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## **26. INCOME UNDER HEAD “PROFITS AND GAINS OF BUSINESS OR PROFESSION”.**

### **26(1): Income Chargeable as Business or Professional Profits**

The incomes referred to in sub-section (2) shall be chargeable to income-tax under the head “Profits and gains of business or profession”.

### **26(2): Incomes Included under Business or Profession**

The income under sub-section (1) shall include—

(a) the profits and gains of any business or profession carried on by the assessee at any time during the tax year;

(b) any compensation or other payment, due to, or received, by any person by whatever name called,—

(i) wholly or substantially managing the affairs—

(A) of an Indian company; or

(B) in India, of any other company; or

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**(ii) holding any agency in India for any part of business activities of any other person; or**

**(iii) for any contract relating to business, in connection with termination of management, office, agency or contract, as the case may be, or modification of terms and conditions relating thereto;**

**(c) any compensation or payment, due to, or received by, any person for vesting of the management of any property or business, in the Government including any corporation owned or controlled by the Government under any law in force;**

**(d) income derived by a trade, professional or similar association from specific services performed for its members;**

**(e) profits on sale of import licence, cash assistance against export, duty drawback or duty remission or any other export incentive, received or receivable;**

**(f) the value of any benefit or perquisite arising from business or the exercise of a profession, whether—**

**(i) convertible into money or not; or**

**(ii) in cash or in kind or partly in cash and partly in kind;**

**(g) any interest, salary, bonus, commission or remuneration, by whatever name called, which is due to, or received by, a partner of a firm from such firm to the extent allowed under section 35(e) as a deduction in computing the income of the firm;**

**(h) any sum, received or receivable, in cash or in kind—**

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**(i) under an agreement for not carrying out any activity in relation to any business or profession, not being—**

**(A) any sum received on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business or profession which is chargeable under the head “Capital gains”;**

**(B) any sum received as compensation from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, as per the terms of agreement entered into with the Government of India; or**

**(ii) under an agreement for not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature, or information or technique likely to assist in the manufacture or processing of goods or provision for services;**

**(i) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy;**

**(j) the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the manner, as may be prescribed; and**

**(k) any sum which is received or receivable in cash or kind, when—**

**(i) a capital asset other than land or goodwill or financial instrument, is demolished, destroyed, discarded or transferred; and**

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(ii) the whole of the expenditure on it has been allowed as a deduction under section 35AD of the Income-tax Act, 1961 or section 46 of this Act.

### **26(3): Speculation Business Treated Separately**

Where speculative transactions carried on by an assessee are of such nature to constitute a business, the business (herein referred to as speculation business) shall be deemed to be distinct and separate from any other business.

### **26(4): Income from Letting Residential House**

Any income from letting out of a residential house or a part of it by the owner shall not be included in income under sub-section (1) and shall be chargeable only under the head “Income from house property”.

## **27. MANNER OF COMPUTING PROFITS AND GAINS OF BUSINESS OR PROFESSION.**

### **27: Computation of Business or Professional Income**

The income referred to in section 26 shall be computed as per the provisions of sections 28 to 60, except section 58.

## **28. RENT, RATES, TAXES, REPAIRS AND INSURANCE.**

### **28(1): Deductions for Rent, Taxes, Repairs and Insurance**

The following amounts shall be allowed as deduction in respect of premises, machinery, plant or furniture used for the purposes of the business or profession:—

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- (a) any premium paid in respect of insurance against risk of damage or destruction thereof;
- (b) land revenue, local rates or municipal taxes paid;
- (c) rent paid, when the premises are occupied by the assessee as a tenant;
- (d) amount paid on account of current repairs to the premises, not being in the nature of capital expenditure, when the premises are occupied by the assessee otherwise than as a tenant;
- (e) amount paid on account of cost of repairs, not being in the nature of capital expenditure, when the premises are occupied by the assessee as a tenant and where he has undertaken to bear the cost of repairs to the premises; and
- (f) the amount paid on account of current repairs to machinery, plant or furniture, not being in the nature of capital expenditure.

**28(2): Proportionate Deduction for Mixed Use**

In case where the premises, building, machinery, plant or furniture is partly used or not wholly and exclusively used for the purposes of the business or profession, the deduction allowable under sub-section (1) shall be restricted to the fair proportionate part thereof as determined by the Assessing Officer, having regard to the usage for the purposes of the business or profession.

**29. DEDUCTIONS RELATED TO EMPLOYEE WELFARE.**

**29(1): Employee Welfare Deductions**

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**The following sums, in the case of an assessee being an employer, shall be allowed as deduction in computing income chargeable under section 26:—**

**(a) any sum paid by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to—**

**(i) such limits, as may be prescribed, for recognising the provident fund or approving the superannuation fund; and**

**(ii) such conditions, as the Board may specify, for cases where the contributions are not made annually either as fixed amounts, or annual contributions fixed on some definite basis by reference to the income chargeable under the head “Salaries” or the contributions or to the number of members of the fund;**

**(b) any sum paid by way of contribution towards a pension scheme referred to in section 124, for an employee up to 14% of the salary of the employee in the tax year, where such salary includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites;**

**(c) any sum paid by way of contribution towards an approved gratuity fund created by the assessee for the exclusive benefit of his employees under an irrevocable trust;**

**(d) irrespective of anything contained in sub-section (2), any provision made for the purpose of making contribution towards approved gratuity fund or for the purpose of payment of any gratuity that has become payable during the tax year;**

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(e) (i) the amount of contribution received from an employee to which the provisions of section 2(49)(o) apply, if it is credited by the assessee to the account of the employee in the relevant fund or funds by the due date;

(ii) for the purposes of sub-clause (i), “due date” means the date by which the assessee is required as an employer to credit employee contribution to the account of an employee in the relevant fund under any Act, rule, order or notification issued under it or under any standing order, award, contract of service or otherwise and the provisions of section 37 shall not apply for determining the “due date” under this clause.

**29(2): Restrictions on Gratuity Deduction**

(a) Subject to the provisions of sub-section (1)(d), no deduction shall be allowed for any provision made for the payment of gratuity to the employees on their retirement or termination for any reason; and

(b) in case deduction has been allowed for any provision made under sub-section (1)(d), then no deduction shall be allowed on actual payment made from such provision.

**29(3): Disallowance of Contributions to Unapproved Funds**

No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860, or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under sub-

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section (1)(a) or (b) or (c), or as required by or under any other law in force.

### **30. DEDUCTION ON CERTAIN PREMIUM.**

#### **30: Deduction for Certain Insurance Premiums**

The following sums shall be allowed as deduction in computing income chargeable under section 26, being premium paid:—

(a) by any assessee in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of business or profession;

(b) by a federal milk co-operative society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk raised by its members to such federal milk co-operative society;

(c) by the assessee as an employer, through any mode of payment other than cash, to effect or to keep in force an insurance on the health of its employees under a scheme framed in this behalf by—

(i) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 and approved by the Central Government; or

(ii) any other insurer and approved by the Insurance Regulatory and Development Authority established under section 3(1) of the Insurance Regulatory and Development Authority Act, 1999.

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31. DEDUCTION FOR BAD DEBT AND PROVISION FOR BAD AND DOUBTFUL DEBT.

31(1): Deduction for Provision for Bad and Doubtful Debts

The amount mentioned in column C of the Table below, in respect of any provision for bad and doubtful debts made by the assessee specified in column B thereof, shall be allowed as a deduction in computation of income chargeable under section 26.

Table

Sl. No.	Specified assessee	Amount of deduction
1	<p>(a) A scheduled bank, other than a bank incorporated by or under the laws of a country outside India; or</p> <p>(b) A non-scheduled bank; or</p> <p>(c) A co-operative bank, other than—</p> <p>(i) A primary agricultural credit society; or</p> <p>(ii) A primary co-operative agricultural and rural development bank.</p>	<p>(a) Not more than 8.5% of the total income of the tax year computed before making any deduction under this clause and Chapter VIII, and an additional amount up to 10% of the aggregate average advances made by rural branches computed in the manner prescribed; and</p> <p>(b) For an assessee mentioned in clauses (a) and (b) of column B, at its option, an additional amount in excess of clause (a) of this column but not more than the income from redemption of securities as per a scheme framed by the Central Government, when such income has been disclosed in the return of income under the head “<i>Profits and gains of business or profession</i>”.</p>

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| Sl. No. | Specified assessee                                                                                                                                                                                                                                           | Amount of deduction                                                                                                                |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| 2       | <p>(a) A bank incorporated by or under the laws of a country outside India; or</p> <p>(b) A public financial institution, or a State Financial Corporation, or a State Industrial Investment Corporation; or</p> <p>(c) A non-banking financial company.</p> | <p>Not more than 5% of the total income of a tax year computed before making any deduction under this clause and Chapter VIII.</p> |

**31(2): Deduction for Actual Bad Debts Written Off**

Any amount of bad debt, or part of it, in the tax year in which such amount is written off as irrecoverable in the accounts of the assessee, shall be allowed as deduction in computation of income chargeable under section 26, subject to the following conditions:—

(a) it has been taken into account in computing the income of the assessee of the tax year in which it is written off, or any earlier tax year, or represents the money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee;

(b) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or

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part and the amount so deducted, the deficiency shall be deductible in the tax year in which the ultimate recovery is made; and

(c) where it relates to an assessee to which sub-section (1) applies,—

(i) only that amount which exceeds the credit balance in the provision for bad and doubtful debts account made under the sub-section shall be allowed as deduction;

(ii) such amount shall be allowed only when the assessee has debited any amount of bad debt or part thereof in that tax year to the provision for bad and doubtful debts account made under that sub-section; and

(iii) the aforesaid account shall be only one such account under sub-section (1) and such account shall be related to all types of advances, including advances made by rural branches.

### **31(3): Clarifications on Bad Debt Deduction**

For the purposes of sub-section (2),—

(a) any bad debt or part of it written off as irrecoverable shall not include any provision for bad and doubtful debt;

(b) any amount of bad debt or part of it, which has been taken into account in computing the income of the assessee of the tax year in which the amount of bad debt or part of it becomes irrecoverable or of an earlier tax year as per income computation and disclosure standards notified under section 276(2) without recording it in the accounts, shall be allowed as a deduction in computing the income of the assessee of the tax year in which it becomes irrecoverable and such bad debt

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or part of it shall be deemed to be written off as irrecoverable in the accounts for the purposes of sub-section (2).

## **32. OTHER DEDUCTIONS.**

### **32: Other Deductions**

The following amounts shall be allowed as deduction in computing income chargeable under section 26:—

(a) bonus or commission paid to an employee for services rendered, but only when such amount would not have been payable to the employee as profits or dividend if it had not been paid as bonus or commission;

(b) interest paid in respect of capital borrowed for the purposes of business or profession, where—

(i) such interest shall not include interest on capital borrowed for acquisition of an asset, whether capitalised in the books of account or not, for any period beginning from the date the capital was borrowed for acquisition of the asset till the date that asset was first put to use;

(ii) recurring subscriptions paid periodically by shareholders or subscribers in Mutual Benefit Societies fulfilling the conditions as may be prescribed, shall be deemed to be capital borrowed;

(c) contribution paid by a public financial institution to the credit guarantee fund trust for small industries as the Central Government may, by notification, specify;

(d) the pro rata amount of discount on a zero coupon bond having regard to the period of life of such bond calculated in the manner, as may be prescribed, where—

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**(i) “discount” means the difference between the amount received or receivable by the infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank issuing the bond, and the amount payable on maturity or redemption of such bond;**

**(ii) “period of life of bond” means the period commencing from the date of issue of the bond and ending on the date of the maturity or redemption of such bond;**

**(e) the amount carried to a special reserve created and maintained by a specified entity, subject to the following conditions:—**

**(i) such amount shall not exceed 20% of the profits derived from an eligible business computed under the head “Profits and gains of business or profession” before any deductions under this clause; and**

**(ii) when the aggregate of such amounts carried to such reserve account from time to time exceeds twice the amount of paid-up share capital and of general reserves of the specified entity, no deduction shall be allowable on such excess, and for the purposes of this clause,—**

**(A) “specified entity” means—**

**(I) a public financial institution as specified in section 2(72) of the Companies Act, 2013;**

**(II) a financial corporation which is a public sector company;**

**(III) a banking company;**

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**(IV) a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank;**

**(V) a housing finance company; and**

**(VI) any other financial corporation including a public company;**

**(B) “eligible business” means,—**

**(I) in respect of any of the specified entities referred to in clause (e)(A)(I) to (IV), the business of providing long-term finance for—**

**(a) industrial or agricultural development;**

**(b) development of infrastructure facility in India; or**

**(c) development of housing in India;**

**(II) in respect of the specified entity referred to in clause (e)(A)(V), the business of providing long-term finance for the construction or purchase of houses in India for residential purposes; and**

**(III) in respect of the specified entity referred to in clause (e)(A)(VI), the business of providing long-term finance for development of infrastructure facility in India;**

**(C) “infrastructure facility” means—**

**(I) an infrastructure facility as defined in Explanation to section 80-IA(4)(i) of the Income-tax Act, 1961 or any other public facility of a similar nature as may be notified by the Board in this behalf and which fulfils the conditions as may be prescribed;**

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**(II) an undertaking referred to in section 80-IA(4)(ii) or (iii) or (iv) or (vi) of the Income-tax Act, 1961; and**

**(III) an undertaking referred to in section 80-IB(10) of the Income-tax Act, 1961; (f) any expenditure, not being capital expenditure, incurred by a corporation or a body corporate, by whatever name called, if,—**

**(i) it is constituted or established by a Central Act or State Act or Provincial Act;**

**(ii) it is notified by the Central Government for the purposes of this clause having regard to the objects and purposes of the Act referred to in sub-clause (i); and**

**(iii) the expenditure is incurred for the objects and purposes authorised by the Act under which it is constituted or established;**

**(g) the expenditure incurred by a co-operative society engaged in the business of manufacture of sugar, on purchase of sugarcane at a price equal to or less than the price fixed or approved by the Government;**

**(h) marked to market loss or other expected loss as computed as per the income computation and disclosure standards notified under section 276(2);**

**(i) any expenditure bona fide incurred by a company for the purpose of promoting family planning amongst its employees, subject to the following conditions:—**

**(A) if such expenditure or any part of it is of capital nature, one-fifth of it shall be deducted for the tax year in which it was incurred and the balance shall be deducted in equal**

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instalments for each of the four immediately succeeding tax years;

(B) the provisions of sections 33(11) and 112(3) shall apply to deduction under this clause as they apply in relation to deductions allowable in respect of depreciation;

(C) the provisions of sections 38(1)(c), 39(4) (Table: Sl. No. 9), 45(6) and (10), shall apply to an asset representing capital expenditure for promoting family planning, to the extent they apply to an asset representing capital expenditure on scientific research;

(j) the amount being difference between the actual cost of animals used for the purposes of the business or profession otherwise than as stock-in-trade and the amount realised from the carcasses or animals, where such animals have died or become permanently useless; and

(k) the amount paid as securities transaction tax or commodities transaction tax, if—

(i) the taxable securities transactions or taxable commodities transactions are entered into the course of the business during the tax year; and

(ii) the income arising from such taxable securities transactions or taxable commodities transactions is included in the income computed under the head “Profits and gains of business or profession”.

