The Utility allows to enter the Cost of Acquisition / Indexation details. A functionality to download entire sheet compatible as per section 112A is also available. Hence, taxpayer can easily compare and analyse figures using AIS Utility.

For Bulk Feedback

The compliance portal restricts the option to view a particular transaction upto 100 line items. Taxpayer can provide bulk feedback to transactions on AIS using AIS Utility without any restriction.

Conclusion

The burning question is whether AIS will be used for processing returns filed by taxpayers. And the answer to this is unclear. Currently, there are limitations in the data that is being uploaded to the account of a taxpayer like sale of securities, sale of immovable property, etc. Also, Income Tax Department has introduced alternate mechanism for processing differences in returns which are 'E-campaign' and 'E-verification Scheme, 2021'. Hence, we can infer that AIS may not be used for processing ITRs for now. However, taxpayers have to ensure that their returns are in consonance with the AIS and in case of differences, feedback against the same have been given.

Wishing you a happy return filing season!

DECIPHERING SECTIONS 54, 54F, 54B AND 54EC AND ISSUES THEREIN FACED WHILE CLAIMING DEDUCTIONS

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INTRODUCTION:

Earning income automatically casts a responsibility on the taxpayers to discharge income tax on such income and so is the case with capital gains too. Section 45 of Income Tax Act, 1961 ("IT Act" or "the Act") is the charging section for Capital Gains. Section 45(1) of the Act reads as under:

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

Thus Section 45(1) make capital gains chargeable to income tax in the previous year in which transfer of a capital asset takes place. However, such capital gains is calculated after claiming deductions under Sections 54 to 54H. These sections provide help taxpayers to reduce their income in nature of capital gains thereby reduce their tax outgo.

This article focuses on deductions claimed under Section 54, Section 54B, Section 54EC and Section 54F against the Long-Term Capital Gains ("LTCG") on sale of residential property or any other asset and discuss common issues faced at the time of claiming such deductions.

SECTIONS 54 and 54F:

About the Sections:

Let's first understand two of most crucial sections 54 & 54F. Both these sections are the most beneficial, commonly and widely availed deduction provisions of the Act. These sections provide deduction from capital gains upon fulfillment of certain conditions.

The synopsis of both the sections is tabulated below:

Particulars	Section 54	Section 54F
Eligible assessee	Individual or HUF	Individual or HUF
Nature of asset transferred	Long Term Capital Asset being building or land appurtenant thereto and a Residential House	Any Long Term Capital Asset other than a Residential House
Conditions for claiming deduction	Re-invested in a residential house in India either by – a. Purchase within 1 year before or 2 years after the date of transfer; or b. Constructed within 3 years after the date of transfer.	Re-invested in a residential house in India either by – a. Purchase within 1 year before or 2 years after the date of transfer; or b. Constructed within 3 years after the date of transfer.

Particulars	Section 54	Section 54F
Amount of deduction	If Capital Gains is < the amount invested = full amount is available as deduction If Capital Gains is > the amount invested = difference is taxable	If cost of new house > net sales consideration = full amount is available as deduction If cost of new house < net sales consideration then, Amount Exempt = Capital Gain X Amount Invested / Net Sale Consideration
Lock in period for holding of new property	3 years from date of its acquisition or construction	3 years from date of its acquisition or construction
Consequence of transfer before 3 years	Capital gains exempted earlier would be reduced from the cost of new asset while computing capital gains in respect of transfer of new asset	Capital gain exempted earlier shall be deemed to be the income of the P.Y. in which the new asset is transferred.
Other requirements/restrictions	a. If capital gains amount does not exceed Rs. 2 Crores, assessee may purchase or construct 2 residential houses in India. This option shall be exercised only once in life time. b. Where cost of new asset exceeds Rs. 10 crores, the amount so exceeding Rs. 10 crores shall not be taken into account. This is applicable from 1st April 2023.	a. Assessee shall not own more than 1 residential house other than new asset on the date of transfer or original asset. b. Shall not purchase any residential house other than new asset within 1 year or shall not construct any residential house other than new asset within 3 years from date of transfer of original asset. c. Where cost of new asset exceeds Rs. 10 crores, the amount so exceeding Rs. 10 crores shall not be taken into account. This is applicable from 1st April 2023.

Particulars	Section 54	Section 54F
Deposit in Separate account	Amount of capital gains which is not appropriated towards purchase or construction of new house is required to be deposited before due of furnishing of return in separate bank account. Such amount is to be used within 3 years from the date of transfer of original asset.	Amount of net consideration which is not appropriated towards purchase or construction of new house is required to be deposited before due of furnishing of return in separate bank account. Such amount is to be used within 3 years from the date of transfer of original asset.

The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity. However, it has been observed that claims of huge deductions by high-net-worth assessees are being made under these provisions, by purchasing very expensive residential houses. It is defeating the very purpose of these sections. In order to prevent this, amendment has been made to both the sections thereby limiting maximum benefit of deduction which an assessee can claim to Rs. 10 crores. If cost of new asset is more than Rs. 10 crores, the cost of such asset shall be deemed to be Rs. 10 crores.

Say for example, if the value of new asset is Rs 25 Crores then the maximum benefit of deduction which an assessee can claim is limited upto Rs 10 Crores only. For the amount above Rs 10 Crores no benefit is available. Here, the limit of Rs 10 Crores is not per financial year but pertains to cost of new asset.

Some of common Issues while claiming deductions under Sections 54 and 54F:

Whether assessee is eligible to claim the deduction under these sections and whether conditions prescribed therein are getting fulfilled or not results in litigation. Some of the issues causing litigation have been dates / duration relevant for the purpose of claiming deduction under the sections, purchase / sale of more than one property, co-ownership/investment in joint names, etc.

Issue No. 01: Whether the assessee can claim the deduction under section 54/54F if he has not utilized the amount of capital gains or not deposited in Capital Gains Account Scheme within the due date prescribed u/s 139(1) but deposited/utilized the same before filing the belated return u/s 139(4).

For claiming deduction u/s 54 and 54F respectively, the assessee needs to utilize the amount of capital gains or net consideration as the case may be by purchasing or constructing a residential property or by depositing the amount in capital gains account scheme before due date for furnishing return u/s 139 until the time he purchases or constructs the residential property. There is dispute whether deduction u/s 54 and 54F to be allowed in regard to amount invested in purchase or construction of residential property till date of filing of return under Section 139(1) or Section 139(4) of the Act.
Section 54(2) reads as under

"The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an

account in any such bank or institution as may be specified in and utilized in accordance with any scheme the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit…………"

Thus, this sub section provides for an interesting proposition that the amount of capital gains which are not appropriated by the assessee either for purchase or construction of new residential house within one year before; or on or before the due date of filing of return of income under section 139, shall be deposited in the capital gains account scheme. So if we do literal reading of Section 54(2), two dates are prescribed i.e. the due date under section 139 and the due date under section 139(1). When Section 139 is referred it just cannot be said to mean only section 139(1), but it means all sub-sections of section 139. The provision mandates that the period of utilization or appropriation of the capital gains in purchase or construction of the new residential house is to be considered till the due date under section 139 [which also covers sub-section (4) and (5) of section 139]. However, in order to take benefit of Capital Gains Account Scheme, the time limit for making such deposit has been prescribed to be till the due date under section139(1). As mentioned previously this has been subject to extensive litigation.

