SOLUTION : There is no dispute that the capital contributed by X to both the firms in his capacity as the karta of the HUF is converted property as per section 64(2). But the question is whether the income which the HUF has derived by way of interest on capital of both these firms can be considered as income derived from the converted property under section 64(2)(b).

In the case of *CIT* v. *Prem Bhai Parekh* [1970] 77 ITR 27, the Supreme Court *held* that the connection between the income derived and the transferred assets was remote. The income arose on account of the minors being admitted to the benefits of partnership. Undoubtedly, they were admitted to the benefits of partnership because of the capital contribution made by them. But, there was no nexus between the transfer of assets to them and the income in question. Hence, the income did not arise directly or indirectly from the transferred assets. For the same reasons, the income also cannot be said to be derived from the assets so transferred under section 64(2)(b).

In the given problem, the interest arises because of capital contribution and there is nexus between the transfer of assets and the income in question. Hence, the income arises directly from the transferred assets. In order that the income can be considered as being derived from the converted property, there should be a nexus between the converted property and the income which is so derived. When such an income has no direct or indirect nexus with the converted property, it cannot be said to be derived from the converted property. An income which is derived from the capital contributed as such can be considered as income derived from the converted property and is assessable in the hands of the assessee in his individual capacity.

218-P5 *From the following information, find out the net income of X, Mrs. X and their minor child Z for the assessment year 2009-10 —*

1. X owns three houses —

House 1 - It is let out on a monthly rent of Rs. 10,000. It is transferred for an adequate consideration to Mrs. X on December 1, 2008.

House 2 - It is let out on a monthly rent of Rs. 15,000. X gifts this house to Mrs. X on June 30, 2008.

House 3 - It is self-occupied. Construction was completed on June 6, 1996. X gifts this house to Mrs. X on January 1, 2009. The house was constructed out of borrowed money and the interest liability for the previous year 2008-09 is Rs. 34,000.

2. On January 1, 1994, X transfers 1,000, 14 per cent debentures of Rs. 100 each of A Ltd. without any consideration to Mrs. X (interest is annually payable on December 31). Out of accumulated debenture interest, Mrs. X gives a loan to a friend and during 2008-09, she gets a sum of Rs. 5,600 as interest.

3. On January 10, 2009, 1,000 debentures of A Ltd. are transferred by Mrs. X (capital gain Rs. 40,000). While the amount of capital gain (i.e., Rs. 40,000) is invested in shares, Rs. 1,00,000 is invested in debentures of IFCI (term 2 years) and during the period ending March 31, 2009, she gets interest of Rs. 16,000.

4. Mrs. X holds 25 per cent equity shares in B Ltd., a foreign company. On May 31, 2008, she gets Rs. 40,000 as dividend.

5. X is employed by B Ltd. without any technical/professional qualification on a salary of Rs. 17,000 per month.

6. X and Mrs. X are partners in a firm (other partners being C, D and E). Z is admitted to the benefits of the firm. During 2008-09, the following payments are received from the firm —

	X Rs.	Mrs. X Rs.	Z Rs.
Share of profit	*60,000*	*90,000*	*20,000*
Interest on capital (Mrs. X has invested half of her capital out of gifts made by X)	*70,000*	*80,000*	*26,000*
Salary of working partner	*15,000*	*20,000*	—

7. During 2004-05, Mrs. X transfers a sum of Rs. 2 lakh to a trust subject to the condition that the trust will annually pay Rs. 5,000 to X and Rs. 6,000 to her father-in-law.

8. X holds 20 per cent preference share capital in D Ltd. (dividend of Rs. 80,000 is received on January 16, 2009) where Mrs. X is employed (salary being Rs. 10,000 per month). Mrs. X does not have any professional qualification.

9. Z, the minor son, holds debentures of Tata Sons which were purchased out of monetary gift made by his grandfather. During the year 2008-09, Z gets Rs. 20,000 as interest on debentures.