### **33. DEDUCTION FOR DEPRECIATION.**

#### **33(1): Deduction for Depreciation**

A deduction in respect of depreciation of—

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**(a) buildings, machinery, plant or furniture, being tangible assets;**

**(b) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st April, 1998, not being goodwill of a business or profession, owned wholly or partly by the assessee and used wholly and exclusively for the purposes of the business or profession, shall be allowed, as per the provisions of this section.**

### **33(2): Depreciation for Power Sector Undertakings**

**In case of assets referred to in sub-section (1) of an undertaking engaged in generation or generation and distribution of power, the deduction in respect of depreciation shall be such percentage of its actual cost to the assessee, as may be prescribed.**

### **33(3): Depreciation on Block of Assets**

**(a) In case of any block of assets, deduction in respect of depreciation shall be such percentage of its written down value, as may be prescribed;**

**(b) when any building, machinery, plant or furniture is partly, or not wholly and exclusively, used for the purposes of the business or profession, the deduction under clause (a) shall be restricted to the fair proportionate part thereof as determined by the Assessing Officer, having regard to the usage of such building, machinery, plant or furniture for the purposes of the business or profession;**

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(c) when deduction of actual cost in respect of any machinery or plant has been allowed under section 54, no deduction under this sub-section shall be allowed.

### **33(4): Half Depreciation for Assets Used Less Than 180 Days**

The deduction under this section shall be restricted to 50% of the prescribed rate, if such asset, being asset referred to in sub-sections (2) and (3) is—

- (a) acquired by the assessee during the tax year; and
- (b) put to use for the purposes of business or profession for less than one hundred and eighty days in that tax year.

### **33(5): Depreciation in Succession, Amalgamation, or Demerger**

The aggregate deduction in respect of depreciation allowable to the predecessor and successor in cases of succession under section 70(1)(zd) or (ze) or (zf), or section 313, or to the amalgamating and the amalgamated company in the case of amalgamation, or to the demerged and resulting company in the case of demerger, as the case may be, for any tax year, shall not exceed the deduction calculated at the prescribed rates under this section as if the succession, amalgamation or demerger had not taken place, and such deduction shall be allowed on pro rata basis based on number of days for which assets were used by the following:—

- (a) predecessor and successor, in case of such succession; or
- (b) amalgamating company and the amalgamated company in case of an amalgamation; or

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**(c) demerged company and the resulting company in case of a demerger.**

### **33(6): Capital Expenditure on Leasehold Buildings**

Where a building, not owned by the assessee, is held on lease or by any other right of occupancy is used for the purposes of business or profession of the assessee, and if any capital expenditure is incurred by the assessee for the purposes of business or profession on construction of any structure or any work by way of renovation, extension or improvement to such building, then such structure or work shall be treated as a building owned by the assessee for the purposes of this section.

### **33(7): Depreciation Applies Irrespective of Claim**

The provisions of this section shall apply whether or not the assessee has claimed deduction for depreciation in computing his total income.

### **33(8): Additional Depreciation on New Machinery or Plant**

In addition to deduction under sub-section (3), additional deduction in respect of depreciation for any new machinery or plant shall be allowed, when—

**(a) the assessee is engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power;**

**(b) the assessee acquires and installs the new machinery or plant;**

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(c) the new machinery or plant is first put to use by the assessee for the purposes of business; and (d) the new machinery or plant (not being a ship or an aircraft)—

(i) was not used either within or outside India by any other person before its installation by the assessee;

(ii) is not installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) is not in the nature of any office appliances or road transport vehicle; or

(iv) is not an asset on which the whole of the actual cost is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income under the head “Profits and gains of business or profession” of any tax year.

**33(9): Rate of Additional Depreciation**

The additional deduction in respect of depreciation referred to in sub-section (8) shall be—

(a) 20% of the actual cost of the new machinery or plant in the tax year when it is acquired and put to use, subject to the provisions of clause (b); or

(b) 10% of the actual cost, if the new machinery or plant is acquired and put to use for less than one hundred and eighty days in the relevant tax year, and 10% of the actual cost shall be allowed in the immediately succeeding tax year.

**33(10): Deduction for Loss on Sale or Disposal of Asset**

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The difference between the written down value and the moneys payable including the scrap value, if any, for any tangible asset in respect of which depreciation is claimed and allowed under sub-section (2), shall be allowed as deduction when—

- (a) such asset is sold, discarded, demolished or destroyed in the tax year not being the tax year in which it is first put into use;
- (b) the moneys payable including the scrap value, if any, is less than its written down value; and
- (c) such deficiency is actually written off in the books of account of the assessee.

**33(11): Restriction and Carry Forward of Depreciation**

(a) Where the profits and gains chargeable for the tax year before allowing the deduction under sub-sections (1) to (10) is less than such allowable deduction, then—

- (i) if such profits and gains is not a loss, the deduction under sub-sections (1) to (10) shall be allowed to the extent of the available profits and gains;
- (ii) if such profits and gains is a loss, no deduction under sub-sections (1) to (10) shall be allowed;

(b) the amount of deduction which has not been allowed under clause (a) shall be added to the allowable deduction under this section, whether available or not, for the succeeding tax year and the total amount shall be deemed to be eligible for deduction in that year, and so on for the succeeding tax years; and

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**(c) the provisions of this sub-section shall be subject to the provisions of sections 112(3) and 113(4).**

### **33(12): Definitions for Depreciation**

**For the purposes of this section,—**

**(a) “assets” mean— (i)tangible assets, being buildings, machinery, plant or furniture; (ii) intangible assets being—**

**(A) know-how; or**

**(B) patents; or**

**(C) copyrights; or**

**(D) trademarks; or**

**(E) licences; or**

**(F) franchises; or**

**(G) any other similar business or commercial rights, but not being goodwill of a business or profession;**

**(b) “know-how” means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto);**

**(c) “sold” includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company or in a scheme of amalgamation of a banking company, as referred to in section 5(c) of the**

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**Banking Regulation Act, 1949 with a banking institution as referred to in section 45(15) of the said Act, sanctioned and brought into force by the Central Government under section 45(7) of that Act, of any asset by the banking company to the banking institution;**

**(d) “written down value of the block of assets” shall have the same meaning as in section 41(1)(c).**

## **34. GENERAL CONDITIONS FOR ALLOWABLE DEDUCTIONS.**

### **34(1): General Deduction Rule**

**Any expenditure (not being an expenditure of the nature specified in sections 28 to 33, 44 to 49, 51 and 52 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession”.**

### **34(2): Expenditures Not Deductible as Business Expenses**

**For the purposes of sub-section (1), an expenditure laid out or expended wholly and exclusively for business or profession by the assessee shall not include any of the following:—**

**(a) an expenditure incurred for any purpose which is an offence or is prohibited by law; or**

**(b) an expenditure incurred on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013; or**

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(c) an expenditure incurred on advertisement in any souvenir, brochure, tract, pamphlet or the like, published by a political party.

### **34(3): Scope of Non-Deductible Illegal Expenditure**

The expenditure mentioned in sub-section (2)(a) shall include expenditure incurred for—

(a) any purpose which is an offence under, or is prohibited by, any law in force in or outside India; or

(b) providing a benefit or perquisite in any form to a person, who may or may not be carrying on a business or exercising a profession, when its acceptance by the person is in violation of any law or rule or regulation or guideline governing the conduct of that person; or

(c) compounding an offence under any law in force in or outside India; or

(d) settling proceedings initiated in relation to contravention under any law notified by the Central Government in this behalf.

## **35. AMOUNTS NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES**

### **35: Amounts Not Deductible in Certain Circumstances**

Irrespective of any other provision of Chapter IV-D, the following amounts shall not be allowed as deduction in computing the income chargeable under the head “Profits and gains of business or profession”:

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**(a) any amount on account of—**

**(i) tax paid on income; or**

**(ii) tax paid by employer referred to in Schedule III (Table: Sl. No. 10); or**

**(iii) tax paid in any other country for which relief is eligible under section 159 or 160, and shall include any surcharge or cess on such tax, by whatever name called;**

**(b)(i) 30% of any sum payable to a resident, on which tax is deductible at source under Chapter XIX-B and during the tax year, such tax has not been deducted or, after deduction, has not been paid up to the due date specified in section 263(1), so, however, that—**

**(A) where in respect of any such sum, tax is deducted in any subsequent year, or is deducted during the tax year but paid after the due date specified in section 263(1), 30% of such sum shall be allowed as a deduction in computing the income of the tax year, in which such tax has been paid;**

**(B) where the assessee is required to and fails to deduct whole or any part of the tax under Chapter XIX-B on any such sum but he is not deemed to be an assessee in default under section 398(2), then for the purposes of this sub-clause, the assessee shall be deemed to have deducted and paid the tax on such sum on the date on which the return has been filed by the payee referred to in section 398(2);**

**(ii) any interest, royalty, fees for technical services or other sum chargeable under this Act which is payable—**

**(A) outside India; or**

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**(B) in India to a non-resident (which is not a company) or to a foreign company, on which tax is deductible at source under Chapter XIX-B and during the tax year, such tax, has not been deducted or after deduction, has not been paid up to the due date specified in section 263(1), so, however, that —**

**(I) Where in respect of any such sum, tax is deducted in any subsequent year, or is deducted during the tax year but paid after the due date specified in section 263(1), such sum shall be allowed as a deduction in computing the income of the tax year, in which such tax has been paid;**

**(II) where the assessee is required to and fails to deduct whole or any part of the tax under Chapter XIX-B on any such sum but he is not deemed to be an assessee in default under section 398(2), then for the purposes of this sub-clause the assessee shall be deemed to have deducted and paid the tax on such sum on the date on which the return has been filed by the payee as referred to in section 398(2);**

**(iii) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source under Chapter XIX-B from any payments made from the fund which are chargeable to tax under the head “Salaries”;**

**(c) any payment chargeable under the head “Salaries”, payable outside India or to a non-resident on which tax is deductible at source under Chapter XIX-B and such tax has not been deducted or, after deduction, has not been paid;**

**(d) any amount—**

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**(i) paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or**

**(ii) which is appropriated, directly or indirectly, from,**

**a State Government undertaking by the State Government;**

**(e) the expenditure incurred by a firm, assessable as such—**

**(i) in the nature of salary, bonus, commission or remuneration, by whatever name called (herein referred as remuneration) to a partner, who is not a working partner; or**

**(ii) on the remuneration to a working partner, and interest to any partner, if it is—**

**(A) not authorised by the partnership deed applicable for the period for which such remuneration or interest is paid; or**

**(B) authorised by and is as per the terms of partnership deed but relates to the period prior to the date of such partnership deed, or which was not authorised by the earlier partnership deed; or**

**(iii) on the aggregate remuneration to all working partners as authorised by the partnership deed, exceeding the amount computed as under:—**

**(A) on the first ₹600000 of the book profit or in case of a loss, ₹300000 or at the rate of 90% of the book profit, whichever is higher;**

**(B) on the balance of the book profit, at the rate of 60%; or**

**(iv) on interest to any partner as authorised by the partnership deed, exceeding 12% simple interest per annum, so, however, that—**

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**(A) where an individual is a partner in a firm, on behalf, or for the benefit, of any other person (such partner and the other person being herein referred to as “partner in a representative capacity” and “person so represented”, respectively),—**

**(I) interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of this clause;**

**(II) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause;**

**(B) where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person;**

**(v) in this clause—**

**(A) “book profit” means the net profit, as shown in the profit and loss account for the relevant tax year, computed as per Chapter IV-D as increased by the aggregate amount of the remuneration to all the partners of the firm, if such amount has been deducted while computing the net profit;**

**(B) “working partner” means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner;**

**(f) the expenditure incurred by an association of persons or a body of individuals (other than a company, or a co-operative**

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society or society registered under the Societies Registration Act, 1860, or under any law corresponding to that Act in force in any part of India) in the nature of interest, salary, bonus, commission or remuneration, by whatever name called, made to a member of such association or body, provided that—

(i) where the interest has been paid by the association or the body to its member and such member has also paid interest to the association or the body, then only such excess interest, if any, paid by the association or body shall not be allowed under this clause;

(ii) where an individual is a member of an association or a body on behalf, or for benefit of any other person, such member and any other person shall be referred as “representative member” and “person so represented”, respectively, then, the provisions of this clause—

(A) shall not be applicable in respect of interest paid to or received from, such individual otherwise than in his capacity as a representative member;

(B) shall be applicable in respect of interest paid to or received from, an individual in his capacity as a representative member and, the person so represented;

(C) shall not be applicable in respect of interest paid to a member, otherwise than as representative member, on behalf or for the benefit of any other person.

## **36. EXPENSES OR PAYMENTS NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES.**

### **36(1): Overriding Effect for Disallowances**

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The provisions of this section shall have effect irrespective of anything to the contrary contained in any other provision of this Act relating to computation of income under the head “Profits and gains of business or profession”.

**36(2): Disallowance of Excessive Payments to Specified Persons**

If the assessee incurs any expenditure for which payment has been or is to be made to any “specified person”, which in the opinion of the Assessing Officer is excessive or unreasonable having regard to the—

- (a) fair market value of the goods, services or facilities; or
  - (b) legitimate needs of the business or profession of the assessee; or
  - (c) benefit derived by or accruing to the assessee therefrom,
- so much of the expenditure as considered excessive or unreasonable by him shall not be allowed as a deduction.

**36(3): Definition of Specified Person and Substantial Interest**

For the purposes of sub-section (2) and this sub-section,—

- (a) “specified person” shall mean the following,—
  - (i) in relation to an assessee mentioned in column B of the Table below, the person referred to in column C thereof:—

**Table**

| Sl. No. | Assessee | Specified person |
|---------|----------|------------------|
|         |          |                  |

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| <b>Sl. No.</b> | <b>Assessee</b>               | <b>Specified person</b>                             |
|----------------|-------------------------------|-----------------------------------------------------|
| <b>1</b>       | <b>Individual</b>             | <b>Any relative of the assessee.</b>                |
| <b>2</b>       | <b>Company</b>                | <b>Any director of the company or his relative.</b> |
| <b>3</b>       | <b>Firm</b>                   | <b>Partner of the firm or his relative.</b>         |
| <b>4</b>       | <b>Association of persons</b> | <b>Member of the association or his relative.</b>   |
| <b>5</b>       | <b>Hindu undivided family</b> | <b>Member of the family or his relative.</b>        |

**(ii) any person being an individual or company or firm or association of persons or Hindu undivided family having substantial interest in the business or profession of the assessee, or any director, partner, member thereof or any relatives of such individual, director, partner, member or any other company in which the first mentioned company has substantial interest;**

**(iii) a company, firm, association of persons, or Hindu undivided family whose director, partner or member has substantial interest in the business or profession of the assessee, or any director, partner or member thereof and their relatives, as the case may be;**

**(iv) any person carrying on a business or profession, where assessee, being—**

**(A) an individual or his relative; or**

**(B) a company, its directors or their relatives; or**

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**(C) a firm, its partners or their relatives; or**

**(D) an association of persons, its members or their relatives;  
or**

**(E) a Hindu undivided family, its members or their relatives,  
has substantial interest in the business or profession of such  
person;**

**(b) a person is deemed to have “substantial interest in the  
business or profession” if—**

**(i) in a case where the business or profession is carried on by  
a company, such person is, at any time during the tax year,  
the beneficial owner of shares (not being shares entitled to a  
fixed rate of dividend whether with or without a right to  
participate in profits) carrying not less than 20% of the  
voting power; and**

**(ii) in any other case, such person is, at any time during the  
tax year, beneficially entitled to not less than 20% of the  
profits of such business or profession.**

**36(4): Disallowance for Cash Payments Exceeding  
₹10,000**

**Where in respect of any expenditure incurred by the assessee,  
any payment or aggregate of payments made in a day to a  
person exceeds ₹10000 and is not made through specified  
banking or online mode, then the expenditure by way of such  
payments shall not be allowed as a deduction.**

**36(5): Cash Payments of Liabilities Previously  
Deducted**

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Where any deduction was made in any preceding tax year for a liability incurred for any expenditure and payment in respect of such liability is made during a subsequent tax year and if such payment or aggregate of payments made in a day to a person exceeds ₹10000 and is not made through specified banking or online mode, such payment shall be deemed to be the income under the head “Profits and gains of business or profession” in such subsequent tax year.

### **36(6): Higher Cash Payment Limit for Goods Carriages**

For the purposes of sub-sections (4) and (5), the figures “₹10000” shall be read as “₹35000” in case the payment is made for plying, hiring or leasing of goods carriages.