ITAT DELHI BENCH 'C' in case of SMT. Harminder Kaur v. Income Tax Officer Ward - 36(4), New Delhi

In this case assessee sold a residential property and invested sale consideration in new residential property by way of booking flat in a housing project. Assessee filed its return of income claiming deduction under section 54 however the same was disallowed by Assessing Officer on ground that assessee had neither invested amount of capital gain in purchase or construction of residential house within stipulated period nor deposited it in capital gain scheme account within limit provided under section 139. ITAT in this case noted and held that assessee had provided detail of payments made for booking flat which showed that payments were made much prior to due date of filing of return under section 139(4). Since investment in property was made prior to due date of filing of return of income under section 139(4), assessee was to be allowed deduction under section 54.

There are many other favourable judicial pronouncements which clearly outline that deduction to be allowed under both the sections till the due date of filing of belated return under Section 139(4):

1. ***CIT v. Smt. Umayal Annamalai [2020] 118 taxmann.com 80/273 Taxman 146 (Mad.)***
2. ***Dr. Kushagra Kataria v. Dy. CIT [2019] 101 taxmann.com 359/174 ITD 648 (Delhi - Trib.)***
3. ***Rajendra Pal Verma v. Asstt. CIT [2019] 104 taxmann.com 303/176 ITD 211 (Mum.)***

The aforesaid interpretation has been approved by the Hon'ble ***Supreme Court in the case of Xavier J. Pulikkal v. Dy. CIT [2016] 73 taxmann.com 34/242 Taxman 59/379 ITR 535 (Mag.)*** when the Hon'ble Apex Court, while allowing the civil appeal, modified (or so to say-reversed) the reasoning of the Kerala High Court in the underlying order in Dr. Xavier J. Pulikkal v. Dy. CIT [2015] 64 taxmann.com 457/[2016] 242 Taxman 206.

The 6th proviso to section 139(1) was amended w.e.f. 1-4-2020 to provide that every person claiming deductions under section 54 or section 54B or section 54D or section 54EC or section 54F or section 54G or section 54GA or section 54GB shall, on or before the due date, furnish a return of his income on or before the due date specified in section 139(1), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed even if total income(before Chapter VIA deductions but after claiming these deductions in respect of capital gains) does not exceed threshold limit. However, there is no section 80AB like provision denying deductions under these sections if ITR not filed on or before due date u/s 139(1). Hence it can be concluded that assessee is entitled to deduction u/s 54 of

investment made in new house up to the date of filing belated return/revised return of Income however in case of deposit unutilized amount in separate bank account or in capital gains scheme due date is considered to be that under section 139(1).

Another interesting issue for discussion is where investment of entire sale consideration is made in construction of residential property within 3 years period however no deposit of capital gains amount or consideration amount was made in capital gains scheme within prescribed due date. In such scenario deduction under sections 54 and 54F cannot be denied. ***ITAT Bangalore has held this in [2012] 124 taxmann.com 243 Ramaiah Dorairaj vs. ITO ward 4(2)(2)***. ITAT had relied on Hon'ble ***Karnataka High Court decision in case of K. Ramachandra Rao*** wherein High Court noted that it is very clear from section that if amount is not invested within stipulated time than amount is required to be deposited in an account notified by Central Government. In other words if he want to claim deduction from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct.

Similar view was taken by ***High Court of Madras in case of Venkata Dilip Kumar v. Commissioner of Income-tax, Chennai [2019] 111 taxmann.com 180 (Madras). High Court*** held that Section 54(2) cannot be read in isolation and on the other hand, application of Section 54(2) should take place only when the assessee failed to satisfy the requirement under Section 54(1). While the compliance of requirement under Section 54(1) is mandatory and if complied, has to be construed as substantial compliance to grant the benefit of deduction, the compliance of requirement under Section 54(2) could be treated only as directory in nature. Mere non-compliance of a procedural requirement under Section 54(2) itself cannot stand in the way of the assessee in getting the benefit under Section 54, if he is, otherwise, in a position to satisfy that the mandatory requirement under Section 54 (1) is fully complied with within the time limit prescribed therein.

The Section 54 and 54F are beneficial provisions and should be interpreted liberally and the Assessing Officer has to see the end utilization of capital gains or net sale consideration in the way prescribed in Section 54 and 54F of the Act, the assessee is entitled for deduction under both the sections.

Issue No. 02: Whether assessee can claim deduction under section 54/54F if the agreement date is much earlier than the possession date of the purchased property?

One of the conditions to claim deduction under both the sections is that the new residential property has to be purchased within 1 year before or 2 years after the date of transfer. The question arises as to whether we can consider the property whose agreement has been done much earlier however possession is received only 1 year before the transfer date for purpose of claiming deduction or not.

ITAT Pune in case of Sanjay Vasant Jumde v. Income Tax Officer [2023] 148 taxmann.com 34 (Pune-Trib) dated 02/02/2023 held that the date of Purchase shall be the Date of possession and not date of agreement for claiming the deduction u/s 54/54F.

In this case assessee, a non-resident Indian, had sold his bungalow and earned long-term capital gain. He invested a portion of capital gains towards purchase of a new residential flat and claimed deduction under section 54 which was disallowed by AO since new property was purchased by assessee on 21-12-16 i.e. beyond one year preceding to sale of old property however possession was received on 24-01-2018 after construction was completed. The ITAT held that new property shall be deemed to have been acquired only when it is ready full consideration has been paid and the possession is received. ITAT had relied on

Bombay High Court judgment case of Smt. Beena K. Jain (supra), 1996 217 ITR 363 Bom dated 23-11-1993. In the said decision of the Hon'ble Bombay High Court (*supra*) it was appreciated about the substance of the transaction involving section 54 of the Act. The question was whether the relevant date was the date of sale agreement or the substantive element of the transaction had to be considered. The Hon'ble Bombay High Court held that the substance of the transaction signifies when the new property is ready for possession, when the substantial or full payment had been made and when the actual possession was acquired by the assessee. These substantial necessities are crucial for determining the issue for claim of deduction u/s 54 of the Act. Admittedly, in this case what the department is harping upon is merely the agreement dated 21-12-2016 when the building itself was not constructed and the assessee has only acquired his right to get a flat in the said building. When actually therefore, can it be said that the new property was purchased? It is only when the assessee received the possession through letter of possession on 24-12-2018. This is when all the three ingredients as enumerated in the decision of Hon'ble Jurisdictional High Court for claiming deduction u/s 54 had been complied with by the assessee. In another decision of ***Pune Tribunal in Ayushi patni v. Dy. CIT [IT Appeal No. 1424/PUN/2016 and ITA No. 1707/PUN/2016, for A.Y. 2012-13, order dated 17-01-2019*** identical facts were considered.

It was observed by the Tribunal that it is an unabated fact that at the time of execution of agreement, the residential property was not in existence. Therefore, taking into consideration the facts of the case, the date of possession of the flat as the date of actual purchase for the purpose of claiming deduction u/s 54/54F of the Act.

The matter however still remains unsettled and point for litigation. However, considering many judicial pronouncements including that of High Court and Tribunals if at time of agreement residential property was not in existence then date of possession of flat can be considered as actual purchase date for purpose of claiming deduction u/s 54 and 54F of the Act.