10. *Z, a professional singer, has income from the profession of singing of Rs. 45,000 for the previous year 2008-09.*

11. *Out of accumulated income from singing, Z makes a fixed deposit with a Government company and interest of Rs.10,000 is received during 2008-09.*

SOLUTION :

1. House 1 - As House 1 is transferred for adequate consideration, X is the owner of the house up to December 1, 2008 and Mrs. X is owner with effect from December 1, 2008. Income of the house will be determined as under —

	X Rs.	Mrs. X Rs.
Annual value	80,000	40,000
Less : Standard deduction (30% of annual value)	24,000	12,000
Income from House 1	56,000	28,000

House 2 - House 2 is transferred by X to Mrs. X without any consideration. By virtue of section 27(*i*) [see para 86.2-4], X will be deemed as owner of House 2 although after transfer Mrs. X will get rental income. Rs. 1,26,000 (being income of House 2, *i.e.*, Rs. 15,000 × 12 – 30% of Rs. 1,80,000) shall be taxable in the hands of X.

House 3 - By virtue of section 27(*i*) [see para 86.2-4], X will be deemed as owner of House 3, although it has been transferred to Mrs. X with effect from January 1, 2009. Income of the house [*i.e.*, (-) Rs. 30,000] will be included in the income of X.

2. Annual interest on debentures (*i.e.*, Rs. 14,000) shall be included in the income of X as debentures were transferred by X to Mrs. X without any consideration. Rs. 5,600, being interest earned by Mrs. X on accumulated debenture interest, is, however, taxable in the hand of Mrs. X.

3. Capital gain of Rs. 40,000 on transfer of debentures by Mrs. X is taxable in the hand of X. Likewise, interest of Rs.16,000 from IFCI will be taxable as income of X as sale proceeds of debentures is invested.

4. Dividend income of Mrs. X is chargeable to tax under the head "Income from other sources". No deduction under section 80L is available.

5. X is employed by B Ltd. in which Mrs. X has a substantial interest. Salary income of X (*i.e.*, Rs. 2,04,000) is taxable as income of Mrs. X.

6. Share of profit from a firm is exempt. One-half of interest of Rs. 80,000 received by Mrs. X will be included in the income of X. Interest received by Z, the minor son, shall be included in the income of X or Mrs. X whosoever has higher income.

7. Rs. 5,000 received by X will be included in the income of Mrs. X. However, Rs. 6,000 will be the income of her father-in-law.

8. Dividend income from a domestic company is not chargeable to tax. As X holds preference share capital (not equity share capital), he does not have substantial interest in D Ltd. Salary income of Mrs. X is not taxable as income of X.

9. Rs. 20,000, being interest on debentures of Tata Sons will be included in the income of X or Mrs. X whose other income is higher.

10. Rs. 45,000, being professional income of Z, is taxable as his own income.

11. Interest received on accumulated professional earning is taxable as income of X or Mrs. X, whoever has higher income. The source of income is bank deposit and not his professional skill of singing.

Computation of income

	X Rs.	Mrs. X Rs.	Z Rs.
Income from salaries			
Salary of X from B Ltd.	-	2,04,000	-
Salary of Mrs. X	-	1,20,000	-

	X Rs.	Mrs. X Rs.	Z Rs.
Income from house property			
House 1	56,000	28,000	-
House 2	1,26,000	-	-
House 3	(-) 30,000	-	-
Profits and gains of business or profession			
Interest from firm	70,000	40,000	-
Interest of Mrs. X	40,000	-	-
Interest of Z [i.e., Rs. 26,000–Rs. 1,500 being exemption under section 10(32)]	-	24,500	-
Salary from firm	15,000	20,000	-
Professional income of Z	-	-	45,000
Capital gains			
Long-term capital gain on transfer of debentures	40,000	-	-
Income from other sources			
Dividend income from a foreign company	-	40,000	-
Interest on debentures	14,000	-	-
Interest on accumulated interest	-	5,600	-
Interest on debentures of IFCI	16,000	-	-
Income of X from trust	-	5,000	-
Interest from Tata Sons	-	20,000	-
Interest of Z from deposit made out of professional earning	-	10,000	-
Gross total income	3,47,000	5,17,100	45,000
Less : Deduction under section 80L [not available]	-	-	-
Net income	3,47,000	5,17,100	45,000