### **36(7): Exceptions to Cash Payment Disallowance**

The provisions of sub-sections (4) and (5) shall not be applicable in cases and circumstances, as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

### **36(8): Validity of Payments Through Banking/Online Mode**

Nothing (with reference to mode of payment) contained in any other law in force or in any contract, shall apply in respect of any payment which has been made through specified banking or online mode, in compliance of sub-sections (4) to (7), and no plea shall be allowed to be raised, in any suit or other proceeding on the ground that the payment

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was not made or tendered in cash or in mode other than through specified banking or online mode.

**36(9): Disallowance of Marked-to-Market or Expected Losses**

No deduction or allowance shall be allowed in respect of marked to market loss or other expected loss, except as allowable under section 32(1)(h).

**37. CERTAIN DEDUCTIONS ALLOWED ON ACTUAL PAYMENT BASIS ONLY.**

**37(1): Deductions Allowed Only on Actual Payment**

The sums payable, as specified in sub-section (2), which are otherwise allowable as a deduction under this Act, shall be allowed as a deduction while computing the income chargeable under section 26 only in the tax year in which such sums are actually paid irrespective of—

- (a) any provision to the contrary in this Act; or
- (b) method of accounting regularly followed; or (c) the tax year in which the liability was incurred.

**37(2): Sums Covered Under Actual Payment Rule**

The sums payable for the purposes of sub-section (1), shall be—

- (a) tax, duty, cess, surcharge or fee, by whatever named called, levied under any law in force;
- (b) contribution of the employer to a provident fund or superannuation fund or gratuity fund or any fund for the welfare of employees;

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(c) amount payable by employer in lieu of any leave at the credit of the employee;

(d) any sum referred to in section 32(a);

(e) interest on loans or advances or borrowings from specified financial entities as per the terms and conditions of the agreement governing such loans or advances or borrowings;

(f) amount payable to the Indian Railways for use of railway assets; or

(g) amount payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006.

### **37(3): Deduction Allowed if Paid Before Return Filing Due Date**

In case the amounts specified in sub-section (2), except the sum referred to in clause (g) thereof, are paid after the end of the tax year in which the liability was incurred, but on or before the due date of filing of return of income under section 263(1) for such tax year, the deduction towards such sum shall be allowed in such tax year.

### **37(4): Conversion of Interest Not Treated as Actual Payment**

If interest on loans or advances or borrowings specified in sub-section (2)(e) is converted into a loan or advance or debenture or any other instrument by which the liability to

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pay is deferred to a future date, then it shall not be deemed to have been actually paid.

**37(5): No Double Deduction for Same Liability**

If a deduction in respect of any sum payable under sub-section (2) has already been allowed in any tax year when such liability was incurred, it shall not be allowed again in any subsequent tax year when it is paid.

**37(6): Exclusion for Employee Contributions**

The provisions of this section shall not apply to a sum received by the assessee from any employee as contribution towards any of the funds referred to in section 2(49)(o).

**37(7): Definition of Specified Financial Entities**

For the purposes of this section, “specified financial entities” means a public financial institution or State Financial Corporation or State Industrial Investment Corporation or such class of non-banking financial companies as may be notified by the Central Government or a scheduled bank or a co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank).

**37(8): Meaning of “Sum Payable” for Taxes, Duties, etc.**

For the purposes of sub-section (2)(a), “the sum payable” means a sum for which the assessee has incurred liability in the tax year even though such sum might not have been payable within that year under the relevant law.

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## **38. CERTAIN SUMS DEEMED AS PROFITS AND GAINS OF BUSINESS OR PROFESSION.**

### **38(1): Certain Sums Deemed as Business Income**

**The following sums shall be deemed to be profits and gains of business or profession and shall be chargeable to income-tax, in the manner specified below, subject to the provisions of sub-section (2):—**

**(a) where an allowance or deduction has been allowed in respect of any loss, expenditure or trading liability incurred by the assessee during any tax year, then,—**

**(i) the value of any benefit accruing to the assessee by way of cessation or remission of such trading liability, including a unilateral act of write-off of such liability in his accounts, in a subsequent tax year in which such benefit accrues; or**

**(ii) any amount obtained by the assessee, whether in cash or otherwise, in respect of such loss or expenditure incurred, in subsequent tax year in which the amount is obtained, whether the business or profession in respect of which the allowance or deduction was made is in existence in such subsequent tax year or not;**

**(b) in a case where any tangible asset [as referred to in section 33(12)(a)(i), which is owned by assessee, is sold, discarded, demolished or destroyed, and the moneys payable for such asset, together with the scrap value [A] exceeds the written down value of such assets [C], the sum as computed below, in the tax year in which the moneys payable for such asset becomes due—**

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**(i) where the moneys payable for such asset together with the scrap value [A] is less than the actual cost of such asset [B], then—**

**[A] – [C]; or**

**(ii) in any other case,—**

**[B] – [C];**

**(c) in a case where an asset representing expenditure of a capital nature on scientific research, referred to in section 45(1)(a)(i) is sold, without having been used for other purposes, and the sale proceeds together with the total deductions allowed under that section exceed the amount of capital expenditure, the excess or the amount of deduction so made, whichever is less, in the tax year in which the asset was sold;**

**(d) in a case where a deduction has been allowed for a bad debt (or part of it) under the provisions of section 31(2), and any amount subsequently recovered exceeds the difference between such debt and the amount allowed, then the amount in excess, in the tax year in which recovery is made;**

**(e) in a case where a deduction has been allowed for any special reserve created and maintained under the provisions of section 32(e), any amount subsequently withdrawn from such reserve, in the tax year in which the amount is withdrawn.**

### **38(2): Conditions for Deeming Income**

**The provisions of sub-section (1) shall apply subject to fulfilment of the following conditions:—**

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(a) in respect of sub-section (1)(a), only when an allowance or deduction has been made in assessment for any tax year towards the trading liability, loss or expenditure incurred;

(b) in respect of sub-section (1)(b), only when the asset owned by the assessee, has been used for the purpose of business or profession, and depreciation has been claimed and allowed thereon under section 33(2);

(c) in respect of sub-section (1)(c), only when the asset has not been used for other purposes.

**38(3): Set-off of Losses When Business Ceases**

Where the business or profession referred to in this section is no longer in existence and there is income chargeable to tax under sub-section (1)(a), (c), (d) or (e), in respect of that business or profession, any loss, not being a loss sustained in speculation business, which arose in that business or profession during the tax year in which it ceased to exist and which could not be set off against any other income of that tax year shall, so far as may be, be set off against the income chargeable to tax under the said clauses of that sub-section.

**38(4): Taxability of Benefits in Hands of Successor**

In respect of sums referred to in sub-section (1)(a), if the benefit referred therein accrues to, or amount referred therein is obtained, by the successor in business, the value of the benefit or the amount shall be chargeable to income-tax as income in the hands of successor in business.

**38(5): Applicability Despite Closure of Business**

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The provisions of sub-section (1)(b), (c), (d) and (e) shall apply in a tax year even if the business is no longer in existence.

### **38(6): Definitions for This Section**

For the purposes of this section,—

(a) “sold” includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company;

(b) “successor in business” means—

(i) the amalgamated company, where there has been an amalgamation;

(ii) the resulting company, where there has been a demerger;

(iii) where the assessee is succeeded by any other person in that business or profession, that other person;

(iv) where a firm carrying on a business or profession is succeeded by another firm, that other firm.

### **39. COMPUTATION OF ACTUAL COST.**

#### **39(1): Computation of Actual Cost of Asset**

The actual cost of an asset used for the purposes of the business or profession shall be the actual cost to the assessee, as reduced by the following amounts:—

(a) part of cost of asset, if any, met by any other person or authority, directly or indirectly;

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(b) goods and services tax paid in respect of which credit of input tax has been claimed and allowed under the relevant law;

(c) duty of excise or additional duty leviable under section 3 of the Customs Tariff Act, 1975 in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944; (d) subsidy, grant or reimbursement, by whatever name called, if any, relatable to the acquisition of the asset, received, directly or indirectly, by the assessee from—

(i) the Central Government;

(ii) a State Government;

(iii) any authority established under any law; or (iv) any other person.

**39(2): Cash Payments Exceeding ₹10,000 Excluded from Actual Cost**

The payment or aggregate of payments exceeding ₹10000 in a day for acquisition of an asset or part thereof, made to a person in a mode otherwise than by specified banking or online mode, shall be excluded from the actual cost of that asset.

**39(3): Apportionment of Non-Specific Subsidy/Grant**

In a case where the subsidy, grant or reimbursement referred to in sub-section (1)(d) is not directly relatable to the asset acquired, the amount of reduction under sub-section (1)(d) shall be determined as under:

$$A \times \left(\frac{A}{B}\right)$$

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where,—

**A = total amount of subsidy, grant or reimbursement not directly relatable to the asset;**

**B = cost of the asset acquired for which actual cost is to be determined; C = cost of all the assets in respect of or in reference to which the subsidy or grant or reimbursement is so received.**

**39(4): Special Rules for Determining Actual Cost**

**In circumstances specified under column B of the Table below, the actual cost of the asset shall be as specified in column C thereof.**

**Table**

| Sl. No. | Specified circumstances                                                                                                                         | Determination of actual cost                                                                                                                                                                                             |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | Where a capital asset is transferred by an amalgamating company to an amalgamated company being an Indian company, in a scheme of amalgamation. | Actual cost to the amalgamated company shall be the same as it would have been if the amalgamating company had continued to hold such capital asset for the purpose of its own business.                                 |
| 2       | Where a capital asset is transferred by a demerged company to a                                                                                 | Actual cost to the resulting company shall be the same as it would have been if the demerged company had continued to hold such asset for the purpose of its own business, which shall not exceed the written down value |

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Sl. No.	Specified circumstances	Determination of actual cost
	resulting company being an Indian company, in a demerger.	of such capital asset in the hands of the demerged company.
3	Where inventory is converted into or treated as a capital asset.	Fair market value of such inventory as on the date of conversion, as determined in the manner as may be prescribed.
4	Where an asset is acquired by the assessee by way of gift or inheritance.	Actual cost to the previous owner as reduced by—(a) Depreciation actually allowed in respect of the tax year commencing on 1st April, 1986 or any earlier tax year; and (b) Depreciation allowable for the tax year commencing on or after 1st April, 1987 under this Act or under the <i>Income-tax Act, 1961</i> (43 of 1961), as if such asset was the only asset in the relevant block of asset.
5	Where a building, being the property of the assessee, is put to use for the purpose of business or profession during the tax year.	Actual cost of the building as reduced by the depreciation— (a) That would have been allowable had the building been used for the purpose of business or profession from the date of acquisition; and (b) Calculated at the rate in force on the date on which such asset was put to use for the purpose of business or profession.
6	Where a capital asset is transferred by—	Actual cost to the transferee company shall be the same as it would have been if the transferor company had continued to hold

Sl. No.	Specified circumstances	Determination of actual cost
	(a) A holding company to its subsidiary company; or (b) A subsidiary company to its holding company, and the conditions of section 70(1)(c) and (d), as the case may be, are satisfied.	such asset for the purpose of its own business.
7	Where an asset, which previously belonged to the assessee and had been used by him for the purpose of his business or profession, is reacquired by the assessee.	(a) Actual cost of the asset in the hands of the assessee when it was first acquired, as reduced by— (i) Depreciation actually allowed in respect of the tax year commencing on 1st April, 1986 or any earlier tax year; and (ii) Depreciation allowable for the tax year commencing on or after 1st April, 1987 under this Act or under the <i>Income-tax Act, 1961</i> (43 of 1961), as if such asset was the only asset in the relevant block of asset; or (b) Actual price for which such asset is reacquired by the assessee, whichever is lower.
8	Where an asset is acquired by the assessee from a previous owner and subsequently the asset is given back to the	Actual cost of the asset to the assessee shall be the written down value of the asset in the hands of the previous owner at the time of transfer by the previous owner.

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| Sl. No. | Specified circumstances                                                                                                                                                                                                                 | Determination of actual cost                                                                                                                                                                                                                            |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|         | <p>previous owner by way of lease, hire, or otherwise, and—</p> <p>(a) The asset was being used for the purpose of business or profession by the previous owner;</p> <p>and(b) Depreciation has been claimed by the previous owner.</p> |                                                                                                                                                                                                                                                         |
| 9       | <p>Where an asset is used in business after it ceases to be used for scientific research related to that business and a deduction is allowable under section 33(3).</p>                                                                 | <p>Actual cost of the asset as reduced by deduction allowed for the capital asset under section 45(1)(a)(i) or under section 35(1)(iv) of the <i>Income-tax Act, 1961</i> (43 of 1961).</p>                                                             |
| 10      | <p>Where the assessee had acquired an asset outside India, as a non-resident, and the asset is</p>                                                                                                                                      | <p>Actual cost of the asset as reduced by the depreciation—(a) That would have been allowable had the asset been used for the purpose of business or profession in India since the date of its acquisition; and(b) Calculated at the rate in force.</p> |

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Sl. No.	Specified circumstances	Determination of actual cost
	brought by him to India and put to use in his business or profession in India.	
11	Where a capital asset is acquired under the scheme of corporatisation of a recognised stock exchange approved by the Securities and Exchange Board of India.	Actual cost of the asset, as if there was no corporatisation.
12	(a) Where deduction under section 46 was allowed or allowable in respect of the capital asset— (i) To the assessee; or (ii) To any person and the assessee acquires or receives such asset through special modes of	(a) Actual cost shall be deemed to be nil.(b) Actual cost of the asset as reduced by the depreciation— (i) That would have been allowable had the asset been used for the purpose of business since the date of acquisition; and (ii) Calculated at the rate in force.