In another case ***Karnataka High Court in case of The Commissioner of Income Tax vs Mr. Shakuntala Devi (TS-5809-HC-2016 Karnataka) dated 28-09-2016*** had even held that Date of MOU to be reckoned as date of purchase for the purpose of benefit u/s 54 though the sale deed was not registered before the period of 2 years. In the instant case consideration paid by assessee under Memorandum of Understanding dated 08.09.2003 would fully cover the consideration of capital gains portion for being eligible to claim deduction under Section 54 of the Act. The fact that consideration received from sale of property were used for purchase of new asset would suffice to claim benefit of Section 54 / 54F of the Act as it amounts to utilisation of capital gains of net consideration for investment in new asset.

Thus, whether date of agreement or date of possession or date of MOU etc. is to be considered as date of purchase depends on facts of the case and is subject matter to litigation.

Issue No. 03: Assessee owns one residential house property in his name and is the co-owner of another house property along with his wife. He derives capital gain and invested the same in purchasing another house, whether he can claim deduction u/s 54 F?

Proviso to Section 54F states that the deduction u/s 54F shall not apply if
(a) the assessee

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) *the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property"*

The issue therefore arises is case where assessee is sole owner of one property and co-owner of another at the time of acquisition of new property. In this scenario whether holding of property in co-ownership will lead to violation of condition of Section of 54F or not?

The Mumbai bench of ITAT in the case of ITO v Rasiklal N Satra (2006 98 ITD 335 Mum dated 19/09/2005) held that the word 'owns' in section 54F means absolute ownership and not merely co-owner. Joint ownership is different from absolute ownership. In the case of residential unit, none of the co-owners can claim that he is the owner of residential house. Ownership of a residential house, in our opinion, means ownership to the exclusion of all others. Therefore, where a house is jointly owned by two or more persons, none of them can be said to be the owner of that house. Further in case of where property is co-owned no individual person on his own can sell the entire property. No doubt, he can sell his share of interest in the property but as far as the property is considered, it would continue to be owned by co-owners.

ITAT fortified its view based on judgement of Hon'ble ***Supreme Court in the case of*** Seth Banarsi Dass Gupta V.Cit ***166 ITR 783***, wherein, it was held that a fractional ownership was not sufficient for claiming even fractional depreciation under Section 32 of the Act. In view of this it was held that assessee was not the owner of residential house which was owned as co-owner with his wife.

If residential property held in joint name but full payment is made by one person, then whether person making payment is considered to be owner of property or not?

Contrary view which can be taken on co-ownership of the residential property for the purpose of Section 54F is by considering the scenario where property is considered to be in the name of person who has made payment of full consideration himself and not a single penny has been contributed by the joint owner. In such cases, it can be considered that the person owns more than one residential house, other than the new asset and thus deduction can be disallowed. Similar view was taken by ***THE ITAT BANGALORE BENCH 'C' in case of Anil Dev vs. Deputy Commissioner of Income Tax, Circle-2(2)(1), Bengaluru (2020) in ITA No. 1040/Bang/2018 dated 25-08-2020***. ITAT had allowed the deduction under Section 54F to the assessee where his contention was that he owned one commercial property and remaining one was residential property which was fully owned by wife of assessee and merely the name of assessee was included in purchase deed. Full consideration was paid by wife of assessee. Thus, only one residential property was fully owned by assessee which was purchased by him out of consideration from sale of shares.

Issue No. 04: Whether deduction u/s 54 /54 F is available to the assessee if the new asset is purchased in the joint name of the assessee together with some family member such as husband, wife, daughter, son or legal heir or what if new house is not purchased by assessee in his/her own name but in name of some family member or relative or in case of assessee being HUF where property is purchased in the name of one of its members and not the HUF itself?

There is a controversy on this issue as to whether assessee should be the owner of the residential property in order to be eligible for claiming deduction or not. Section 54 and 54F provide for purchase or construction of new house. But both sections are silent on name or who should be the owner of the house. From plain reading of section, it can be interpreted that the new house should be owned or be in the name of the assessee. However, the phrase "assessee should be legal owner" is missing. In many cases it has been held that where entire consideration has been paid by the assessee himself, he is entitled to full deduction u/s 54 even if property has been purchased in joint name with other family members. There are even cases where the deduction is denied in such cases. Some judicial rulings deny deductions under this section as assessee is not the owner of new house.

In case of ***Laxmi Narayan v CIT [2018] 89 taxmann.com 334 402 ITR 117 (Rajasthan) dated 07.11.2017 and in case of Radhey Shyam Arora vs. ITO (IT Appeal No. 267 Jp of 2017 dated 13-12-2017) Jaipur ITAT*** had held that "*The law provisions require the assessee to reinvest the gain amount within the stipulated time and there is no specific requirement that he should be the legal owner of reinvested property. It is not specified that it is to be in the name of assessee. Accordingly, when entire investment for the purchase of new house has gone through the assessee's account, then the benefit u/s. 54 cannot be denied on the ground that the new house was purchased in the name of his wife*". Similarly, when new house is purchased in joint name with brother, sister, children, close relatives, etc., and payment for new house is fully made through bank account of assessee, full deduction u/s. 54 is allowed, when such names are added for sake of convenience only.

Some other favourable judgments are:

a. ***CIT vs. Lamal Wahal [2013] 214 Taxman 287/30 taxmann.com 34 (Delhi)***

b. ***DIT, International Taxation vs. Mrs. Jeniffer Bhide [2012] 349 ITR 80/[2011] 203 Taxman 208/15 Taxmann.com 82 (KAR.)***

The Hon'ble ***Bombay High Court in case of Prakash vs. ITO [2009] 312 ITR 40/[2008] 173 Taxman 311 (BOM.)*** has taken a contrary view. High Court held that the purpose of section 54F is to give benefit on the ownership of one residential house only to the assessee and to encourage to have one residential house by the assessee. Therefore, right from the sale of original asset till the purchase and/or construction of the residential house, i.e., the "new asset", the ownership and domain over the new asset is a must. The new property must be owned by the assessee and/or he should be having legal title over the same. The others may use and occupy the same along with the assessee but the ownership should be of the assessee of the residential house so purchased from the net consideration/sale proceeds of the sale of original asset by the assessee.

The honorable ***Gujarat HC in the case of PCIT v Vaidya Panalalmanilal HUF (2018) 259 Taxman 19 (Guj.)(HC)dated 24 09 2018*** held that there was no dispute at the hands of revenue that the sale consideration arising out of sale of capital asset was used for acquisition of new asset and that such new asset was shown in books of HUF. Revenue's sole objection is that the sale deed was not executed in the name of the HUF but was in the name of two of the members of the HUF. The Tribunal was right in coming to the conclusion that this was substantial compliance with the requirement of section 54F when neither the source of acquisition of the new capital asset nor the account of such new asset in the name of the HUF are doubted. Mere technicality that the sale deed was executed in the name of member of the HUF rather not HUF, would not be sufficient to defeat the claim of deduction. By mere names of the purchasers in the sale deed, the rights of the HUF and other members of the HUF do not get defeated. If at all, the persons' named in the sale deed hold the property of the trust for and on behalf of HUF and the other members of the HUF.

The judgments in case of ***Vipin Malik (HUF) (supra) Delhi High Court*** *reported in* **330 ITR 309, *Kalya vs. Commissioner of Income Tax (supra) Rajasthan High Court*** *reported in* **208 ITR 436 *and Prakash (by legal heir of assessee) vs. Income Tax Officer (supra) Bombay High Court*** reported in 312 ITR 340, were concerned with the very different situation. The common thread running in these three cases is that the purchase of the new asset was in the name of person other than the assessee. The title was vested in such purchaser and not in the name of the assessee who had sold the existing capital asset.