CHAPTER TEN

Set off and carry forward of losses

Mode of set off and carry forward - The three steps

226. The process of setting off of losses and their carry forward may be covered in the following steps :

Step 1	Inter-source adjustment under the same head of income [*see* para 227].
Step 2	Inter-head adjustment in the same assessment year [*see* para 228]. *Step 2* is applied only if a loss cannot be set off under *Step 1*.
Step 3	Carry forward of a loss [*see* para 229]. *Step 3* is applied only if a loss cannot be set off under steps 1 and 2.

Inter-source adjustment - How made [Sec. 70]

227. The provisions of section 70 are given below—

227.1 ***General rule*** - If the net result for any assessment year, in respect of any source under any head of income, is a loss, the assessee is entitled to have the amount of such loss set off against his income from any other source under the *same head of income* for the same assessment year.

Provisions illustrated - X has two businesses—Business A and Business B. While Business A returns an income of Rs. 3.5 lakh, Business B results in a loss of Rs. 1 lakh. In this case, loss of Rs. 1 lakh from Business B can be set off against income of Rs. 3.5 lakh from Business A. It may be noted that X does not have any option to set off (or not to set off) the loss of Business B.

227.2 ***Exceptions*** - The following are the exceptions to the aforesaid rule—

▪ *Loss from speculation business* - Loss in a speculation business can be set off only against the profit in a speculation business.

▪ *Long-term capital loss* - Long-term capital loss can be set off only against long-term capital gain.

▪ *Loss from the activity of owning and maintaining race horses* - Loss incurred in the business of owning and maintaining race horses cannot be set off against any income except income from such business.

▪ *Loss cannot be set off against winnings from lotteries, crossword puzzles, etc.* - By virtue of section 58(4) [*see* para 201.1-7], a loss cannot be set off against 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.

▪ *Loss from purchase and sale of securities* - *See* paras 229.6 and 229.7.

227.3 ***Other points*** - One should note the following points —

1. Barring the aforesaid cases, any other loss can be set off against any other income within the same head of income. In other words,

a. loss from a house property can be set off against income from any other house property ;

b. loss from a non-speculation business can be set off against income from speculation or non-speculation business ;

c. short-term capital loss can be set off against any capital gain (whether long-term or short-term);

d. under the head "Income from other sources" loss from an activity (other than the business of owning and maintaining race horses) can be set off against any income but other than winnings from lotteries, crossword puzzles, etc.

2. If income from a particular source is exempt from tax, *e.g.*, income exempt from tax under section 10, loss from such source cannot be set off against income chargeable to tax.

3. If there is income from one source and loss from another source within the same head of income, one has to set off the loss against the income. Barring cases given in para 227.3 *supra*, in all other cases loss has to be first set off against income within the same head of income.

227.4 *Provisions illustrated* - The following illustrations are given to have a better understanding—

1. X, Y and Z give the following information pertaining to the income under the head "Profits and gains of business or profession"—

	X		*Y*		*Z*	
	Speculative Rs.	*Non-speculative Rs.*	*Speculative Rs.*	*Non-speculative Rs.*	*Speculative Rs.*	*Non-speculative Rs.*
Business A	1,40,000		1,60,000		1,50,000	
Business B	(-) 50,000		(-) 1,80,000		(-) 60,000	
Business C		2,00,000		4,00,000		2,10,000
Business D		(-) 80,000		(-) 90,000		(-) 2,20,000
Total	90,000	1,20,000	(-) 20,000	3,10,000	90,000	(-) 10,000

Note: In this case, loss from speculative business can be set off only against income from speculative business. However, loss from non-speculative business can be set off against income from any business — speculative or non-speculative. For instance, in the case of Y loss of Rs. 20,000 from speculative business cannot be set off against income of Rs. 3,10,000 from non-speculative business. In the case of Z, however, loss of Rs. 10,000 from non-speculative business should be set off against speculative business income of Rs. 90,000. It may be noted that Z does not have any option to set off (or not to set off) the loss of Rs. 10,000 against income of Rs. 90,000.