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| Sl. No. | Specified circumstances                                                                                                                                   | Determination of actual cost                                                                                             |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
|         | acquisition from such person.(b)<br>Where deduction allowed under section 46 in respect of a capital asset becomes deemed income as per section 46(9)(b). |                                                                                                                          |
| 13      | Where any amount is paid or payable as interest in connection with the acquisition of an asset.                                                           | Actual cost shall not include so much of such amount as is relatable to any period after such asset is first put to use. |

**39(5): AO’s Power to Re-determine Actual Cost to Prevent Tax Avoidance**

Irrespective of anything contained in sub-section (4), other than serial number 8 of the Table in the said sub-section, in a case where the asset is acquired by the assessee, its actual cost shall be such amount as may be determined by the Assessing Officer having regard to all the circumstances of the case, where—

- (a) the asset was used by any other person for the purposes of his business, before such acquisition; and

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**(b) the Assessing Officer is satisfied that the main purpose of the transfer of the asset, directly or indirectly, was to reduce tax liability (by claiming depreciation on enhanced actual cost).**

### **39(6): Approval Requirement for Re-determination of Actual Cost**

**The determination of actual cost under sub-section (5) shall be made with the prior approval of the Joint Commissioner.**

### **39(7): Definition of Special Modes of Acquisition**

**For the purposes of this section, “special modes of acquisition” means acquisition—**

- (a) by way of a gift or will or an irrevocable trust; or**
- (b) upon distribution on the liquidation of a company; or**
- (c) by such mode of transfer as is referred to in section 70(1)(a), (c), (d), (e), (j), (zd), (ze) and (zf).**

## **40. SPECIAL PROVISION FOR COMPUTATION OF COST OF ACQUISITION OF CERTAIN ASSETS.**

### **40(1): Cost of Acquisition for Certain Assets on Special Transfers**

**For the purposes of computation of income under the head “Profits and gains of business or profession”, cost of acquisition of an asset which becomes property of—**

- (a) an amalgamated company under a scheme of amalgamation; or**

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**(b) an assessee, under a gift, or will, or an irrevocable trust, or on total or partial partition of a Hindu undivided family, when sold as stock-in-trade shall be the sum of—**

**(i) cost of acquisition of the said asset in the hands of the amalgamating company in case of clause (a), or the transferor or donor in case of clause (b);**

**(ii) any cost of improvement made;**

**(iii) any expenditure incurred by the amalgamating company or transferor or donor, as the case may be, wholly and exclusively in connection with such transfer.**

### **40(2): Exception to Special Cost Rules**

**This section shall not apply to an asset referred to in section 67(6).**

## **41. WRITTEN DOWN VALUE OF DEPRECIABLE ASSET**

### **41(1): Written Down Value of Depreciable Assets**

**For the purposes of computation of income under the head “Profits and gains of business or profession”, written down value means—**

**(a) in case the asset is acquired in the tax year, the actual cost to the assessee;**

**(b) in case the asset is acquired before the tax year, actual cost to the assessee less depreciation actually allowed under this Act or under the Income-tax Act, 1961;**

**(c) in case of block of assets, the written down value computed in the following manner:**

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**[(A-D) + B-C]-E,**

**where A = the written down value of the block of assets in the immediately preceding tax year;**

**B = actual cost of any asset falling within that block, acquired during the tax year;**

**C = moneys payable together with scrap value, if any, in respect of any asset falling within the block, which is sold, transferred, demolished, destroyed or discarded during the tax year, where “C” shall not exceed (A-D)+B;**

**D = depreciation actually allowed in respect of block of assets in relation to the said immediately preceding tax year;**

**E = in the case of a slump sale, the actual cost of the asset falling within that block as reduced by—**

**(i) depreciation actually allowed in respect of tax year commencing on 1st April, 1986 or any earlier tax year; and**

**(ii) depreciation allowable for tax year commencing on or after 1st April, 1987 under this Act or under the Income-tax Act, 1961, as if such asset was the only asset in the relevant block of asset.**

**41(2): WDV in Cases of Intra-Group or Amalgamation Transfers**

**Where any block of asset is transferred by—**

**(a) a holding company to its subsidiary company and the conditions of section 70(1)(c) are satisfied;**

**(b) a subsidiary company to its holding company and the conditions of section 70(1)(d) are satisfied; or**

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**(c) amalgamating company to the amalgamated company being an Indian company, then the actual cost of the block of assets, irrespective of anything contained in section 39, in the hands of transferee company or amalgamated company, as the case may be, shall be the same as written down value of the block of assets as in the case of the transferor company or the amalgamating company in the immediately preceding tax year as reduced by depreciation actually allowed in respect of that block of asset in relation to that tax year.**

**41(3): WDV Adjustment on Demerger**

Where any asset, forming part of a block of assets is transferred by a demerged company to a resulting company, the written down value of block of assets of demerged company for the immediately preceding tax year, shall be reduced by the written down value of the assets transferred to the resulting company pursuant to such demerger.

**41(4): WDV of Assets in Hands of Resulting Company**

Where any asset, forming part of a block of assets is transferred by a demerged company to a resulting company then the actual cost of the block of assets, irrespective of anything contained in section 39, for resulting company shall be the written down value of the assets transferred from the demerged company immediately before such demerger.

**41(5): WDV on Company to LLP Conversion**

Where any block of assets is transferred by a private company or unlisted public company to a limited liability partnership and the conditions in section 70(1)(ze) are

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satisfied, then the actual cost of the block of assets, irrespective of anything contained in section 39, in the hands of limited liability partnership shall be written down value in the hands of said company as on the date of conversion of the company into limited liability partnership.

**41(6): WDV on Corporatisation of Stock Exchange**

Where any asset forming part of the block of assets is transferred to a company under the scheme of corporatisation of a recognised stock exchange in India approved by the Securities and Exchange Board of India, the written down value of the block of assets in the hands of such company, shall be the written down value of the assets transferred immediately before such transfer.

**41(7): WDV on Business Succession**

In a case of succession in business or profession under section 313, where an assessment is made in the hands of successor under section 313(2), the written down value of any asset or block of assets shall be the amount which would have been taken as its written down value, if the assessment had been made directly on the person succeeded to.

**41(8): Treatment of Carried Forward Depreciation**

For the purposes of this section, any allowance in respect of any depreciation carried forward under section 33(11) shall be deemed to be the depreciation actually allowed.

**41(9): WDV Where Income Not Computed in Earlier Years**

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Where an assessee was not required to compute his total income for the purposes of this Act for any tax year or tax years preceding the tax year under consideration,—

(a) the actual cost of an asset shall be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;

(b) the total amount of depreciation on such asset provided in the books of account of the assessee in respect of such tax year or tax years preceding the tax year under consideration shall be deemed to be the depreciation actually allowed under this Act for the purposes of this clause; and

(c) the depreciation actually allowed under clause (b) shall be adjusted by the amount of depreciation attributable to such revaluation of the asset.

**41(10): WDV for Mixed Agricultural and Business Income**

For the purposes of this section, where the income of an assessee is derived, in part from agriculture and in part from business chargeable to income-tax under the head “Profits and gains of business or profession”, for computing the written down value of assets acquired before the tax year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head “Profits and gains of business or profession” and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act or under the Income-tax Act, 1961.

**41(11): Definition of “Sold”**

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**For the purposes of this section, the term “sold” shall have the meaning assigned to it in section 38(6)(a).**

## **42. CAPITALISING THE IMPACT OF FOREIGN EXCHANGE FLUCTUATION.**

### **42(1): Capitalising Foreign Exchange Fluctuation**

**Irrespective of anything contained in any other provision of this Act, where at the time of making payment during the tax year, there is a variation in liability of an assessee as expressed in Indian currency, due to change in rate of exchange, in relation to an asset acquired for the purpose of business or profession from a country outside India, it shall be dealt with in the manner specified in sub-sections (2) and (3).**

### **42(2): Computation of Variation in Liability**

**For this section, the liability shall exclude any part met directly or indirectly by any other person or authority and the “variation in liability” shall be computed as—**

$$A = B - C$$

**where,—**

**A = variation in liability;**

**B = payment expressed in Indian currency at the time when it is made—**

**(a) towards the whole or part of the cost of asset; or**

**(b) towards repayment of the whole or part of the moneys borrowed, directly or indirectly, along with interest in foreign currency, specifically for acquiring such asset;**

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**C = liability, corresponding to the amount referred in B, in Indian currency at the time of acquisition of such asset.**

**42(3): Adjustment of Variation in Liability**

The variation in liability shall be added or reduced from the—

- (a) actual cost of the asset as referred in section 39; or
- (b) expenditure of capital nature referred to in section 32(i) or 45(1)(a)(i); or
- (c) cost of acquisition of a capital asset (not being a capital asset referred to in section 74) for the purpose of section 72, and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset.

**42(4): Effect of Forward Exchange Contracts**

Where the assessee has entered into a contract with an authorised dealer as defined in section 2 of the Foreign Exchange Management Act, 1999, for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the said liability, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset under this section shall, in respect of so much of the sum specified in the contract as is available for discharging the said liability, be computed with reference to the rate of exchange specified therein.

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43. TAXATION OF FOREIGN EXCHANGE FLUCTUATION.

43(1): Taxation of Foreign Exchange Fluctuations

Subject to the provisions of section 42, any gain or loss arising on account of change in foreign exchange rates on foreign currency transactions shall be treated as income or loss, as the case may be, and shall be computed as per the income computation and disclosure standards notified under section 276(2).

43(2): Scope of Foreign Exchange Fluctuation Taxation

The provisions of sub-section (1) shall be applicable to all foreign currency transactions, including those relating to—

- (a) monetary items and non-monetary items;
- (b) translation of financial statements of foreign operations;
- (c) forward exchange contracts; and
- (d) foreign currency translation reserves.

44. AMORTISATION OF CERTAIN PRELIMINARY EXPENSES.

44(1): Amortisation of Preliminary Expenses

If an assessee, being an Indian company or a person (other than a company), who is resident in India, incurs any expenditure specified in sub-section (2)—

- (a) before the commencement of its business; or

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**(b) after the commencement of its business, in connection with the extension of its undertaking or in connection with its setting up a new unit, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive tax years beginning with—**

**(i) the tax year in which the business commences, for clause (a); or**

**(ii) the tax year in which the extension of the undertaking is completed or the new unit commences production or operation, for clause (b).**

**44(2): Eligible Preliminary Expenses**

**The expenditure referred to in sub-section (1) shall be—**

**(a) the expenditure in connection with—**

**(i) preparation of feasibility report;**

**(ii) preparation of project report;**

**(iii) conducting market survey or any other survey necessary for the business;**

**(iv) engineering services relating to the business;**

**(b) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business;**

**(c) in addition to expenditure in clauses (a) and (b), if the assessee is a company,—**

**(i) legal charges for drafting and printing of the Memorandum and Articles of Association of the company;**

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(ii) fees for registering the company under the provisions of the Companies Act, 2013;

(iii) expenditure in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus; and

(d) such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act), as may be prescribed.

### **44(3): Statement of Preliminary Expenses**

In relation to expenditure specified in sub-section (2)(a), the assessee shall furnish a statement containing the particulars of the expenditure in such form and manner, as may be prescribed.

### **44(4): Deduction Cap on Preliminary Expenses**

The allowable deduction under sub-section (1) in respect of aggregate of expenditure referred to in sub-section (2) shall be restricted to 5%— (a) of the cost of the project; or (b) of the capital employed in the business of the company, where the assessee is an Indian company, at its option.

### **44(5): Definitions for Deduction Cap**

For the purposes of this section,—

(a) “cost of the project” means the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings) and—

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**(i) for cases under sub-section (1)(a), the actual cost as shown in the books of the assessee as on the last day of the tax year in which the business commences;**

**(ii) for cases under sub-section (1)(b), the actual cost as shown in the books of the assessee as on the last day of the tax year in which either the extension of the undertaking is completed, or the new unit commences production or operations, as the case may be, in so far as such fixed assets have been acquired or developed in connection with the extension of the undertaking or setting up of new unit;**

**(b) “capital employed in the business of the company” means—**

**(i) in cases under sub-section (1)(a), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the tax year in which the business of the company commences;**

**(ii) in a case under sub-section (1)(b), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the tax year in which the extension of the undertaking is completed or, as the case may be, the new unit commences production or operation, in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the undertaking or the setting up of the new unit of the company;**

**(c) “long-term borrowings” means—**

**(i) any moneys borrowed by the company from Government or Industrial Finance Corporation of India Limited or any other financial institution which is eligible for deduction**

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under section 32(e) or any banking institution (not being a financial institution referred to above); or

(ii) any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of capital plant and machinery, where the tenure of moneys borrowed or debt is not less than seven years.

### **44(6): Audit Requirement for Non-Company Assesseees**

If the assessee is a person, other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless,—

(a) the accounts of the assessee for the year or years in which the expenditure specified in sub-section (2) is incurred have been audited by an accountant before the specified date referred to in section 63; and

(b) the assessee furnishes for the first year in which the deduction under this section is claimed, the report of such audit by such date in such form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed.

### **44(7): Amalgamation and Preliminary Expense Deduction**

If an undertaking of Indian company entitled for deduction under sub-section (1) is transferred before expiry of five years specified in the said sub-section, in a scheme of amalgamation, to another Indian company, then—

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**(a) no deduction under sub-section (1) shall be allowed to the amalgamating company for the tax year in which amalgamation takes place; and**

**(b) all provisions of this section shall continue to apply to the amalgamated company as they would have applied to the amalgamating company, as if the amalgamation had not taken place.**

**44(8): Demerger and Preliminary Expense Deduction**

**If an undertaking of Indian company entitled for deduction under sub-section (1) is transferred before five years specified in the said sub-section, in a scheme of demerger to another company, then—**

**(a) no deduction under sub-section (1) shall be allowed to the demerged company for the tax year in which demerger takes place; and**

**(b) all provisions of this section shall continue to apply to the resulting company as they would have applied to the demerged company, as if the demerger had not taken place.**

**44(9): No Double Deduction**

**If a deduction under this section is claimed and allowed for any tax year in respect of any expenditure referred to in sub-section (2), deduction shall not be allowed for such expenditure under any other provision of this Act for the same or any other tax year.**

**45. EXPENDITURE ON SCIENTIFIC RESEARCH.**

**45(1): Deduction for Scientific Research Expenditure**

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**(a) A deduction shall be allowed for any expenditure, being in the nature of—**

**(i) capital expenditure, but not on acquisition of land which is acquired as such or as part of any property; or**

**(ii) revenue expenditure, incurred on scientific research related to the business of the assessee subject to provisions of this section.**

**(b) A deduction shall also be allowed under this sub-section in respect of the aggregate of expenditure (not being in the nature of capital expenditure), related to business, incurred on—**

**(i) salary to an employee engaged in such scientific research; or**

**(ii) purchase of materials used in such scientific research, where such expenditure is incurred within three years immediately preceding the commencement of business, to the extent certified by the prescribed authority as incurred on such research and such expenditure shall be deemed to have been incurred in the tax year in which the business is commenced.**

**(c) For the purposes of this sub-section, the aggregate of capital expenditure incurred within three years immediately preceding the commencement of business shall be deemed to have been incurred in the tax year in which the business is commenced.**

**45(2): Deduction for In-House Scientific Research  
(Certain Companies)**

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**(i) A deduction shall be allowed in respect of any expenditure on scientific research incurred (not being expenditure in the nature of cost of any land or building) by a company engaged in the business of—**

**(A) bio-technology; or**

**(B) manufacture or production of any article or thing, which is not specified in Schedule XIII, on in-house research and development facility as approved by the prescribed authority, subject to the conditions and manner, as may be prescribed.**

**(ii) No deduction shall be allowed under this sub-section to a company approved under sub-section (3)(b)(ii).**

**(iii) No deduction shall be allowed in respect of the expenditure mentioned in clause (i) under any other provision of this Act.**

**(iv) The expenditure under clause (i) shall be allowed subject to such conditions and on furnishing of documents in such form and manner, as may be prescribed.**

**(v) For the purposes of this sub-section, “expenditure on scientific research”, in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central Act or State Act or Provincial Act and filing an application for a patent under the Patents Act, 1970.**

**45(3): Deduction for Payments to Approved Research Bodies**

**A deduction shall be allowed for any sum, paid to—**

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**(a) (i) a research association having the object of undertaking scientific research or to a University, college or institution to be used for scientific research; or**

**(ii) a research association having the object of undertaking research in social science or statistical research or to a University, college or institution to be used for research in social science or statistical research;**

**(b) a company which is—**

**(i) registered in India having the main object of scientific research and development; and**

**(ii) approved by such authority, for the purposes of this clause in such manner and subject to such conditions, as may be prescribed; (c)(i) a national laboratory; or (ii) a University; or**

**(iii) an Indian Institute of Technology; or**

**(iv) a specified person, with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority.**

**45(4): Conditions for Deduction of Research Contributions**

**For the purposes of sub-section (3),—**

**(a) the expenditure shall be allowed subject to such conditions and on furnishing of documents in such form and manner, as may be prescribed; and**

**(b) in respect of clause (a) of the said sub-section, only such association, University, college or other institution shall be**

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eligible for deduction, which for the time being is approved in the manner and subject to such conditions, as may be prescribed, and is specified by the Central Government, by notification.

**45(5): Validity of Deduction Despite Withdrawal of Approval**

The deduction for any sum under sub-section (3) shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to such entities or the programme undertaken by entities as mentioned in sub-section (3)(c), has been withdrawn.

**45(6): No Double Deduction for Research Assets**

Where a deduction is allowed for any tax year under this section in respect of expenditure, represented wholly or partly by an asset, no deduction shall be allowed under section 33(3) for the same or any other tax year in respect of that asset.

**45(7): Depreciation Provisions Applicable to Research Assets**

The provisions of section 33(11) in respect of depreciation shall apply in relation to deductions allowable for capital expenditure under sub-section (1).