In the present case of ***PCIT v Vaidya Panalal Manilal HUF***, the capital asset was sold by the HUF and purchased by the HUF as reflected in the accounts. The names of two members of the HUF shown in the sale deed was only a cosmetic in nature.

Rajasthan High Court in case of ***KALYA v. CIT [2012] 208 TAXMAN 436/22 TAXMANN.COM 67 (RAJ.) dated 19-05-2012*** held that The word '*assessee*' used in the IT Act needs to be given a 'legal interpretation' and not a 'liberal interpretation'. If the word 'assessee' is given a liberal interpretation, it would tantamount to giving a free hand to the assessee and his legal heirs and it shall curtail the revenue of the Government, which the law does not permit. Therefore, deduction u/s 54B would not be available where the land was purchased by assessee in the name of his son & daughter-in-law.
The question therefore still arises as to if new property is not in name of assessee but if entire payments are made out of sales proceeds of asset transferred than whether assessee will be considered to be owner of the property and allowed deduction or not.

The ***Supreme Court*** in case of ***CIT v. Vegetable Products Ltd. [1973] 88 ITR 192*** has observed that if a statutory provision is capable of more than one view, then the view which favours the taxpayer should be preferred. Therefore, section 54/54F, being a beneficial provision enacted for encouraging investment in residential houses, should be liberally interpreted. There is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, the sections do not require that the new residential house should be purchased in the name of the assessee; it merely says that the assessee should purchase/construct "a residential house".

SECTIONS 54B and 54EC:

Section 54B of the Income Tax Act states that individual or HUF sells a long term capital asset being agricultural land and invests proceeds in purchase of a new agricultural land within 2 years of sale then capital gains arising from the sale will be exempt from tax.
Synopsis of section is tabulated below:

Particulars	Conditions
Eligibile assessee	Individual of HUF
Nature of Asset transferred	The deduction applies only to agricultural land. It does not apply to any other type of property, such as residential or commercial properties. Such land must have been used in 2 years immediately preceding the date on which transfer took place for agricultural purposes.
Time Limit	Investment of sale proceeds in the purchase of new agricultural land in India to be done within two years from the date of sale. If the new agricultural land is purchased before the sale of the old land, the deduction cannot be claimed.
Quantum of Deduction	Amount of deduction will be equal to the amount invested in the new agricultural land. If the amount invested is less than the capital gains, then the remaining amount will be taxable.
Minimum period of holding	At least 3 years from date of purchase.

Particulars	Conditions
Other conditions	If agricultural land is not purchased before the date of furnishing of Income Tax Return u/s 139 – the amount of capital gains must be deposited before the date of filing of return in any bank or institution specified according to the Capital Gains Account Scheme, 1988. The deduction can be claimed for the amount which is deposited. If the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,— (*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and (*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

As per Income Tax Act, there are two types of Agriculture Land in India that is 'Rural Agriculture Land' and 'Urban Agriculture Land'. Therefore, it is very important to understand the meaning of 'Rural Agriculture Land' and 'Urban Agriculture Land'.

Rural Agricultural Land or Agricultural Land referred to in **Section 2(14)(iii) of the Act** is not considered a capital asset. Therefore, any gains from its sale are not taxable under the head Capital Gains. As per Section 2(14) of the Income Tax Act, 1961 Capital Assets does not include-

"agricultural land in India, not being land situated-

(a) In an 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 then thousand; or

(b) In any area within the distance, measured aerially-

(i) Not being more than two kilometres from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(ii) Not being more than six kilometres from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(iii) Not being more than eight kilometres from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

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

From the above definition, it is clear that to be a rural agriculture land, a land has to qualify both the below mentioned conditions.

1. The land should be Out of the Municipality or Nagar Palika.
2. The land should be aerially out of:

   - 2 Kms in case of nearest Municipality or Nagar Palika having population of more than 10000 but not exceeding 100000/-; or

   - 6 Kms in case of nearest Municipality or Nagar Palika having population of more than 1,00,000 but not exceeding 10,00,000/-; or

   - 8 Kms in case of nearest Municipality or Nagar Palika having population of more than 10,00,000/-.

Urban Agricultural Land: - *Urban Agricultural Land is a land located in specified location i.e. not a Rural Agricultural Land and used for agricultural purposes.*

Now that we have understood that only Urban agricultural land is considered as capital asset lets discuss issues for claiming deduction under section 54B.

Issue No. 05: Whether assessee can be denied deduction on the fact that property was valued as non-agricultural land for stamp paper?

ITAT Delhi in Vipin Kumar Vs ITO (2019) ITA 7620/Del/2019 dated 16-01-2023 held that benefit under section 54B of the Income Tax Act cannot be denied on mere fact that property was valued by the registered authority as a non-agricultural land for the purpose of stamp paper. Assessee had submitted the facts that land sold by him was agricultural land for which copy of sale deed, Khatauni and report of Gram Pradhan was also submitted regarding regarding situation of land from municipal limit of Hapur.

Based on high stamp duty levied by registration authority and basis fact that as per the sale deed page no. 36, the land was sold for the purpose of residential use Ld. AO concluded the land is a capital asset being non-agricultural land and hence denied deduction under Section 54B. Copy of Khasra and Khatauni and other relevant documents were ignored in which the land was shown as agricultural land. The crucial point of controversy thus, needs to be restored to the files of CIT(A) to allow the additional evidences of the assessee and to let the assessee establish that the land falling in the share of assessee which was sold by the impugned sale deed was not converted to non-agricultural purposes by any order of revenue authorities. If that stands establish the mere fact that it was sold for the purpose of residence of the vendor or that it was valued for the purpose of stamp papers by the registered authority as a non-agricultural land would not be material and assessee will be entitled to benefit of Section 54B of the Act.

Issue No. 06: Whether deduction under Section 54B be denied for agricultural land which was converted to non-agricultural before the transfer

One of important conditions for being eligible to claim deduction under Section 54B is that the agricultural activity has to be undertaken 2 years prior to date of sale. In a typical scenario where land was agricultural land and before sale it is converted to non-agricultural, if assessee is able to prove that agricultural activity was being undertaken on the land in 2 years prior to sale date then deduction cannot be denied. ***Surat bench of ITAT in case of [2023] 149 taxmann.com 378 Balubhai Mustafabhai Mahida vs. DCIT*** held that AO cannot deny deduction if assessee is able to provide complete details of agricultural activities and evidence thereof. Just because of fact that prior to sale land was converted to non-agricultural cannot be ground to reject claim of assessee.

Section 54EC – Capital Gains not to be charged on investment in certain bonds

Section 54EC is Deduction on Long Term capital gains arising on sale of long term capital asset being land or building or both through investment in Capital Gain Bonds. Capital gain bonds or 54EC bonds are the fixed income instruments that provide capital gains tax deduction under section 54EC to the investors. The tax liability on long-term capital gains from sale of immovable property can be reduced by purchasing 54EC bonds.

Synopsis of section is tabulated below:

Particulars	Conditions
Eligible assessee	All assesses
Asset Type	Land or building or both being long term asset
Time Limit	6 months from date of transfer
Quantum of Deduction	Rs. 50 lakhs or amount of capital gains invested in purchase of bonds
Qualifying assets	Long Term bonds viz. NHAI bonds or Rural Electrification Bonds
Lock in period	Such investment can be redeemed only after 5 years.

