

CC 4.1 Ch / CC 4.1 Cg

TAXATION-I

UNIT 1: a) Basic Concepts and Definition under IT Act

Assessee, Previous year, Assessment year, Person, Income, Source of income, Heads of income, Gross total income, Maximum marginal rate of tax, Tax Evasion, Tax avoidance, tax planning.

Income Tax Act, 1961 is an act to levy, administrate, collect & recover Income-tax in India. It came into force from 1st April 1962.

Income Tax including surcharge (if any) & cess is charged for any person at the rate as prescribed by Central Act for that assessment year. Income-tax Act has provided separate provisions with respect to levy of tax on income received in advance as well as the income with respect of which the amount has not yet been received. A person also has to keep track of his TDS deducted while calculating his final tax liability at the end of the year.

Income Tax holds its importance for it is the money which tends to support the running of our government. It is one of the major sources of revenue for the government and thus helps to meet the funds required to develop the country and other defence related needs of a nation.

Type of Taxes:

There are basically two kinds of taxes - Direct Tax and Indirect Tax. Direct Tax is tax that is paid by an individual or any other person on the basis of his Income. It is a form of tax that is directly paid by the person to the government, i.e., the liability to pay the tax and the burden of tax falls on the same person. Indirect taxes are the types of taxes where the person depositing the tax with government and the person actually having been burdened by the tax are different. Generally these taxes are included in the prices of the goods or services which are provided to the people and then such taxes are deposited by the person collecting the same from their customers. GST is one of the most popular type of indirect tax.

Some Important Definition under Income-Tax Act 1961:

- Assessee:

As per section 2(7), an assessee is a person who is liable to pay the taxes under any provision of Income Tax Act 1961. Assessee can also be a person with respect of whom any proceedings have been initiated or whose income has been assessed under the Income Tax Act 1961, Assessee is any person who is deemed assessee under any of the provisions of this act or an assessee in default under any provisions of this Act.

- Assessment:

Assessment is primarily a process of determining the correctness of income declared by the assessee and calculating the amount of tax payable by him and further procedure of imposing that tax liability on that person.

- Previous Year:

As per Section 2(34) of the defines Previous Year as-

1. Previous year means the previous year as defined in section 3;
2. As per section 3 of the Income Tax Act 1961, previous year is defined as the financial year which immediately precedes the assessment year. Income earned in a particular year is taxable in the next year. The year in which income is earned is known as 'previous year' and the next year in which it becomes taxable is known as 'assessment year'. The Financial year is a period of 12 months beginning from April 1 to March 31 of next year. For instance, if your financial year is from 1 April 2019 to 31 March 2020, then it is known as FY 2019-20 and the assessment year would be AY 2020-21.

In case the source of income is new or the business set up is new, previous year for that entity will start from the date of setting up of that business or profession or from the date when the source of income of this new existence starts and ends in the said financial year.

Exception to Previous Year:

These incomes are taxed as the income of year immediately preceding the assessment year at the rates applicable to such person.

1. Income of a person who is leaving India for a long period or permanently.
2. Income of a person who is trying to alienate his assets with an intention to avoid taxes.
3. Income of a discontinued business.
4. Income of non-resident shipping companies who don't have any representative in India.

- Assessment Year:

As per section 2(9), Assessment year is the 12 months' period commencing on 1st of April till 31st March of next year. It is the year in which the income of previous year is assessed. For instance, if your previous year is from 1 April 2019 to 31 March 2020, then the assessment year begins on 1st of April 2020 to 31st march 2021 would be AY 2020-21.

- Person:

As per section 2(31), "person" includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation.—for the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains.

- Income:

The definition of Income as per section 2 (24) includes—

- (i) profits and gains ;
- (ii) dividend ;
- (iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.

Explanation.—For the purposes of this sub-clause, "trust" includes any other legal obligation ;

- (iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17 ;
- (iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit ;
- (iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living ;
- (iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation

which, but for such payment, would have been payable by the director or other person aforesaid ;

- (iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;
- (v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59 ;
- (va) any sum chargeable to income-tax under clause (iiia) of section 28 ;
- (vb) any sum chargeable to income-tax under clause (iiib) of section 28 ;
- (vc) any sum chargeable to income-tax under clause (iiic) of section 28 ;
- (vd) the value of any benefit or perquisite taxable under clause (iv) of section 28 ;
- (ve) any sum chargeable to income-tax under clause (v) of section 28 ;
- (vi) any capital gains chargeable under section 45 ;
- (vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule ;
- (viiia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;
- (viii) [Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Original sub-clause (viii) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964;]
- (ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

Explanation.—For the purposes of this sub-clause,—

- (i) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
- (ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game ;
- (x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees ;
- (xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in the Explanation to clause (10D) of section 10 ;

- (xii) any sum referred to in clause (va) of section 28;

- [(xiiia) the fair market value of inventory referred to in clause (via) of section 28;]
- (xiii) any sum referred to in clause (v) of sub-section (2) of section 56;
- (xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;
- (xv) any sum of money or value of property referred to in clause (vii) or clause (viia) of sub-section (2) of section 56;
- (xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56;
- (xvii) any sum of money referred to in clause (ix) of sub-section (2) of section 56;
- (xviii) any sum of money or value of property referred to in clause (x) of sub-section (2) of section 56;
- [(xviib) any compensation or other payment referred to in clause (xi) of sub-section (2) of section 56;]
- (xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than,—
 - (a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or
 - (b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be;

- Heads of Income :

As per section 14, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:—

1. Salaries
2. Income from house property
3. Profits and gains of business or profession
4. Capital gains
5. Income from other sources

- Gross Total Income(GTI) [Section-80B(5)] :

As per Sec. 14 of the Act, the income of a person is calculated under the following five-heads: (i) Salaries, (ii) Income from house property, (iii) Profits and gains of business or profession, (iv) Capital gains, (v) Income from other sources. Aggregate of incomes computed under the above 5 heads, after applying clubbing provisions and making adjustments of set off and carry forward of losses, is known as Gross Total Income (GTI).

- Total Income:

According to Section 2(45), total income of an assessee is gross total income as reduced by the amount deductible under Chapter VIA, i.e. Section.80C to 80U.

- Income Tax:

It is the tax that is collected by Central Government for each financial year levied on total taxable income of an assessee during the previous year. The Income-tax Act contains the provisions for computing taxable income, but the rate of tax is given by the Finance Act passed by the Parliament along with the Union Budget every year.

- Maximum marginal rate of tax:

As per section 29(C), "maximum marginal rate" means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, association of persons or, as the case may be, body of individuals as specified in the Finance Act of the relevant year.

- Tax Planning:

It is the duty of every citizen to pay legitimate tax but at the same time it is his right not to pay taxes which are not due. Tax planning means reducing tax liability by taking advantage of the legitimate concessions and exemptions provided in the tax law. It involves the process of arranging business operations in such a way that reduces tax liability.

- Tax Evasion:

Tax evasion means avoiding tax by illegal means. Generally it involves suppression of facts, falsifying records, fraud or collusion. It is an attempt to evade tax liability with the help of unfair means. Tax evasion is illegal and would result in punishment by way of penalty, fines and sometimes prosecution.

- Tax Avoidance:

Tax avoidance means taking undue advantage of the loopholes, lacunae or drafting mistakes for reducing tax liability and thus avoiding payment of tax which is lawfully payable. Generally it is done by twisting or interpreting the provisions of law and avoiding payment of tax. Tax avoidance takes into account the loopholes of law. Though it has a legal sanction, it means following the provisions of law in letter but killing the spirit of the law.