**45(8): No Double Deduction for Research Payments**

No deduction in respect of the sum mentioned in sub-section (3)(c) shall be allowed under any other provision of this Act.

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### **45(9): Authority to Decide Questions on Scientific Research**

If any question arises under this section as to whether, and if so, to what extent any activity constitutes or constituted scientific research, or any asset is or was being used, for scientific research, the Board shall refer the question to—

(a) the Central Government, when such question relates to any activity under sub-section (3)(a), and its decision shall be final;

(b) the prescribed authority, when such question relates to any other activity other than the activity specified in clause (a), whose decision shall be final.

### **45(10): Transfer of Research Assets in Amalgamation**

When an amalgamating company, in a scheme of amalgamation, sells or otherwise transfers to the amalgamated company (being an Indian company) any asset representing capital expenditure on scientific research, the provisions of this section shall apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred the asset.

### **45(11): Definitions for Scientific Research Deductions**

For the purposes of this section,—

(a) “National Laboratory” means a scientific laboratory functioning at the national level under the aegis of the Indian Council of Agricultural Research, the Indian Council of Medical Research, the Council of Scientific and Industrial Research, the Defence Research and Development

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**Organisation, the Department of Electronics, the Department of Bio-Technology or the Department of Atomic Energy and which is approved as a National Laboratory by such authority and in such manner, as may be prescribed;**

**(b) “salary” has the meaning assigned to it in section 16 read with section 18 subject to the following modifications:**

**(i) in section 16, clauses (e) and (j) shall be omitted;**

**(ii) in section 18, the references to “assessee” shall be construed as references to “employee of former employee” and the reference to “his employer or former employer” and “an employer or a former employer” shall be construed as reference to “the assessee”;**

**(c) “specified person” means such person approved by the prescribed authority; and (d) “land”, for the purpose of sub-section (1)(a)(i), includes any interest in land.**

## **46. CAPITAL EXPENDITURE OF SPECIFIED BUSINESS.**

### **46(1): Deduction for Capital Expenditure in Specified Business**

**An assessee, at his option, shall be allowed a deduction of the whole of the capital expenditure incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the tax year in which such expenditure is incurred.**

### **46(2): Deduction for Pre-Commencement Expenditure in Specified Business**

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Where the expenditure referred to in sub-section (1) is incurred prior to the commencement of its operations and such expenditure is capitalised in the books of account as on the date of commencement of its operations, it shall be allowed during the tax year in which such business is commenced.

### **46(3): Conditions for Specified Business Deduction**

This section shall apply to the specified business fulfilling all of the following conditions:—

- (a) it is not set up by splitting up, or the reconstruction, of an already existing business;
- (b) it is not set up by the transfer of machinery or plant previously used for any purpose to the specified business;
- (c) if the business is of the nature referred to in sub-section (11)(d)(iii) and such business—
  - (i) is owned by a company formed and registered in India under the Companies Act, 2013 or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central Act or State Act;
  - (ii) has been approved by the Petroleum and Natural Gas Regulatory Board established under section 3(1) of the Petroleum and Natural Gas Regulatory Board Act, 2006 and notified by the Central Government in this behalf;
  - (iii) has made not less than such proportion of its total pipeline capacity as specified by regulations made by the Petroleum and Natural Gas Regulatory Board established under section 3(1) of the Petroleum and Natural Gas

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**Regulatory Board Act, 2006 available for use on common carrier basis by any person other than the assessee or an associated person; and**

**(iv) fulfils any other condition as may be prescribed;**

**(d) if the business is of the nature referred to in sub-section (11)(d)(xiv), such business,—**

**(i) is owned by a company registered in India or by a consortium of such companies or by an authority or a board or corporation or any other body established or constituted under any Central Act or State Act;**

**(ii) entity referred to in sub-clause (i) has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility.**

**46(4): No Double Deduction for Specified Business**

**No deduction shall be allowed under the provisions of Chapter VIII-C in relation to such specified business for the same or any other tax year, if a deduction under sub-section (1) is claimed and allowed.**

**46(5): Restriction on Repeat Deduction**

**No deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section in any tax year or under this section in any other tax year, if the deduction has been claimed and allowed to him under this section.**

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**46(6): Eligible Specified Businesses and Commencement Dates**

The provisions of this section shall apply to the specified business referred to in column B of the Table below if it commences its operations as specified in column C thereof.

**Table**

| <b>Sl. No.</b> | <b>Nature of specified business</b>                                                                                                                                                                                                                                        | <b>Date of commencement of operations being on or after</b> |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| <b>A</b>       | <b>B</b>                                                                                                                                                                                                                                                                   | <b>C</b>                                                    |
| <b>1</b>       | <b>Laying and operating a cross-country natural gas pipeline network for distribution, including storage facilities being an integral part of such network.</b>                                                                                                            | <b>1st April, 2007</b>                                      |
| <b>2</b>       | <b>Building and operating a new hotel of two-star or above category as classified by the Central Government.</b>                                                                                                                                                           | <b>1st April, 2010</b>                                      |
| <b>3</b>       | <b>Building and operating a new hospital with at least 100 beds for patients.</b>                                                                                                                                                                                          | <b>1st April, 2010</b>                                      |
| <b>4</b>       | <b>Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, and which is notified by the Board in this behalf in accordance with the guidelines as may be prescribed.</b> | <b>1st April, 2010</b>                                      |
| <b>5</b>       | <b>Developing and building a housing project under a scheme for affordable housing framed by the Central Government or a</b>                                                                                                                                               | <b>1st April, 2011</b>                                      |

| Sl. No. | Nature of specified business                                                                                                                                                             | Date of commencement of operations being on or after |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| A       | B                                                                                                                                                                                        | C                                                    |
|         | State Government, and which is notified by the Board in this behalf in accordance with the guidelines as may be prescribed.                                                              |                                                      |
| 6       | A new plant or a newly installed capacity in an existing plant for production of fertilizer.                                                                                             | 1st April, 2011                                      |
| 7       | Setting up and operating an inland container depot or a container freight station notified or approved under the <i>Customs Act, 1962 (52 of 1962)</i> .                                 | 1st April, 2012                                      |
| 8       | Bee-keeping and production of honey and beeswax.                                                                                                                                         | 1st April, 2012                                      |
| 9       | Setting up and operating a warehousing facility for storage of sugar.                                                                                                                    | 1st April, 2012                                      |
| 10      | Laying and operating a slurry pipeline for the transportation of iron ore.                                                                                                               | 1st April, 2014                                      |
| 11      | Setting up and operating a semiconductor wafer fabrication manufacturing unit, and which is notified by the Board in this behalf in accordance with the guidelines as may be prescribed. | 1st April, 2014                                      |
| 12      | Developing, or operating and maintaining, or developing, operating and maintaining, any infrastructure facility.                                                                         | 1st April, 2017                                      |
| 13      | In all other cases.                                                                                                                                                                      | 1st April, 2009                                      |

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46(7): Hotel Operation Transfer Without Losing Specified Business Status

Where the assessee builds a hotel of two star or above category as classified by the Central Government and subsequently, transfers the hotel operation thereof to another person while retaining its ownership, the assessee shall be deemed to be carrying on the specified business referred to in sub-section (11)(d)(iv).

46(8): Application of Other Provisions to Specified Business

The provisions contained in sections 122(6) and 140(8) and (13) shall, so far as may be, apply to this section in respect of goods or services or assets held for the purposes of the specified business.

46(9): Restriction on Use of Assets for Specified Business

Any asset for which a deduction is claimed and allowed under this section—

(a) shall be used only for the specified business for a period of eight years beginning with the tax year in which such asset is acquired or constructed;

(b) is used for the purpose other than specified business during the period referred to in clause (a), and is not chargeable to tax under section 26(2)(k), then the total amount of deduction so claimed and allowed in one or more tax years, as reduced by the amount of depreciation allowable under section 33, as if no deduction under this

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section was allowed, shall be deemed to be the income chargeable under the head “Profits and gains of business or profession” of the tax year in which the asset is so used.

46(10): Exception for Sick Industrial Companies

The provisions of sub-section (9)(b) shall not apply to a company which has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, as it stood before its repeal by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 during the period specified in sub-section (9)(a).

46(11): Definitions for Specified Business Deduction

For the purposes of this section,—

(a) “associated person”, in relation to the assessee, means a person,—

(i) who participates, directly or indirectly, or through one or more intermediaries in the management or control or capital of the assessee;

(ii) who holds, directly or indirectly, shares carrying at least 26% of the voting power in the capital of the assessee;

(iii) who appoints more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or (iv) who guarantees at least 10% of the total borrowings of the assessee;

(b) “cold chain facility” means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products,

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products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce;

(c) “infrastructure facility” means—

(i) a road including toll road, a bridge or a rail system;

(ii) a highway project including housing or other activities being an integral part of the highway project;

(iii) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(iv) a port, airport, inland waterway, inland port or navigational channel in the sea;

(d) “specified business” means any one or more of the following businesses:—

(i) setting up and operating a cold chain facility;

(ii) setting up and operating a warehousing facility for storage of agricultural produce;

(iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;

(iv) building and operating, anywhere in India, a hotel of two star or above category as classified by the Central Government;

(v) building and operating, anywhere in India, a hospital with at least 100 beds for patients;

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(vi) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government and which is notified by the Board in this behalf in accordance with the guidelines as may be prescribed;

(vii) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government and which is notified by the Board in this behalf in accordance with the guidelines may be prescribed;

(viii) production of fertilizer in India;

(ix) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;

(x) bee-keeping and production of honey and beeswax;

(xi) setting up and operating a warehousing facility for storage of sugar;

(xii) laying and operating a slurry pipeline for the transportation of iron ore;

(xiii) setting up and operating a semiconductor wafer fabrication manufacturing unit which is notified by the Board in this behalf in accordance with the guidelines as may be prescribed;

(xiv) developing, or maintaining and operating, or developing, maintaining and operating, a new infrastructure facility;

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(e) any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if—

(i) such machinery or plant was not, at any time before the date of the installation by the assessee, used in India;

(ii) such machinery or plant is imported into India; and

(iii) no deduction of depreciation for such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period before the date of installation of the machinery or plant by the assessee;

(f) if any machinery or plant or its part previously used for any purpose is transferred to the specified business and its total value does not exceed 20% of the total value of the machinery or plant used in such business, then the conditions specified in sub-section (3)(b) shall be deemed to be complied with;

(g) any expenditure of capital nature shall not include any expenditure—

(i) for which the payment or aggregate of payments made to a person in a day, is not through specified banking or online mode, exceeds ₹ 10000 rupees; or

(ii) incurred on the acquisition of any land or goodwill or financial instrument.

47. EXPENDITURE ON AGRICULTURAL EXTENSION PROJECT AND SKILL DEVELOPMENT PROJECT.

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47(1): Deduction for Agricultural Extension and Skill Development Projects

Any expenditure (excluding cost of any land or building) incurred, on—

(a) agricultural extension project by any assessee; or

(b) any skill development project by a company, shall be allowed as a deduction, in the tax year in which such expenditure is incurred provided such project is notified by the Board as per the guidelines issued by it.

47(2): No Double Deduction for Agricultural Extension or Skill Development Expenditure

If a deduction under this section is claimed and allowed for any tax year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed for such expenditure under any other provision of this Act for the same or any other tax year.

48. TEA DEVELOPMENT ACCOUNT, COFFEE DEVELOPMENT ACCOUNT AND RUBBER DEVELOPMENT ACCOUNT

48(1): Deduction for Deposits in Tea, Coffee, or Rubber Development Accounts

Where an assessee is carrying on business of growing and manufacturing tea or coffee or rubber in India, such assessee shall be allowed a deduction on the basis of deposits into the special account or deposit account and computed as per the provisions of the Schedule IX.

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48(2): Tax on Withdrawals from Development Accounts

Any amount withdrawn or utilised or released from the aforesaid accounts at the time of closure or otherwise shall be charged to tax as per the provisions of the Schedule IX.

48(3): Tax on Sale or Transfer of Assets from Development Schemes

Where any asset acquired as per the special scheme or the deposit scheme, as referred to in the Schedule IX, is sold or otherwise transferred in any tax year, it shall be charged to tax in accordance with the provisions of the said Schedule.

49. SITE RESTORATION FUND.

49(1): Deduction for Deposit in Site Restoration Fund

An assessee carrying on a business of prospecting, extracting, or producing petroleum or natural gas, or both, in India, and who has an agreement with the Central Government for this business, shall be allowed a deduction on the basis of deposit to special account or site restoration account and computed as per the provisions of the Schedule X.

49(2): Tax on Withdrawal or Transfer from Site Restoration Fund

Any amount withdrawn or transferred from the aforesaid accounts at the time of closure or otherwise shall be charged to tax in the year in which the amount is transferred or withdrawn as per the provisions of the Schedule X.

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49(3): Tax on Sale or Transfer of Assets from Site Restoration Scheme

Where any asset acquired as per the special scheme, or the deposit scheme, as referred to in Schedule X, is sold or otherwise transferred in any tax year, it shall be charged to tax in accordance with the provisions of the said Schedule.

50. SPECIAL PROVISION IN THE CASE OF TRADE, PROFESSION OR SIMILAR ASSOCIATION

50(1): Deduction for Shortfall of Receipts in Members' Associations

Irrespective of anything to the contrary contained in this Act, if, during the tax year, the amount received by a specified association from its members falls short of the expenditure incurred by such association solely for the protection or advancement of common interest of its members, then the amount so falling short shall be allowed as deduction from the income of such association under the head “Profits and gains of business or profession” and the remaining amount, if any, shall be allowed deduction from its income under any other head.

50(2): Definitions and Conditions for Deduction in Members' Associations

For the purposes of sub-section (1),—

(a) “specified association” means any trade, professional or similar association, not covered in Schedule III (Table: Sl. No. 24), whose income or its part is not distributed to its

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members (other than as grants to any associations or institutions affiliated to it);

(b) the amount received by the specified association from its members shall include amount by way of subscription or otherwise, and shall not include any remuneration received by the association for rendering any specific services to such members;

(c) expenditure incurred by specified association shall not include—

(i) expenditure deductible under any other provision of this Act; and

(ii) any capital expenditure.

50(3): Priority of Set-Off Before Deduction

The effect of other provisions of this Act relating to carry forward and set off of brought forward losses or allowances shall be given before allowing deduction under sub-section (1).

50(4): Limit on Deduction for Members' Associations

The maximum allowable deduction under this section shall not exceed 50% of the total income as computed before allowing deduction under this section.

51. AMORTISATION OF EXPENDITURE FOR PROSPECTING CERTAIN MINERALS.

51(1): Deduction for Prospecting or Extraction of Minerals

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An assessee, being an Indian company or a person (other than a company) who is resident in India, who is engaged in any operations relating to prospecting for, or extraction or production of, any mineral, shall be allowed a deduction of an amount equal to one-tenth of the amount of expenditure referred to in sub-section (2), in each of the relevant tax years.

51(2): Eligible Expenditure for Mineral Prospecting Deduction

The expenditure referred to in sub-section (1) is the expenditure incurred by the assessee at any time during the year of commercial production and any one or more of the four tax years immediately preceding that year, wholly and exclusively on any operations relating to prospecting for any mineral or group of associated minerals specified in Part A or Part B, respectively, of the Schedule XII or on the development of a mine or other natural deposit of any such mineral or group of associated minerals.

51(3): Reduction of Reimbursed or Recovered Expenditure

The expenditure under sub-section (2) shall be reduced by such expenditure which is met directly or indirectly by any other person or authority and any sale, salvage, compensation or insurance moneys realised by the assessee in respect of any property or rights brought into existence as a result of the expenditure.