Let us understand some of issues faced while claiming deduction u/s 54EC

Issue No. 07: Can deduction under Section 54EC be claimed where specified Bond were purchased prior to date of sale of property?

Ahemdabad ITAT Bench in case of Dakshaben R Patel v.s ACIT (2012) ITA No. 2803/Ahd/2011 dated 31-05-2012 had held that Section 54EC clearly states that the investment in specified bonds is to be made "within a period 6 months after the date of such transfer", the intention of the legislature is clear. Had the legislature wanted to give liberty to the assessee to invest before or after the date of transfer, they would have explicitly said so, as has been provided in section 54 & 54F of the Act. Since such specific words are not used in section 54 EC, deduction cannot be allowed to the assessee.

Thus, investment in bonds prior to date of transfer cannot be considered to be reason for claiming deduction under section 54EC as investment was not made within 6 months after the date of transfer thereby resulting in non-fulfillment of condition.

If agreement to sale is entered and any advance is received by the assessee against such agreement and which is thus invested in 54EC bonds prior to the final sale agreement then deduction under 54EC is allowed. This view has been taken by Bombay High Court in case of ***CIT vs Subhash Vinayak Supnekar ITA No. 1009 of 2014 dated 14.12.2016***.

Issue No. 08: Whether the benefit under section 54EC and 54F can be taken simultaneously?

Deduction under section 54EC cannot be denied on ground that assessee has availed deduction under section 54 F also in respect of a part of capital gains. Mumbai ITAT in case of ***ACIT vs Deepak S Bheda 2012 23 taxmann com 159 (Mum) dated 15-06-2012*** **it was held that deduction cannot be denied in 54EC just because same has also been availed in Section 54F.** It is to be noted that it is not a case of availing double deduction on the same amount but the assessee has claimed deduction under section 54F as well as under section 54EC for the respective amount of capital gain invested in purchase of new house and REC bonds. Wherever any such restriction is deemed fit, the Legislature has provided in the statute a sufficient check under chapter VI-A of the Act. As far as the claim of deduction under section 54F and under section 54EC, there is no such restriction in the statute that the assessee cannot claim the deduction under both sections, even if the conditions provided under the respective sections are complied with and the same does not result in availing double deduction on the same amount. The expression 'the whole or any part of capital gains in the long-term specified assets' makes it clear that the deduction under section 54EC is available even when the part of capital gain is invested in specified long-term asset. There is no dispute that the assessee has invested out of the total capital gain in REC bonds within the prescribed period of time as provided under section 54EC. Therefore, once the conditions as prescribed under section 54EC are complied with, then the deduction cannot be denied on the ground that the assessee has availed the deduction under section 54F also against a part of the capital gain.

CONCLUSION:

As mentioned previously, Sections 54, 54F, 54B and 54EC are all beneficial for assessee and hence they should be interpreted liberally in a way that they prove beneficial for claiming of relevant deductions from capital gains. Many of issues are still unsettled and judicial pronouncements are in both ways therefore it is advisable that whenever there is a transaction of sale of long-term asset be it residential or any other asset, proper guidance and advice of Chartered Accountant is taken before entering into the transaction to avoid any future litigations.

TAX ISSUES IN RELATION TO FIRM

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The Indian Partnership Act do not provide separate legal entity status to the partnership firm, however, for the purpose of the application of the provisions of the Income Tax Act, 1961 ('the Act/ the Income tax act'), a firm and its partner are treated separately. On the other hand, a Limited Liability Partnership (LLP) enjoys separate legal entity status. The LLP integrates the benefits of a company as well as partnership firm, however for the purpose of income tax, LLP is considered as Firm. The Income tax act further provides for special provisions for Firm in relation to payment of interest / remuneration to partners, capital introduction in the form of capital asset by partner, withdrawal from firm at the time of dissolution or reconstitution of firm, etc. In this article, we will understand and analyses some of the issues involved in those provisions.

1. **Computation of Book profit - Whether income assessable under the non business head/s which are credited to profit and loss shall form part of 'book profit' u/s 40(b) of Act?**

   As per the provision of section 40(b) of the Act, while computing the total income of the firm, any remuneration paid/payable to a partner, shall be deductible based on the restrictions prescribed on the computed book profit of the Firm.

   Explanation 3 states that the book profit means the net profit as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit.

   The said chapter nowhere provides that net profit should be the only income from business or profession alone and not from other sources. Thus, for the purpose of section 40(b)(v) read with explanation there cannot be separate method of accounting for ascertaining net profit and/or book profit. Thus, if the income from other sources is included in the PnL A/c, then it cannot be disregarded while ascertaining book profit for computation of the remuneration of the partners.

   This ratio was laid down in following case:

   - Serajudddin & Bros. vs. CIT [(2012) 24 taxmann.com 46 (Calcutta HC)]
   - Suresh A. Shroff & Co. v. JCIT [2012] 27 taxmann.com 291 (Mumbai ITAT)
   - Mac Industries v. ITO [2021] 124 taxmann.com 570 (Surat-Trib.)

2. **Whether quantum of interest and remuneration etc. to partners is required to be specified in the LLP agreement or a simple recital authorizing partners to mutually decide the quantum of remuneration from time to time will do?**

   There is no unity of opinions on this question between different High Courts. However, CBDT vide Circular No. 739, dated 25 March 1996 has taken a view that simple authorisation of payment of remuneration etc. in the deed is not sufficient. Remuneration payable to each individual working partner has to be specified in the deed or manner of quantification of such remuneration has to be laid down in such deed and only then the remuneration to a working partner can be allowed as deduction.

3. Whether, for allowance of deduction of interest payments, requirement of section 36(1)(iii) needs to be fulfilled?

The above question is squarely covered by Supreme court in case of Munjal Sales Corp v CIT [2008] 298 ITR 298 (SC), the court held that *"Section 40 starts with the words 'Notwithstanding anything to the contrary in sections 30 to 38' which shows that even if an expenditure or allowance comes within the purview of sections 30 to 38, the assessee could lose the benefit of deduction if the case falls under section 40. In other words, every assessee, including a firm, has to establish, in the first instance, its right to claim deduction under one of the sections between sections 30 to 38 and in the case of the firm, if it claims special deduction, it has also to prove that it is not disentitled to claim deduction by reason of applicability of section 40(b)(iv). It is important to note that section 36(1) refers to other deductions, whereas section 40 comes under the heading 'Amounts not deductible'. Therefore, sections 30 to 38 are other deductions, whereas section 40 is a limitation on those deductions. Therefore, even if an assessee is entitled to deduction under section 36(1)(iii), the assessee-firm will not be entitled to claim deduction for interest payment exceeding 18/12 per cent per se."*

4. Whether despite specific ceiling on allowable quantum of interest and remuneration etc. paid to partners, revenue can invoke the provisions of disallowance of alleged unreasonable or excessive interest and remuneration etc. u/s 40A(2) of Act?

The rulings on the above referred subject has held that section 40(b) and 40A(2) operate in different fields and the provisions of Section 40A have no application in the cases where Section 40(b) has been applied. Further, it was held the AO has no power to go into the question of reasonableness of remuneration paid by the firm to its partners and he can only examine whether the remuneration is not exceeding the prescribed limits as laid down in Section 40(b).

Thus, when remuneration is paid to a working partner as defined in section 40(b) and said payment is authorised by deed, there is no justification for treating any amount of remuneration as excessive under section 40A(2) provided aggregate remuneration to all the partners is also within ceiling prescribed u/s 40(b).