51(4): Excluded Expenditures from Mineral Prospecting Deduction

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The following expenditure shall be excluded from the expenditure referred to in sub-section (2):—

- (a) any expenditure on the acquisition of the site of the source of any mineral or group of associated minerals referred to in the said sub-section or of any rights in or over such site; or**
- (b) any expenditure on the acquisition of the deposits of such mineral or group of associated minerals or of any rights in or over such deposits; or**
- (c) any expenditure of a capital nature in respect of any building, machinery, plant or furniture for which allowance by way of depreciation is admissible under section 33.**

51(5): Computation and Limit of Deduction for Mineral Prospecting

The deduction to be allowed under sub-section (1) for any relevant tax year shall be—

- (a) an amount equal to one-tenth of the expenditure specified in sub-section (2) as reduced by the expenditure mentioned in sub-sections (3) and (4) (such one-tenth being herein referred to as the instalment); or**
- (b) such amount as is sufficient to reduce to nil the income (as computed before making the deduction under this section) of that tax year arising from the commercial exploitation [whether or not such commercial exploitation is as a result of the operations or development referred to in sub-sections (2) and (3)] of any mine or other natural deposit of the mineral or any one or more of the minerals in a group of associated minerals under this section in respect of which the expenditure was incurred, whichever is less.**

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51(6): Carry Forward of Unallowed Instalment

If any part of the instalment for a relevant tax year is not fully allowed, it shall be carried forward to the subsequent tax year, becoming part of the instalment of that tax year and such carrying forward may continue for each following tax year, but no instalment shall be carried forward beyond the tenth tax year from the tax year in which commercial production began.

51(7): Audit Requirement for Non-Corporate Assesseees

Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless,—

(a) the accounts of the assessee for the tax year or years in which the expenditure specified in sub-section (2) are incurred have been audited by an accountant, before the specified date referred to in section 63; and

(b) the assessee furnishes for the first tax year in which the deduction under this section is claimed, the report of such audit, by such date, in such form and duly signed and verified by such accountant, as may be prescribed.

51(8): Continuation of Deduction in Case of Amalgamation or Demerger

If an undertaking of an Indian company, entitled for deduction under sub-section (1), is transferred before ten years specified in the said sub-section in a scheme of amalgamation or demerger, to another Indian company, then,—

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(a) no deduction shall be allowed to the amalgamating or demerged company for the year in which such amalgamation or demerger takes place; and

(b) all the provisions of this section shall continue to apply to the amalgamated or resulting company as it would have applied to the amalgamating or demerged company, as if the amalgamation or demerger had not taken place.

51(9): Prohibition of Double Deduction for Same Expenditure

If a deduction under this section is claimed and allowed for any tax year in respect of any expenditure referred to in subsection (2), deduction shall not be allowed for such expenditure under any other provision of this Act for the same or any other tax year.

51(10): Definitions for Mineral Prospecting Deduction

For the purposes of this section,—

(a) “operation relating to prospecting” means any operation undertaken for the purposes of exploring, locating or proving deposits of any mineral and includes any such operation which proves to be infructuous or abortive;

(b) “year of commercial production” means the tax year in which as a result of any operation relating to prospecting, commercial production of any mineral or any one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of Schedule XII, commences;

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(c) “relevant tax years” means the ten tax years beginning with the year of commercial production.

52. AMORTISATION OF EXPENDITURE FOR TELECOMMUNICATIONS SERVICES, AMALGAMATION, DEMERGER, SCHEME OF VOLUNTARY RETIREMENT, ETC

52(1): Amortisation of Specified Expenditures in Telecommunications, Amalgamation, Demerger, and Voluntary Retirement

Where an expenditure of the nature specified in column B of the Table given below is incurred during the tax year, a deduction or part thereof shall be allowed in equal instalments in each of the successive tax years as mentioned in column D of the said Table, beginning from the initial tax year specified in column C thereof.

Table

Sl. No.	Nature of expenditure	Initial tax year	Number of tax years over which deduction of expenditure is allowable in equal instalments
A	B	C	D
1	Expenditure incurred by an Indian company, wholly and exclusively for the purposes of amalgamation or demerger of an	Tax year in which such amalgamation or demerger takes place.	Five tax years.

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| Sl. No. | Nature of expenditure                                                                                                                             | Initial tax year                                                                                                                      | Number of tax years over which deduction of expenditure is allowable in equal instalments                                                            |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| A       | B                                                                                                                                                 | C                                                                                                                                     | D                                                                                                                                                    |
|         | undertaking.                                                                                                                                      |                                                                                                                                       |                                                                                                                                                      |
| 2       | Amount paid to an employee in connection with his voluntary retirement as per any scheme of voluntary retirement.                                 | Tax year in which such payment is made.                                                                                               | Five tax years.                                                                                                                                      |
| 3       | Capital expenditure incurred and actually paid for acquiring any right to use spectrum for telecommunication services ( <i>spectrum fee</i> ).    | Tax year in which—(a) The business to operate telecom services is commenced; or(b) Spectrum fee is actually paid, whichever is later. | Number of years commencing from the initial tax year and ending in the tax year up to which the spectrum for which the fee is paid remains in force. |
| 4       | Capital expenditure incurred and actually paid for acquiring any right to operate telecommunication services (herein referred to as licence fee). | Tax year in which,— (a) the business to operate telecom services is commenced; or (b) licence fee is actually paid, whichever is late | Number of years commencing from the initial tax year and ending in the tax year up to which the licence for which the fee is paid remains in force.  |

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52(2): Tax Treatment on Transfer of Licence or Spectrum Rights

Where the licence or spectrum referred to in sub-section (1) (Table: Sl. No. 3 or 4)—

(a) is transferred, and the proceeds of the transfer (so far as they consist of capital sums) are less than the expenditure though incurred, but remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of the transfer, shall be allowed in respect of the tax year in which the licence or spectrum is transferred;

(b) is transferred, whether in whole or in part, and the proceeds of the transfer (so far as they consist of capital sums) exceed the amount of the expenditure though incurred, but remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred to obtain the licence or spectrum and the amount of such expenditure remaining unallowed, shall be chargeable to income-tax as profits and gains of the business in the tax year in which the licence or spectrum has been transferred;

(c) is transferred under clause (b) in a tax year in which the business is no longer in existence, the provisions of said clause shall apply as if the business is in existence in that tax year;

(d) is transferred, whether in whole or in part, and the proceeds of the transfer (so far as they consist of capital sums) are equal or greater than the amount of expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed under sub-section (1) in respect of the tax year in which the licence or spectrum is transferred or in respect of any subsequent tax year or years;

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(e) is sold or otherwise transferred by the amalgamating company or demerged company, as the case may be, in a scheme of amalgamation or demerger, to the amalgamated company or resulting company, being an Indian company,—

(i) the provisions of clauses (a), (b), (c) and (d) shall not apply to the amalgamating or demerged company; and

(ii) all the provisions of this section shall continue to apply to the amalgamated or resulting company as it would have applied to the amalgamating or demerged company, as if the transfer had not taken place.

52(3): Deduction on Partial Transfer of Licence or Spectrum

Where a part of licence or spectrum referred to in sub-section (1)(Table: Sl. No. 3 or 4) is transferred in a tax year and sub-section (2)(b) and (c) does not apply, the deduction to be allowed under sub-section (1) for the expenditure though incurred but remaining unallowed shall be arrived at by—

(a) subtracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed; and

(b) dividing the remainder by the number of relevant tax years which have not expired at the beginning of the tax year during which the licence or spectrum is transferred.

52(4): Restriction on Double Deduction for Specified Expenditure

No deduction shall be allowed—

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(a) for depreciation under section 33(1) to (10) in respect of expenditure mentioned in sub-section (1) (Table: Sl. No. 3 or 4), where deduction under this section is claimed and allowed for any tax year;

(b) under any other provision of this Act in respect of the expenditure mentioned in sub-section (1) (Table: Sl. No. 1 or 2).

52(5): Consequences of Non-Compliance for Spectrum Expenditure Deduction

In case any deduction has been claimed and granted in respect of an expenditure referred to in sub-section (1) (Table: Sl. No. 3) in a tax year and subsequently there is failure on part of the assessee to comply with any of the provisions of this section, then,—

(a) the deduction shall be deemed to have been wrongly allowed;

(b) the Assessing Officer may, irrespective of any other provisions of this Act, recompute the total income of the assessee for the said tax year by making necessary rectification;

(c) the provisions of section 287 shall, so far as may be, apply; and

(d) the period of four years specified in section 287(8) shall be counted from the end of the tax year in which such failure takes place.

52(6): Continuation of Deduction in Case of Business Reorganisation

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Where a specified business reorganisation takes place before the expiry of the period specified in sub-section (1) (Table: Sl. No. 2.D), in case of an expenditure referred against serial number 2 thereof, then,—

(a) the provisions of this section, as far as may be, shall continue to apply to the successor entity as they would have applied to the predecessor entity if such reorganisation had not taken place; and

(b) no deduction shall be allowed to the predecessor entity under this section for the tax year in which such reorganisation takes place.

52(7): Definitions for Amortisation of Specified Expenditures

For the purposes of this section,—

(a) “actually paid” means the actual payment of expenditure irrespective of the tax year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in such manner, as may be prescribed;

(b) “equal instalments” shall be calculated by taking numerator as 1 and denominator as the tax years mentioned in column D of the Table in sub-section (1);

(c) “specified business reorganisation” means—

(i) amalgamation of an Indian company and its undertaking with another Indian company; or

(ii) demerger of an undertaking of an Indian company to another company; or

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(iii) succession of a firm or proprietorship concern to a company fulfilling conditions as laid down in section 70(1)(zd); or

(iv) conversion of a private company or unlisted public company to a limited liability partnership fulfilling conditions laid down in section 70(1)(ze).

53. FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS OTHER THAN CAPITAL ASSETS IN CERTAIN CASES.

53(1): Deemed Full Value of Consideration for Transfer of Non-Capital Land or Building

In case of transfer of an asset (other than a capital asset), being land or building or both, if the consideration received or accrued from such transfer is less than the stamp duty value, then such stamp duty value for computing profits and gains from transfer of such asset shall be deemed to be the full value of consideration.

53(2): Safe Harbour Limit for Stamp Duty Valuation

The provisions of sub-section (1) shall not apply if the stamp duty value does not exceed 110% of the consideration received or accrued and in such a case, the consideration received or accrued shall be deemed to be the full value of consideration.

53(3): Consideration Based on Date of Agreement

If the date of agreement fixing the value of consideration for transfer of asset and date of registration for transfer of such asset are different, then the stamp duty value as on date of

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agreement may be taken to be the full value of consideration under sub-section (1).

53(4): Condition for Adopting Stamp Duty Value on Date of Agreement

The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by specified banking or online mode on or before the date of agreement for transfer of such asset.

53(5): Reference to Valuation Provisions for Stamp Duty Value

For the determination of the stamp duty value under sub-section (1), the provisions of section 78(2) and (3) shall apply.

54. BUSINESS OF PROSPECTING FOR MINERAL OILS.

54(1): Deduction for Specified Oil Exploration Business

Where the assessee undertakes specified oil exploration business, then deduction specified in sub-sections (3) and (4) shall be allowed while computing the income under the head “Profits and gains of business or profession”.

54(2): Definition of Specified Oil Exploration Business

For the purposes of this section, “specified oil exploration business” means business consisting of prospecting for or extraction or production of mineral oils where the following conditions are fulfilled:—

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- (a) the Central Government has entered into an agreement with the assessee;
- (b) such agreement is entered for association or participation of the Central Government or any person authorised by it; and
- (c) such agreement is laid before each House of Parliament.

54(3): Deductions Allowed for Oil Exploration Activities

The deduction referred to in sub-section (1) shall be—

- (a) for the period before the beginning of commercial production, expenditure towards infructuous or abortive exploration incurred in respect of any surrendered area;
- (b) for the period after the commencement of commercial production, expenditure (whether before or after such production) in respect of drilling or exploration activities or services or in respect of physical assets used in that connection;
- (c) for the tax year of commencement of commercial production and such succeeding tax years as specified in the agreement, towards depletion of mineral oil in the mining area.

54(4): Nature and Manner of Allowing Deductions for Oil Exploration

The deductions referred to in sub-section (1) shall be—

- (a) either in lieu of, or in addition to, any allowance admissible under this Act as specified in the agreement; and

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(b) computed and made in the manner specified in the agreement and the other provisions of this Act shall be deemed to have been modified to such extent.

54(5): Tax Treatment on Transfer of Oil Exploration Business or Interest

Where the business or any interest therein as referred to in sub-section (1) is wholly or partly transferred as per the provisions of the agreement, the profit shall be charged to tax or deduction shall be allowed in the following manner:—

(a) where A is less than C, then (C-A) shall be allowed as deduction in the tax year in which such business or interest is transferred;

(b) where A is greater than C,—

(i) but less than B, then (A-C) shall be the profit chargeable under the head “Profits and gains of business or profession” for the tax year in which such transfer takes place;

(ii) in any other case, only (B-C) shall be the profit chargeable under the said head for the tax year in which such transfer takes place; and

(iii) no deduction shall be allowed for the expenditure incurred remaining unallowed in the tax year in which such transfer takes place or any subsequent tax year,

where,—

A = proceeds of the transfer (so far as they consist of capital sums);

B = total amount of expenditure incurred in connection with the business or to obtain interest therein;

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C = amount of expenditure incurred remaining unallowed.

54(6): Applicability of Tax Provisions When Business Ceases to Exist

If the business or interest therein is no longer in existence in the year of transfer, the provisions of sub-section (5) shall apply as if such business is in existence during the said year.

54(7): Continuation of Deductions in Case of Amalgamation or Demerger

Where the business or interest therein is sold or otherwise transferred in a scheme of amalgamation or demerger and the amalgamated entity or the resulting entity being an Indian company, then the provisions of sub-section (5) shall—

(a) not apply to the amalgamating or demerged company; and

(b) continue to apply to the amalgamated or resulting company as it would have applied to the amalgamating or demerged company as if the transfer had not taken place.

55. INSURANCE BUSINESS.

55: Computation of Income for Insurance Business

Irrespective of anything to the contrary contained in the provisions of this Act for computing income under the head “Income from house property”, “Capital gains” or “Income from other sources”, or in section 390(5) and (6), or in sections 26 to 54, the profits and gains of any business of insurance, including any such business carried on by a

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mutual insurance company or by a co-operative society, shall be computed as per the provisions of Schedule XIV.

56. SPECIAL PROVISION IN CASE OF INTEREST INCOME OF SPECIFIED FINANCIAL INSTITUTIONS.

56(1): Taxability of Interest on Bad or Doubtful Debts of Financial Institutions

Irrespective of anything to the contrary contained in this Act, the interest income in relation to bad or doubtful debts of a specified financial institution shall be chargeable to tax under the head “Profits and gains of business or profession” in the tax year in which such interest is—

- (a) credited to the profit and loss account; or
 - (b) actually received,
- whichever is earlier.

56(2): Definitions Relating to Interest on Bad or Doubtful Debts

For the purposes of this section,—

- (a) “specified financial institution” means—
 - (i) a public financial institution; or
 - (ii) a scheduled bank; or
 - (iii) a co-operative bank, other than—
 - (A) a primary agricultural credit society; or

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(B) a primary co-operative agricultural and rural development bank; or

(iv) a State Financial Corporation; or

(v) a State Industrial Investment Corporation; or

(vi) any such class of non-banking financial companies, as may be notified by the Central Government;

(b) “bad or doubtful debts” shall be such categories of debts, as may be prescribed, having regard to the guidelines issued in relation to such debts by the Reserve Bank of India.

57. REVENUE RECOGNITION FOR CONSTRUCTION AND SERVICE CONTRACTS.

57(1): Revenue Recognition for Construction and Service Contracts

The profits and gains arising from a construction contract or a contract for providing services, shall be determined on the basis of percentage of completion method, subject to provisions of sub-section (2), as per the income computation and disclosure standards notified under section 276(2).

57(2): Methods for Computing Income from Service Contracts

For the purposes of sub-section (1), the profits and gains arising from a contract for providing services shall be determined—

(a) on the basis of project completion method, if the duration of such contract is not more than ninety days;

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(b) on the basis of straight line method, if the contract involves indeterminate number of acts over a specified period of time.

57(3): Components of Revenue and Cost for Contract Accounting Methods

For the purposes of percentage of completion method, project completion method or straight line method under this section,—

- (a) the contract revenue shall include retention money;**
- (b) the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.**

58. SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS OF BUSINESS OR PROFESSION ON PRESUMPTIVE BASIS IN CASE OF CERTAIN RESIDENTS.

58(1): Override of Other Provisions for Presumptive Income Computation

The provisions of sections 26 to 54, to the extent contrary to this section, shall not apply to the manner of computation of profits and gains of the specified business or profession in sub-section (2).

58(2): Presumptive Taxation for Specified Businesses and Professions

The profits and gains of any specified business or profession as mentioned in column B of the Table below, carried on by an assessee specified in column C of the said Table, having

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total turnover or gross receipts of business or profession during the tax year specified in column D and computed in the manner specified in column E thereof, shall be deemed to be the profits and gains of such business or profession chargeable to tax under the head “Profits and gains of business or profession”.

**Table**

| Sl. No. | Specified business or profession                                        | Assessee           | Total turnover or, as the case may be, gross receipts of business or profession during tax year                                                                                          | Manner of computation                                                                                                                                                           |
|---------|-------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A       | B                                                                       | C                  | D                                                                                                                                                                                        | E                                                                                                                                                                               |
| 1       | Any business other than the business specified against serial number 2. | Eligible assessee. | (a) Does not exceed two crore rupees; or (b) does not exceed three crore rupees, where the amount or aggregate of amounts received, in cash, does not exceed 5% of the total turnover or | (A) The aggregate of – (i) 6% of total turnover or gross receipts which is received by specified banking or online mode during the tax year or before the due date specified in |



|   |                                                      |                                                                                         |                 |                                                                                                                                                                                                                              |
|---|------------------------------------------------------|-----------------------------------------------------------------------------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                                      |                                                                                         | gross receipts. | section 263(1) in respect of that tax year; (ii) 8% of total turnover or gross receipts as reduced by the turnover or gross receipts covered in (i); or (B) profit claimed to have been actually earned, whichever is higher |
| 2 | Business of plying, hiring or leasing goods carriage | An assessee, who owns not more than ten goods carriages at any time during the tax year |                 | (A) The aggregate of income from goods carriage:— (i) being a heavy goods vehicle, calculated at the rate of ₹1000 per ton of gross vehicle weight or unladen weight, as the case may be, for each                           |



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				<p>vehicle, for every month or part of a month during which such vehicle is owned by the assessee in the tax year;</p> <p>(ii) being a vehicle other than heavy goods vehicle, calculated at the rate of ₹7,500 for each goods carriage for every month or part of a month during which the vehicle is owned by the assessee in the tax year;</p> <p>or</p> <p>(B) profit claimed to have been actually earned, whichever is higher.</p>
3	Specified	Specified	(a) Does not	50% of the

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	profession as referred to in section 62(4).	assessee.	exceed fifty lakh rupees; or (b) does not exceed seventy-five lakh rupees, where the amount or aggregate of amounts received in cash does not exceed 5% of the gross receipts.	gross receipts or profit claimed to have been actually earned, whichever is high
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58(3): Requirement to Maintain Books and Audit When Declaring Lower Profits

Any assessee mentioned in column C of the Table in sub-section (2), who claims that—

(a) the profits or gains actually earned from the specified business or profession are lower than the profits or gains computed in the manner mentioned in column E of the said Table; and

(b) whose total income exceeds the maximum amount which is not chargeable to tax,

shall be required to—

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- (i) keep and maintain such books of account and other documents as required under section 62; and
- (ii) get the accounts audited and furnish a report of such audit as required under section 63.

58(4): No Additional Deduction or Set-Off Allowed Under Presumptive Scheme

Any loss, allowance or deduction allowable under the provisions of this Act, shall not be allowed against the income computed in the manner specified in sub-section (2).

58(5): Deduction for Partner’s Salary and Interest in Presumptive Scheme for Transport Business

For the purposes of sub-section (2) (Table: Sl. No. 2), where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in section 35(e).

58(6): Computation of Written Down Value Under Presumptive Scheme

The written down value of any asset used for the purposes of specified business or profession shall be computed as if the assessee mentioned in column C of the Table in sub-section (2) had claimed and was actually allowed deduction in respect of depreciation thereon for each of the relevant tax years.

58(7): Ineligibility for Presumptive Taxation on Declaring Lower Profits

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Where an eligible assessee declares profit for any tax year as per the provisions of sub-section (2) (Table: Sl. No. 1) and he declares profit for any of the five tax years succeeding such tax year in contravention of the provisions of sub-section (1), then he shall not be eligible to claim the benefit of the provisions of this section for five tax years subsequent to the tax year in which the profit has not been declared as per the provisions of the said sub-section.

58(8): Mandatory Books and Audit for Ineligible Assessee Under Presumptive Scheme

Irrespective of anything contained in foregoing provision of this section, where provisions of sub-section (7) are applicable to an eligible assessee and his total income exceeds the maximum amount which is not chargeable to income-tax, he shall be required to keep and maintain such books of account and other documents as required under section 62 and get them audited and furnish a report of such audit as required under section 63.

58(9): Treatment of Non-Account Payee Instruments as Cash Receipts

For the purposes of sub-section (2) (Table: Sl. Nos. 1 and 3), the receipt of amount or aggregate of 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.

58(10): Exclusion of Transport Business from Books and Audit Requirements

The provisions of sections 62 and 63 shall not apply in so far as they relate to the business referred to in sub-section (2)

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(Table: Sl. No. 2) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.

58(11): Definitions Applicable to Presumptive Taxation Scheme

For the purposes of this section,—

(a) “eligible assessee” means an individual, a Hindu undivided family, or a firm other than a limited liability partnership, who is resident in India, and who—

(i) has not claimed any deduction under section 144;

(ii) has not claimed any deduction under Chapter VIII-C for the relevant tax year;

(iii) does not carry on specified profession as defined in section 62(4);

(iv) does not earn any income in the nature of commission or brokerage;

(v) does not carry on any agency business;

(b) “specified assessee” means an individual or a firm, other than a limited liability partnership, who is a resident in India;

(c) “limited liability partnership” shall have the same meaning as assigned to it in section 2(1)(n) of the Limited Liability Partnership Act, 2008;

(d) the expressions “goods carriage”, “gross vehicle weight” and “unladen weight” shall have the same meaning as

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respectively assigned to them in section 2 of the Motor Vehicles Act, 1988;

(e) “heavy goods vehicle” means any goods carriage, the gross vehicle weight of which exceeds 12,000 kilograms; and

(f) an assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.

59. COMPUTATION OF ROYALTY AND FEE FOR TECHNICAL SERVICES IN HANDS OF NON-RESIDENTS.

59(1): Computation of Royalty and Fees for Technical Services of Non-Residents

Income in the nature of royalty or fees for technical services received by a specified assessee during a tax year, shall be computed under the head “Profits and gains of business or profession” under this Act, if the following conditions are satisfied:—

(a) income is received from the Government or an Indian concern;

(b) income is in pursuance to an agreement made by the specified assessee with the Government or the Indian concern;

(c) the specified assessee carries on business in India through a permanent establishment, or performs professional services from a fixed place of profession, situated in India; and

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(d) the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession.

59(2): Disallowance of Certain Expenditures for Non-Resident's Royalty or Technical Service Income

No deduction shall be allowed against the income computed under sub-section (1) in respect of the following amounts:—

(a) any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India; or

(b) amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to its head office or to any of its other offices.

59(3): Exclusion from Certain Business Provisions

The provisions of section 61 in so far as it relates to business referred to in section 61(2) (Table: Sl. No. 5), shall not apply in respect of the income referred to in this section.

59(4): Maintenance of Books and Audit Requirement for Specified Assessee

The specified assessee shall keep and maintain books of account and other documents as per the provisions of section 62, get his accounts audited on or before the specified date referred to in section 63 by an accountant, and furnish report of audit in the prescribed form, duly signed and verified by the accountant.

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59(5): Definition of Specified Assessee

For the purposes of this section, the expression “specified assessee” means a non-resident (not being a company) or a foreign company.

60. DEDUCTION OF HEAD OFFICE EXPENDITURE IN CASE OF NON-RESIDENTS.

60(1): Deduction of Head Office Expenditure for Non-Resident Assesseees

Irrespective of anything to the contrary contained in sections 26 to 54, in the case of a non-resident assessee, deduction of head office expenditure incurred by such assessee as is attributable to his business or profession in India, shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession” subject to provisions of sub-section (2).

60(2): Limit on Deduction for Head Office Expenditure

The deduction allowable under sub-section (1) shall be restricted—

(a) if the adjusted total income of the assessee is a loss, to an upper monetary limit of 5% of the average adjusted total income of the assessee; or

(b) in any other case, to an upper monetary limit of 5% of the adjusted total income of the assessee.

60(3): Definitions for Deduction of Head Office Expenditure

For the purposes of this section,—

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(a) “adjusted total income” means the total income computed under this Act, without giving effect to the allowance referred to in this section or in section 33(11) or the deduction referred to in section 32(i)(A) or any loss carried forward under section 111(1) or 112(1) or 113(2) or 115(2) or the deductions under Chapter VIII;

(b) “average adjusted total income” means,—

(i) if the assessee is assessable for each of the three tax years immediately preceding the relevant tax year, the arithmetic mean of his adjusted total income over those three tax years;

(ii) if the assessee is assessable only for two of the said three tax years, the arithmetic mean of his adjusted total income over those two tax years;

(iii) if the assessee is assessable only for one of the said three tax years, his adjusted total income for that tax year;

(c) “head office expenditure” means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of—

(i) rent, rates, taxes, repairs or insurance of any premises outside India used for the business or profession;

(ii) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of, or in addition to, salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;

(iii) travelling by any employee or other person employed in, or managing the affairs of, any office outside India; and

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(iv) such other matters connected with executive and general administration, as may be prescribed.

61. SPECIAL PROVISION FOR COMPUTATION OF INCOME ON PRESUMPTIVE BASIS IN RESPECT OF CERTAIN BUSINESS ACTIVITIES OF CERTAIN NON-RESIDENTS.

61(1): Override of Other Provisions for Presumptive Income of Non-Residents

The provisions of sections 26 to 54, to the extent contrary to this section, shall not apply to the manner of computation of profits and gains of the specified business in sub-section (2).

61(2): Presumptive Taxation for Specified Businesses of Non-Residents

The profits and gains of any specified business as mentioned in column B of the Table below, carried on by a specified assessee as mentioned in column C of the said Table during a tax year, shall be computed in the manner specified in column D thereof, and shall be deemed to be the profits and gains of such business of such assessee chargeable to tax for the said tax year under the head “Profits and gains of business or profession

Table

SI No.	Specified business	Specified assessee	Profits and gains of business or profession
A	B	C	D

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<p>1</p>	<p>Business of operation of ships, other than cruise ships referred to in Serial number 2.</p>	<p>Non-resident.</p>	<p>7.5% of (A+B), where,— A = sum on account of carriage of passengers, livestock, mail or goods shipped at any port in India, whether paid or payable, in or outside India, to the assessee or any other person on his behalf (including demurrage, handling or other similar charges);</p> <p>B = sum on account of carriage of passengers, livestock, mail or goods shipped at any port outside India, whether received or deemed to be received in India, by the assessee or any other person on</p>
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			his behalf (including demurrage, handling or other similar charges).
2	Business of operation of cruise ships (subject to the conditions as may be prescribed).	Non-resident.	20% of (A+B), where,— A = sum on account of carriage of passengers, paid or payable to the assessee or any other person on his behalf; B = sum on account of carriage of passengers received or deemed to be received by the assessee or any other person on his behalf.
3	Business of operation of aircraft	Non-resident.	5% of (A+B), where,— A = sum on account of carriage of passengers, livestock, mail or goods from any place in India, paid or payable (in or

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			outside India) to the assessee or any other person on his behalf; B = sum on account of carriage of passengers, livestock, mail or goods from any place outside India, received or deemed to be received in India, by the assessee or any other person on his behalf
4	Business of civil construction or erection or testing or commissioning, of plant or machinery, in connection with a turnkey power project, approved by the Central Government.	Foreign company.	10% of the amount towards such civil construction, erection, testing, or commissioning, paid or payable, to the assessee or to any other person on his behalf, whether in or outside India.
5	Business of providing	Non-resident.	10% of (A+B), where,—

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	<p>services or facilities (including supply of plant and machinery on hire) for prospecting, extraction or production of mineral oils.</p>		<p>A = sum on account of business of providing services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of mineral oils in India, paid or payable (in or outside India), to the assessee or any other person on his behalf;</p> <p>B = sum on account of business of providing services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for,</p>
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			or extraction or production of mineral oils outside India, received or deemed to be received in India, by the assessee or any other person on his behalf.
6	Business of providing services or technology in India, for the purposes of setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India to a resident company.	Non-resident.	25% of (A+B), where,— A = the amount paid or payable to the non-resident assessee or to any person on his behalf on account of providing services or technology; B = the amount received or deemed to be received by the non-resident assessee or on behalf of non-resident assessee on account of providing

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			services or technology.
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61(3): Option to Declare Lower Profits for Certain Non-Resident Businesses

For the purposes of sub-section (2) (Table: Sl. Nos. 4 and 5) the specified assessee may claim that the profits actually earned from the specified business are lower than the business profits computed under sub-section (2), if,—

- (a) he keeps and maintains such books of account and other documents as required under section 62; and
- (b) gets his accounts audited and furnish a report of such audit as required under section 63.

61(4): Restriction on Additional Deductions or Set-Offs

Any loss, allowance or deduction allowable under the provisions of this Act shall not be allowed against the income computed in the manner specified in sub-section (2).

61(5): Computation of Written Down Value Under Presumptive Scheme

The written down value of any asset used for the purposes of specified business or profession shall be computed, as if the assessee mentioned in column C of the Table in sub-section (2) had claimed and was actually allowed depreciation thereon for each of the relevant tax years.

61(6): Exclusion from Applicability of Presumptive Scheme

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For the purposes of sub-section (2) (Table: Sl. No. 5) the provisions of this section shall not apply where the provisions of section 54 or 59 or 207 or 527 apply for the purposes of computing profits and gains or any other income referred to in the said sections.

61(7): Meaning of “Plant” for Specified Non-Resident Businesses

For the purposes of sub-section (2) (Table: Sl. No. 5), “plant” includes ships, aircrafts, vehicles, drilling units, scientific apparatuses and equipments used for the purposes of the specified business.

61(8): Conditions for Resident Company Under Electronics Manufacturing Scheme

For the purposes of sub-section (2) (Table: Sl. No. 6), resident company shall satisfy the following:—

(a) it is establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods, article or thing in India, under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology; and

(b) it satisfies the conditions as may be prescribed in this behalf.

61(9): Exclusion from Applicability of Sections 59 and 207

The provisions of sections 59 and 207 shall not apply to amounts referred to in sub-section (2) (Table: Sl. No. 6).