The following ruling has laid down the above principle:

- CIT vs. Great City Manufacturing Co. [(2013) 33 taxmann.com 258 (Allahabad HC)]
- Chhajed Steel Corporation v. ACIT 77 ITD 419 (Ahmedabad ITAT)
- N.M. Anniah & Co. v. CIT 101 ITR 348 (Karnataka High Court)

Further, the following cases have held that no disallowance under Section 40A(2) can be made if there no comparable cases available and there is no evasion of tax:

- Indo Enterprises (ITA No. 1221/Pun/2016) dated 19 September 2018;
- Indo Saudi Services (Travel) (P.) Ltd. (2009) (310 ITR 306) (Bom HC)

5. Whether provision of section 50C/50CA are also applicable in case where partner introduces capital asset in the form of land/building/shares by way of capital contribution?

Section 45(3) specifically deals with transfer of capital asset by a person to a firm, in which he is or becomes a partner, by way of capital contribution. The transaction is chargeable to tax as capital gains in the year of transfer and the amount recorded in the books of the firm deemed to be full value of consideration. Thus, issue may arise in a case where amount recorded in books of firm is lower than 50C or 50CA valuation.

The Mumbai tribunal in case of DCIT vs M/s Amartara Pvt. Ltd. (ITA No. 6050/Mum/2016) held that since the Act itself is provided for deeming consideration to be adopted for the purpose of section 48 of the Act, another deeming fiction provided by way of section 50C cannot be extended to compute deemed full value of consideration as a result of transfer of capital asset. Thus section 45(3) prevails over section 50C.

In case of contribution in kind to LLP, section 32(2) of the LLP Act, 2008 read with Rule 23(2) of LLP Rules prescribes that valuation of contribution in kind should be accounted and disclosed in accordance with value approved by valuer.

6. Further, in the hands of Firm, where the capital contribution received is recorded at a lower value, will inadequate consideration be subject to provisions of section 56(2)(x)?

There exist 2 view on the said proposition:

<u>View 1: 56(2)(x) is not applicable</u>

a) The amount credited to partner's account is merely a notional amount. The actual consideration given by the firm on admission of a partner is not ascertainable or indeterminable.

b) The above principles were laid down by the SC in the case of Sunil Siddharthbhai (156 ITR 509) where the SC had to consider the matter from a capital gains angle, in the context of a transfer of assets by a partner to a firm, and contributing shares to the firm as his capital contribution. The SC went to hold that in the absence of the failure of computational mechanisms there would be no capital gains though there was a transfer under the provisions of the Income-tax Act. The Income-tax Act was subsequently amended and section 45(3) was subsequently introduced.

c) Further, deeming provisions as laid down under section 45(3) cannot be used for the purposes of section 56(2)(x).

On the basis of above, it can be said that failure to compute consideration given by the firm leads to inability to calculate inadequacy of consideration, which is indeed the primary requirement for the applicability of section 56(2)(x). Consequently, section 56(2)(x) shall not be applicable in the hands of partnership firm

<u>View 2: 56(2)(x) is applicable</u>

a) It is doubtful that the ratio of Sunil Siddharthbhai's case may be extended to the case of the firm. The contribution would be capital assets in the hands of the firm. The cost of acquisition of the capital asset to the firm may be the same as that recorded in its books of account on contribution. It may be difficult for the firm to urge that the cost is unascertainable and the charge to capital gains on the transfer fails.

   In the absence of any other legal precedent, it is difficult to conclude on applicability of 56(2)(x). However, on the basis of above discussion, though arguments in favour of non-applicability of 56(2)(x) exist, View 2 appears to be a better view.

Further, the Finance Act 2021 has amended provisions in relation to withdrawal by partner in the event of reconstitution or dissolution. We hereby understand some of the issues in relation to the same:

7. Gains arising on recognition of self-generated Goodwill deemed to be short term

S. 45(4) CG attributable to self-generated goodwill/asset is deemed as STCG, even if such self-generated goodwill/asset is held for more than 3 years by the firm. The rationale for the same is unclear.

8. Subsequent transfer of goodwill

If s. 45(4) Capital Gains pertains to self-generated goodwill/asset, the firm gets relief only at the time of sale of such goodwill/asset in the future as a standalone capital asset, which, in most cases, is an unlikely event. In event of the sale of such goodwill/ asset as a part of a slump sale, then the subject matter of transfer is an undertaking and not goodwill as a standalone capital asset, there is no clarity whether s. 45(4) CG attributed to self-generated goodwill/asset can be reduced while computing CG from slump sale.

9. Subsequent transfer of the remaining asset in the firm being a tax-neutral transfer

For all practical purposes, the amount attributed u/s. 48(iii) to remaining capital assets of the firm remains in abeyance and can be activated only upon transfer thereof by the firm in the future. If the firm transfers such remaining capital assets as tax-neutral transfer (say, by way of gift or conversion under Chapter XXI of Companies Act, 2013), difficulty may arise in claiming the benefit of s. 48(iii):

- Since the transaction is tax neutral transfer in the hands of the firm, the firm may not be able to claim the benefit
- The successor of the firm (who acquires such assets through tax-neutral transfer) may need to cross the hurdle of the restrictive scope of s. 48(iii), which apparently grants benefit only where the transfer is "by the specified entity" itself i.e. firm, and not by the successor.

10. When Stock in trade and capital asset both are taken over by the retiring partner

To understand the issue, let us take an example as follows:

M/s XYZ & Co.			
Liabilities	**Amount**	**Asset**	**Amount**
Capital A/c		Asset 1 (FMV 600)	300
X	500	Asset 2 (FMV 1200)	900
Y	500	Stock in trade (FMV 600)	300
Z	500		
Total	**1500**	**Total**	**1500**

Firm M/s XYZ & co. has 3 equal partners. Both the assets are long term capital assets. Thus, the net worth of the Firm is Rs 2400 with each partner's intrinsic interest worth Rs 800/-. Mr. X retires from the firm and his account is settled by giving him Asset 1 and 1/3rd of stock in trade. The indexed cost of Asset 1 is Rs 450

Analysis:

As already explained the computation u/s 9B will be

Particulars	Amount (in Rs.)
Full value of consideration	600
Less: Indexed cost	450
Long term gains on the sale of asset – I	**150**
Tax on above @ 20%*	30
#FMV of Transfer of Stock in trade	200
#Less: Cost	100
#Business profits on above – II	**100**
#Tax on above @ 30%*	30

*(*Note: Surcharge and cess are ignored only for ease of calculation)*

#The guidelines issued are silent on the treatment, in cases where stock in trade is taken over. Explicit guidelines with regard to the treatment of stock in transfer are expected to clear the ambiguity. There are two views possible w.r.t to consideration while calculating the revised capital:

One can say that double taxation is only with respect to the capital asset being transferred since the same is taxable u/s 9B and 45(4). Thus, the gains only with respect to the transfer of capital asset ought to be adjusted in the partner capital balance.

On the contrary, one can state that the section clearly mentions 'amount standing to the credit of the partner capital' means after considering all the profits/gains/losses till the date of retirement. Moreover, the analogy prescribed in the circular states that '*This exercise is required to be carried out since section 9B of the Act mandates that it is to be deemed that the firm has transferred the asset to partner"*. Thus, the distribution of share business profit should be allowed to avoid double taxation without any dilution.

Thus, Rs 150 will be taxable under the head capital gains and Rs 100 will be taxable under the head business and profession.

Based on the above analogy, the Revised Capital of retiring partner for the purpose of section 45(4) will be:

Particulars	Considering credit of profit on transfer of stock in trade	Not considering credit of profit on transfer of stock in trade
X's Capital balance	500	500
Add: X's share in Book Gain on sale of the asset (600-300) /3	100	100
Less: Share of tax on LTCG	(10)	(10)
Add: Share of Profit & loss on the transfer of stock in trade (200-100)/3	33	-
Less: Share of tax on business profits	(10)	-
Revised Capital Balance of Mr. A	**613**	**590**

Gains u/s 45(4)

Particulars	Considering credit of profit on transfer of stock in trade	Not considering credit of profit on transfer of stock in trade
Value of Money received	Nil	Nil
FMV of the asset taken over	600	600
Revised Capital Balance of Mr. A	(613)	(590)
Sum chargeable to tax u/s 45(4)	**(13)**	**10**

In the first scenario, the capital gains u/s 45(4) will be deemed to be nil. Hence no further attribution is required u/s 48(iii).

In second scenario, as per s. 48(iii) r. w. Rule 8AB, s. 45(4) CG of Rs 10 is attributed as follows:

Where CG Relates to	Basis of Attribution	Amount
Asset 1 – Taken over by partner	No attribution	Nil
Revaluation of Asset 2 (1200-900 = 300)	$10 \times \frac{300}{(300+300^{**})}$	5
Revaluation of Stock in Trade (600-300 = 300)	Not Applicable	???

Note: Rule 8AB states that the **numerator will be an increase in or recognition of the **capital asset,** however, the **denominator** will be an increase in or recognition of the value of **all assets.**

The term 'all assets' is not clearly defined, it can have 2 interpretations:

- Literal interpretation: It includes all assets including current assets
- Other view is that the rule speaks of only capital asset, self-generated goodwill, or any self-generated asset, thus the denominator should also be an aggregate of only those assets.

However, the rule further states that if the CG u/s 45 is not on account of revaluation of a capital asset or self-generated asset/goodwill, no amount shall be attributable to any capital asset. In our example the CG u/s 45 is also on account of the revaluation of stock in trade, hence its attribution cannot be made to Asset 1.

Since the provision of section48(iii) is not applicable in the case of stock in trade, as seen from the above, the tax paid on the transfer of stock in trade is not allowed as a step-up cost.

Further, as per Rule 8AA(5), S 45(4) capital gains of Rs 10, in the second scenario, shall be classified as STCG & LTCG as follows:

45(4) Gains attributable to	Amount attributes as per Rule 8AB	Nature of Gain
Asset 2	5	LTCG
Stock in trade	???	???

Since stock in trade is not a capital asset, it is not possible to decide the nature of capital gain. Can it be said that the computation mechanism fails, by applying the law laid down by the Honourable Supreme Court in case of B. C. Srinivasa Setty 128 ITR 294?

A similar situation will arise when there is a takeover of agricultural land by a partner on his retirement since agricultural land is not a capital asset as per section 2(14).

11. What if there is a decrease on account of revaluation?

Rule 8AB only mentions "increase in or recognition of capital asset' hereby implying that only upward revaluation ought to be considered while the downward revaluations are to be ignored. Thus, in cases where there is an increase in the revaluation of only 1 asset and that asset is taken over by the partner, no attribution will be allowed.

12. What about the revaluation of liabilities?

Section 45(4) only states to compute capital balance without considering the amount of **increase** in any asset or recognition of self-generated goodwill. Thus, following the analogy as stated in the point before, the capital balance can include a decrease in the revaluation of liabilities.

For the purpose of attribution under rule 8AB, in case the CG u/s 45(4) is on account of decrease in revaluation of liabilities, a similar situation will arise as stated in **Issue 4.** Further, the nature of capital gains is also not ascertainable as envisaged in Issue 4

13. What if the partner is retired based on the DCF method of valuation?

Where the retiring partner is paid cash on basis of the DCF method or an lumpsum valuation, and the firm does not obtain any valuation report from an approved valuer, it is not possible to apply Rule 8AA(5).

14. Whether one can claim deduction u/s 54EC in case the asset transferred is a long term capital asset?

The Supreme court in the case of Dempo Company Ltd. [2016] 74 taxmann.com 15, approved Bombay HC's decision in the case of ACE Builders (P.) Ltd. [2006] 281 ITR 210 which granted deduction u/s. 54E on CG computed u/s. 50 from the sale of LTCA being a depreciable asset, for the following reasons

- Deeming fiction in s.50 is confined only to s.48 and 49 – and does not apply to other provisions of the act such as s.54E, which makes no distinction between depreciable and non-depreciable assets.
- Fiction in s.50 deems CG as STCG and does not convert depreciable asset which is LTCA into STCA.

Rule 8AA(5) employs phrase which is similar to s. 50, and states that s. 45(4) CG attributable to depreciable assets "shall be deemed to be from the transfer of STCA". Is such deeming fiction limited only to the characterisation of CG for purpose of s. 45(4), which has the impact of denial of indexation benefit?

The fiction of STCG in relation to CG u/s. 45(4) is created via Rule 8AA(5). The legal validity of Rule 8AA(5) is in question since it is going beyond the scope of section 2(42A). However, assuming the said rule is valid, such rule is notified under the authority of s. 2(42A) which defines STCA for the entire act. Unlike in the case of s.50 - which merely overrides s.48/49, the fiction of Rule 8AA(5) r. w. s. 2(42A) is created at the very root of the definition of STCA. Capital gains so computed will therefore be STCG for all provisions of the Act. There is no requirement thereafter, to examine the nature of capital asset every time while examining different provisions of the Act such as s. 74, 112, etc. Consequently, the ratio of SC decision will have no applicability to capital gains computed under s. 45(4) r.w. Rule 8AA(5).

15. Is tax u/s. 45(4) triggered in the event of a partner retiring from the firm, or upon actual receipt from the firm?

Assume, a partner retires in March 2022 and his account is settled in March 2024 by cash payment from the firm. Whether s. 45(4) is triggered in hands of the firm in FY 2021-22 (viz. year of retirement) or FY 2023-24 (viz. year of actual receipt)?

As per one view, s. 45(4) is triggered in FY 2021-22. As per the Indian Partnership Act as also u/s. 24(5) of the LLP Act, immediately upon retirement, a debt (viz. right to receive) is determined in favour of the retiring partner, representing the value of his share in the firm's assets. Determination of such a debt due to the partner in lieu of extinguishment of his partnership interest is a constructive receipt, which triggers s. 45(4) in hands of the firm immediately.

Another view is that s. 45(4) is triggered in FY 2023-24 viz. on actual receipt; S. 45(4) refers to 'received' which is different than 'receivable'. Wherever Legislature desired to capture receipt on the accrual basis, it has consciously employed 'receivable' or 'due to' or 'repayable' (Example: Refer TDS provisions). The Hon'ble Supreme Court in the case of **Moon Mills Ltd. (1966) (59 ITR 574)** dealt with the balancing charge provision in the 1922 Act which provided for taxation of insurance money "received". The Hon'ble Supreme Court held that the balancing charge was fictional in the business chapter, and such fiction cannot be extended beyond what was clearly contemplated therein. SC did not attribute the word 'received' as an equivalent to 'receivable', and SC upheld taxation in the year of actual receipt, despite the taxpayer having adopted the mercantile method of accounting and insurance compensation shown as receivable in books. Also, fact that other aspects of the business chapter were computed as per the mercantile method was regarded as irrelevant by SC while dealing with the fictional provision relating to balancing charge which was based on actual receipt.