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## **62. MAINTENANCE OF BOOKS OF ACCOUNT.**

### **62(1): Requirement to Maintain Books of Account**

**(a) Any person carrying on specified profession; or (b) any person carrying on, business; or any profession not being a profession referred to in clause (a) and satisfying the conditions referred to in sub-section (2), shall keep and maintain such books of account and other documents to enable the Assessing Officer to compute his total income under this Act.**

### **62(2): Conditions Requiring Maintenance of Books of Account**

**The conditions in respect of persons referred to in sub-section (1)(b) shall be the following:—**

**(a) where the income from business or profession exceeds ₹ 120000 or its total sales, turnover or gross receipts from such business or profession exceeds ten lakh rupees in any one of the three years immediately preceding the tax year; or**

**(b) where business or profession is newly set up in the tax year, the income from business or profession is likely to exceed ₹ 120000 or its total sales, turnover or gross receipts from such business or profession is likely to exceed ten lakh rupees during such tax year; or**

**(c) where during the tax year, the assessee referred to in section 58(2) or 61(2) (Table: Sl. Nos. 4 and 5), has claimed income from business or profession to be lower than the deemed profits as referred to in section 58(2) or section 61(2); or**

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(d) in case of an individual or Hindu undivided family, clauses (a) and (b) shall be modified to the extent of income from such business or profession exceeding ₹ 250000 and its total sales, turnover or gross receipts from such business or profession exceeding twenty-five lakh rupees.

62(3): Power of the Board to Prescribe Requirements for Books of Account

For the purposes of this section, the Board may prescribe—

- (a) the books of account and other documents (including inventories, wherever necessary) to be kept and maintained;
- (b) particulars to be contained therein;
- (c) the form, manner and place at which they shall be kept and maintained; and
- (d) the period for which such books of account and other documents are to be retained.

62(4): Definition of Specified Profession

For the purposes of this section, the expression “specified profession” means—

- (a) legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration, information technology or company secretary; or
- (b) any other profession, as may be notified by the Board in this behalf.

63. TAX AUDIT.

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63(1): Mandatory Tax Audit for Certain Businesses and Professions

Every person, carrying on the business or profession fulfilling any of the conditions specified in column B of the Table below, shall get his accounts of the tax year audited by an accountant, before the specified date.

Table

Sl. No.	Conditions for getting books of account audited
A	B
1	<p>Every person—</p> <p>(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any tax year, subject to the provisions of clause (b);</p> <p>(b) In case of a person whose—</p> <p>(i) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the tax year, in cash, does not exceed 5% of the said amount; and</p> <p>(ii) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed 5% of the said payment,</p> <p>clause (a) shall have effect as if for the words “one crore rupees”, the words “ten crore rupees” had been substituted;</p> <p>(c) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year.</p>
2	<p>If the person is carrying on business or profession, referred to in section 58(2) or 61(2) (Table: Sl. No. 4 and 5) and the profits and gains from such business or profession are claimed to be lower than the deemed profits as referred to in</p>

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|  | the said sections. |
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### **63(2): Exemption from Tax Audit for Presumptive Income Cases**

The provisions of this section shall not apply where profits and gains of business or profession, declared by the assessee are as per section 58(2) or 61(2).

### **63(3): Furnishing of Tax Audit Report**

The assessee shall furnish by the specified date, the report of such audit in such form, duly signed and verified by the accountant and setting forth such particulars, as may be prescribed.

### **63(4): Audit Under Other Laws Deemed Sufficient Compliance**

Where a person is required, by or under any other law, to get his accounts audited, then it shall be sufficient compliance of this section, if such person—

(a) gets the accounts of such business or profession audited under such law before the specified date; and

(b) furnishes by that specified date the report of such audit along with the report of the accountant in the form as may be prescribed.

### **63(5): Definitions for Tax Audit Compliance**

For the purposes of this section,—

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(a) “specified date” in relation to the accounts of the assessee of the tax year, means the date one month prior to the due date for furnishing the return of income under section 263(1).

(b) the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash.

#### **64. SPECIAL PROVISION FOR COMPUTING DEDUCTIONS IN CASE OF BUSINESS REORGANISATION OF CO-OPERATIVE BANKS.**

##### **64(1): Deduction in Case of Business Reorganisation of Co-operative Banks**

The deduction under section 33 or 44 or 52(1) (Table: Sl. No. 1 or 2) shall, in a case where business reorganisation of a co-operative bank has taken place during the tax year, be allowed as per provisions of this section.

##### **64(2): Formula for Apportioning Deductions Between Predecessor and Successor Co-operative Banks**

The amount of deduction allowable to the predecessor co-operative bank or to the successor co-operative bank or to the converted banking company under section 33 or 44 or 52(1) (Table: Sl. No. 1 or 2) shall be determined as per the formula—

(i) for predecessor co-operative bank:—  $\frac{AXB}{C}$

(ii) for successor co-operative bank or converted banking company:—  $\frac{AXD}{C}$

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where,—

**A = the amount of deduction allowable to the predecessor co-operative bank, if the business reorganisation had not taken place;**

**B = the number of days comprised in the period beginning with the 1st day of the tax year and ending on the day immediately preceding the date of business reorganisation; and**

**C = the total number of days in the tax year in which the business reorganisation has taken place.**

**D = the number of days comprised in the period beginning with the date of business reorganisation and ending on the last day of the tax year.**

**64(3): Continuation of Deduction Post Reorganisation of Co-operative Banks**

The provisions of section 44 or 52(1) (Table: Sl. No. 1 or 2) shall, in a case where an undertaking of the predecessor co-operative bank entitled to the deduction under the said section is transferred before the expiry of the period specified therein to a successor co-operative bank or to a converted banking company on account of business reorganisation, apply to the successor co-operative bank or to the converted banking company in the tax years subsequent to the year of business reorganisation as they would have applied to the predecessor co-operative bank, as if the business reorganisation had not taken place.

**65. INTERPRETATION FOR THE PURPOSES OF SECTION 64.**

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65: Definitions for Interpretation of Section 64

For the purposes of section 64,—

(a) “amalgamation” means the merger of an amalgamating co-operative bank with an amalgamated co-operative bank, if—

(i) all the assets and liabilities of the amalgamating co-operative bank or banks immediately before the merger (other than the assets transferred, by sale or distribution on winding up, to the amalgamated co-operative bank) become the assets and liabilities of the amalgamated co-operative bank;

(ii) the members holding 75% or more voting rights in the amalgamating co-operative bank become members of the amalgamated co-operative bank; and

(iii) the shareholders holding 75% or more in value of the shares in the amalgamating co-operative bank (other than the shares held by the amalgamated co-operative bank or its nominee or its subsidiary, immediately before the merger) become shareholders of the amalgamated co-operative bank;

(b) “amalgamating co-operative bank” means—

(i) a co-operative bank which merges with another co-operative bank; or

(ii) every co-operative bank merging to form a new co-operative bank;

(c) “amalgamated co-operative bank” means—

(i) a co-operative bank with which one or more amalgamating co-operative banks merge; or

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**(ii) a co-operative bank formed as a result of merger of two or more amalgamating co-operative banks;**

**(d) “business reorganisation” means reorganisation of business involving the amalgamation or demerger of a co-operative bank or conversion of a primary co-operative bank;**

**(e) “conversion” means transition of a primary co-operative bank to a banking company under the scheme of the Reserve Bank of India as may be notified vide its circular number DCBR. CO. LS. PCB. Cir. No. 5/07.01.000/2018-19, dated 27th September, 2018;**

**(f) “converted banking company” means a banking company formed as a result of conversion from primary co-operative bank;**

**(g) “demerger” means the transfer by a demerged co-operative bank of one or more of its undertakings to any resulting co-operative bank, in such manner that—**

**(i) all the assets and liabilities of the undertaking or undertakings immediately before the transfer become the assets and liabilities of the resulting co-operative bank;**

**(ii) the assets and the liabilities are transferred to the resulting co-operative bank at values (other than change in the value of assets consequent to their revaluation) appearing in its books of account immediately before the transfer;**

**(iii) the resulting co-operative bank issues, in consideration of the transfer, its membership to the members of the demerged co-operative bank on a proportionate basis;**

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**(iv) the shareholders holding 75% or more in value of the shares in the demerged co-operative bank (other than shares already held by the resulting bank or its nominee or its subsidiary immediately before the transfer), become shareholders of the resulting co-operative bank, otherwise than as a result of the acquisition of the assets of the demerged co-operative bank or any undertaking thereof by the resulting co-operative bank;**

**(v) the transfer of the undertaking is on a going concern basis; and**

**(vi) the transfer is as per the conditions specified by the Central Government, by notification, having regard to the necessity to ensure that the transfer is for genuine business purposes;**

**(h) “demerged co-operative bank” means the co-operative bank whose undertaking is transferred, pursuant to a demerger, to a resulting bank;**

**(i) “predecessor co-operative bank” means the amalgamating co-operative bank or the demerged co-operative bank, or the primary co-operative bank, which has been succeeded as a result of conversion;**

**(j) “primary co-operative bank” shall have the meaning assigned to it in clause (ccv) of section 5 of the Banking Regulation Act, 1949;**

**(k) “resulting co-operative bank” means—**

**(i) one or more co-operative banks to which the undertaking of the demerged co-operative bank is transferred in a demerger; or**

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**(ii) any co-operative bank formed as a result of demerger; (l) “successor co-operative bank” means the amalgamated co-operative bank or the resulting bank.**

## **66. INTERPRETATION.**

### **66: Interpretation for Part D (Business or Profession Income Provisions)**

**For the purposes of Part D of this Chapter,—**

**(1) “agreement”, for the purposes of section 26(2)(h), includes any arrangement or understanding or action in concert,—**

**(A) whether or not such arrangement, understanding or action is formal or in writing; or**

**(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;**

**(2) “banking company” means a company to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act;**

**(3) “commission or brokerage” shall have the meaning assigned to it in section 402(7);**

**(4) “commodities transaction tax” shall have the same meaning as assigned to it under Chapter VII of the Finance Act, 2013;**

**(5) “fees for technical services” shall have the meaning assigned to it in section 9(7)(b);**

**(6) “housing finance company” means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for**

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**construction or purchase of houses in India for residential purposes;**

**(7) “Indian Institute of Technology” shall have the same meaning as that of “Institute” defined in section 3(g) of the Institutes of Technology Act, 1961;**

**(8) “Keyman insurance policy” shall have the meaning assigned to it in Schedule II (Note 1);**

**(9) “limited liability partnership” shall have the same meaning as assigned to it in section 2(1)(n) of the Limited Liability Partnership Act, 2008;**

**(10) “long-term finance”, for the purposes of section 32(e), means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;**

**(11) “micro enterprise” shall be an enterprise classified as such under the notification in this behalf by the Central Government under the Micro, Small and Medium Enterprises Development Act, 2006;**

**(12) “mineral oil” includes petroleum and natural gas;**

**(13) “moneys payable” in respect of any tangible asset [as referred to in section 33(12)(a)(i)] includes—**

**(a) any insurance, salvage or compensation moneys payable in respect thereof;**

**(b) where the asset is sold, the price for which it is sold;**

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**(14) “non-scheduled bank” means a banking company as defined in section 5(c) of the Banking Regulation Act, 1949, which is not a scheduled bank;**

**(15) “paid” means, except for section 37, actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head “Profits and gains of business or profession”;**

**(16) “permanent establishment” shall have the meaning assigned to it in section 173(c);**

**(17) “plant” includes ships, vehicles, books, scientific apparatus and surgical equipment used for the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings;**

**(18) “predecessor entity” means—**

**(a) the amalgamating Indian company in the case of amalgamation;**

**(b) the demerged Indian company, in the case of demerger;**

**(c) a firm, in the case of a succession of a firm by a company as referred to in section 70(1)(zd);**

**(d) a private company or unlisted public company, in case of conversion as referred to in section 70(1)(ze);**

**(19) “primary agricultural credit society” shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949;**

**(20) “primary co-operative agricultural and rural development bank” means a society having its area of operation confined to a taluk and the principal object of**

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which is to provide for long-term credit for agricultural and rural development activities;

(21) “professional services” shall have the meaning assigned to it in section 402(28);

(22) “public company” shall have the same meaning as assigned to it in section 2(71) of the Companies Act, 2013;

(23) “public financial institution” shall have the same meaning as assigned to it in section 2(72) of the Companies Act, 2013;

(24) “rate of exchange” means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(25) “royalty” shall have the same meaning as assigned to it in section 9(6)(b);

(26) “rural branch” means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census, of which the relevant figures have been published before the first day of the tax year;

(27) “scientific research” means—

(a) any activity for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries; and

(b) the references to expenditure incurred on scientific research shall include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution,

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**of scientific research, but does not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, and the references to scientific research related to a business or class of business shall include any scientific research—**

**(i) which may lead to or facilitate an extension of that business or, all businesses of that class;**

**(ii) of a medical nature which has a special relation to the welfare of workers employed in that business or, all businesses of that class;**

**(28) “securities transaction tax” shall have the meaning assigned to it under Chapter VII of the Finance (No. 2) Act, 2004;**

**(29) “service”, for the purposes of section 26(2)(h), means a service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as—**

**(a) accounting;**

**(b) banking;**

**(c) communication;**

**(d) conveying of news or information;**

**(e) advertising;**

**(f) entertainment;**

**(g) amusement;**

**(h) education;**

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- (i) financing;**
- (j) insurance;**
- (k) chit funds;**
- (l) real estate;**
- (m) construction;**
- (n) transport;**
- (o) storage;**
- (p) processing;**
- (q) supply of electrical or other energy; and**
- (r) boarding and lodging;**

**(30) “small enterprise” shall be an enterprise classified as such under the notification in this behalf by the Central Government under the Micro, Small and Medium Enterprises Development Act, 2006;**

**(31) “speculative transaction” means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips, other than the following transactions:—**

- (a) a specified derivative transaction as defined in clause (33);**
- (b) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchandising business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured, or merchandise sold by him;**

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**(c) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations;**

**(d) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage, to guard against loss which may arise in the ordinary course of his business as such member;**

**(32) “Specified Banking or Online Mode” shall mean transaction 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;**

**(33) “specified derivative transaction” means any transaction in respect of trading in derivatives referred to in section 2 (ac) of the Securities Contracts (Regulation) Act, 1956; or in respect of trading in commodity derivatives (other than agricultural commodity derivatives) which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 or in respect of trading in agricultural commodity derivatives, if such transactions are—**

**(a) is carried out—**

**(i) through a stock broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 and the rules, regulations or bye-laws made or directions issued under those Acts; or**

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**(ii) by banks or mutual funds, electronically on screen-based systems of a recognised stock exchange; and**

**(b) supported by a time stamped contract note issued by the intermediary to every client indicating in the contract note—**

**(i) the unique client identity number allotted under any law in force; and**

**(ii) the Permanent Account Number allotted under this Act;**

**(34) “State Government undertaking” includes—**

**(a) a corporation established by or under any State Act;**

**(b) a company in which more than 50% of the paid-up equity share capital is held by the State Government;**

**(c) a company in which more than 50% of the paid-up equity share capital is held by the entity referred to in clause (a) or (b) (whether singly or taken together);**

**(d) a company or corporation in which the State Government has the right to appoint the majority of the directors or to control the management or policy decisions, directly or indirectly, including by virtue of its shareholding or management rights or shareholders agreements or voting agreements or in any other manner;**

**(e) an authority, a board or an institution or a body established or constituted by or under any State Act, or owned or controlled by the State Government;**

**(35) “State Industrial Investment Corporation” means a Government company within the meaning of section 2(45) of the Companies Act, 2013, engaged in the business of providing long-term finance for industrial projects;**

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**(36) “State Financial Corporation” means a Financial Corporation established under section 3 or 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951;**

**(37) “successor entity” means—**

**(a) the amalgamated Indian company, in the case of amalgamation;**

**(b) the resulting Indian company, in the case of demerger;**

**(c) a company, in case of a succession of a firm by a company as referred to in section 70(1)(zd);**

**(d) a limited liability partnership, in case of conversion of private company or unlisted public company to a limited liability partnership, as referred to in section 70(1)(ze);**

**(38) “taxable commodities transaction” shall have the meaning assigned to it under Chapter VII of the Finance Act, 2013;**

**(39) “taxable securities transaction” shall have the meaning assigned to it under Chapter VII of the Finance Act, 2004;**

**(40) “University” shall have the meaning assigned to it in section 70(2) (Table: Sl. No. 7).**

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