The issue is fact-specific. The Honourable supreme court in the case of Standard Triumph Motor Co. Ltd. [1993] 67 Taxman 160 held that the time of receipt depends upon when funds are made available by the firm at disposal of the retiring partner. In the present case, if the retiring partner had an unfettered right to withdraw funds in FY 2021-22 itself, the mere fact that he chose to withdraw funds only in FY 2023-24 may not arguably defer taxability u/s. 45(4). On other hand, where terms of the partnership deed suggest that partner could have withdrawn funds only in FY 2023-24, arguably, s. 45(4) may trigger only in FY 2023-24.

16. Where retiring partner's account is settled by the firm over a period, in installments

To illustrate, the partner retires in year 1, and his capital balance at the time of retirement is 3 Lakhs. His share of 10 Lakh is settled in 2 equal installments, 5 Lakh paid in year 1 and the balance 5 Lakh paid in a year. As per the partnership deed, such a partner could not have withdrawn funds at any point of time prior to actual receipt from the firm in years 1 and 2.

An open issue could be, whether s.45(4) can be defended in year 2 on the ground that the person is not at all a 'specified person' in year 2 since he ceased to be a partner in year 1 itself? Definition of 'specified person' in s. 9B refers to a person who 'is' a partner of a firm in 'any previous year'.

Another issue could be, whether component D of the formula in s. 45(4) (representing partner's capital account balance) can be deducted twice over years 1 and 2? A better view appears to be that, the aggregate deduction of component D across years 1 and 2 cannot exceed the partner's capital balance at the time of retirement. Permitting deductions at every instalment would result in duplicated deduction, which is not permitted in law unless specifically provided. In the above facts, component D of 3 Lakh once reckoned while computing CG u/s. 45(4) in year 1, cannot be reckoned again in year 2

17. Whether s.45(4) is prospective or retroactive?

S. 45(4) is applicable from AY 2021- 22. Assume, the partner retired prior to the introduction of s. 45(4) - say, on 31 March 2020 and cash payable to him on retirement from the firm got crystallised prior to 31 March 2020, but such cash is actually received by him only after 1 April 2020 - is charge u/s. 45(4) triggered?

In one view, s. 45(4) should be given a retroactive effect and applies to every receipt post 1 April 2020 even where reconstitution or part receipt would have happened before 1 April 2020. S. 45(4) is a deeming fiction linked to receipt-based taxation, along the lines of s. 45(1A) and 46(2). Fact that reconstitution may have occurred prior to 1 April 2020 does not dilute deemed taxability linked to the event of receipt. Also, s. 45(4) does not grandfather past reconstitution; unlike other amendments in Act. Also, s. 46(2) has been applied in respect of distributions by liquidator post 1 April 1961, while earlier distributions were exempt

As another view (which appears to be defensible), s. 45(4) should NOT be given a retroactive effect and is inapplicable to receipts post 1 April 2020 where reconstitution happened before 1 April 2020. Reconstitution is defined as where a person "ceases" to be a partner of a firm - emphasis on 'ceases' supports that cessation needs to occur only after new provisions are introduced on statute – where cessation is before 1 April 2020, there is no 'reconstitution', and hence, s. 45(4) is inapplicable. Further, terms such as 'specified person' and 'specified entity' are coined by statute for the first time post 1 April 2020. It would be incorrect to attribute such terminologies to past transactions carried out when such concepts never existed on statute. Also, to attract charge u/s. 45(4), there has to be 'profits or gains' from receipt in hands of a partner is necessary. In the present case, the retiring partner's entitlement stood determined prior to 1 April 2020, receipt post 1 April 2020 does not yield any 'profits or gains' – rather, it is the realisation of pre-existing right or debt. In the commercial sense, no 'profits or gains' were made by the partner post 1 April 2020. To attract tax u/s. 45(4), receipt post 1 April 2020 should

lead to income or enrichment of partner. Also, a specific provision along the lines of Explanation to s. 45(5) is needed to cover past reconstitutions into the ambit of s. 45(4). Also, a comparison with s. 46(2) under the alternative view is inappropriate since the liquidation of the company is a continuing event while retirement/ reconstitution is a snapshot event. Further, in liquidation, there is unlikely to be any prior debt realised by a shareholder from the company.

18. Impact of partner's capital account having a negative balance

The formula as prescribed u/s 45(4) of A=B+C-D, where D represents the balance in the capital account of the partner (represented in any manner). The issue is whether component D, being a negative figure, can be assumed as zero, or, should be considered as a negative figure to effectively increase CG?

Mumbai Tribunal (SB) decision of Summit Securities Ltd. [2012] 19 taxmann.com 102 held that, though negative net worth of the undertaking, if 'deducted' as cost of acquisition in terms of s. 50B, effectively leads to an addition to the full value of sale consideration, the same needs consideration and cannot be assumed as nil. Considering the ratio of such a decision, it is possible to argue in the context of component D that negative capital balance may effectively lead to an increase in component A thus same needs to be considered.

In defence, an argument that taxpayers may like to raise is that component D can only mean a positive figure since the language of s.45(4) defines component D as "balance in the capital account", and "balance" always refers to a positive figure and cannot envisage a negative figure. As a counter to such argument, the tax authority may suggest that as per the SC decision in the case of J. K. Industries vs. UOI [2007] 165 Taxman 323, words of accounting language used in a statute should be interpreted as understood in accounting practice – and hence, expression "balance" should be interpreted in an accounting sense, to mean either a positive figure (in case of credit balance) or a negative figure (in case of debit balance).

19. Impact of retirement at book value

Assume, the retiring partner's account is settled at book value which is equivalent to his capital balance, and such settlement is as per long-standing terms of the partnership deed.

Arguably, such a settlement may not have any adverse implications u/s. 45(4) as there is no excess over capital balance and such settlement merely reflects working out of pre-existing rights.

In a different scenario, assume, there is retirement where the partner retires by receiving only his capital balance and nothing in excess thereof – despite there being a higher entitlement basis partnership deed.

Arguably, actual receipt by a partner from the firm is relevant - s. 45(4) does not have any deeming fiction for taxation w. r. t. the fair value of partnership interest.

However, s. 56(2)(x) implications in hands of continuing partners (which are enriched on account of lower payment to retiring partner) may require evaluation.

In the absence of any guidance from CBDT or legal precedents on many of the issues, it is difficult to form any view with regards to taxability. The issues are litigation prone and department, especially at lower levels, may not take a favourable view on the matter. A comprehensive call including the risk appetite of the client will have to be taken while filing the return of income. A documented approach on the favourable view and steps to mitigate the unfavourable view will be helpful at the assessment and litigation level.

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
Sat-Sun 22nd, 23rd & 29th April, 2023	50 Year Celebrations Committee	Ramat Ji Ramjhat -A grand sports spectacle Celebrating 50 years of association spread over 3 days where games like cricket, lagori, carom, notrum, Master chef, Drawing and Clay Moulding were organised.	NA	More than 400 participants on each of 3 days
Thu-Thu 4th May - 11th May, 2023	Member & Recreation Committee	International Family Picnic to Jordan	NA	11 Families - 23 Individuals

Ramat Ji Ramjhat

Family Picnic to Jordan