2. A, B and C give the following information pertaining to the income under the head "Capital gains"—

Capital asset which is transferred	*A*		*B*		*C*	
	Short-term Rs.	*Long-term Rs.*	*Short-term Rs.*	*Long-term Rs.*	*Short-term Rs.*	*Long-term Rs.*
P	2,50,000		4,60,000		3,12,000	
Q	(-) 90,000		(-) 4,90,000		(-) 80,000	
R		4,00,000		80,000		5,56,000
S		(-) 3,80,000		(-) 15,000		(-) 5,90,000
Total	1,60,000	20,000	(-) 30,000	65,000	2,32,000	(-) 34,000

Note : Long-term capital loss can be set off only against long-term capital gains. However, short-term capital loss can be set off against long-term as well as short-term capital gains. For instance, in the case of B short-term capital loss of Rs. 30,000 should be set off against long-term capital gains of Rs. 65,000. In the case of C, however, long-term capital loss of Rs. 34,000 cannot be set off against short-term capital gains of Rs. 2,32,000. It may be noted that B does not have any option to set off (or not to set off) short-term capital loss against long-term capital gains.

Inter-head adjustment - How made [Sec. 71]

228. The provisions of section 71 are given below—

228.1 *General rule* - Where the net result of computation made for any assessment year in respect of any head of income is a loss, the same can be set off against the income from other heads.

Provisions illustrated - X has two non-speculative businesses—Business A and Business B. Besides he has income from house property. The result of the three sources of income is given below—

	Business income Rs.	Property income Rs.
Business A	(-) 2,90,000	
Business B	70,000	
Income from house property		5,10,000
Total	(-) 2,20,000	5,10,000

In this case, business loss of Rs. 2,20,000 can be adjusted against property income of Rs. 5,10,000. Consequently, the property income is reduced to Rs. 2,90,000. It may be noted that X does not have any option to set off (or not to set off) the business loss against property income.

228.2 *Exceptions* - The following are the exceptions to the aforesaid rule—

- *Loss in a speculation business* - Loss in a speculation business cannot be set off against any other income.
- *Loss under the head "Capital gains"* - Losses under the head "Capital gains" cannot be set off against income under other heads of income.
- *Loss from the activity of owning and maintaining race horses* - Losses from the business of owning and maintaining race horses cannot be set off against any other income.
- *A loss cannot be set off against winnings from lotteries, etc.* - By virtue of section 58(4) [*see* para 201.1-7] a loss cannot be set off against 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.
- *Loss from purchase and sale of securities [Sec. 94(7)]* - *See* paras 229.6 and 229.7.
- *Business loss cannot be set off against salary [Sec. 71(2A)]* - Loss from business or profession (including unabsorbed depreciation†) cannot be set off against income under the head "Salaries".

228.3 *Other points* - The following points should be considered —

1. Before adjusting loss under section 71, one has to set off the loss under section 70 [*see* para 227].

2. Barring the aforesaid cases [*see* para 228], any loss can be set off against income under other heads of income for the same year. For instance, house property loss can be set off against speculative profit.

3. No order of priority is given in the Act. One should try to first set off those losses which cannot be carried forward to the next year.

4. Barring the cases discussed in para 228, in all other cases a loss has to first adjusted against available income under other heads of income. No option is available to set off a loss or not to set off a loss.

For instance, if a taxpayer has following income/loss —

	Current year Rs.	Next year Rs.
Business income	(–) 1,00,000	8,00,000
Long-term capital gain	2,30,000	3,00,000

He cannot avoid set off in the current year under section 71 (simply because capital gains are taxable at lower rate), and carry forward the business loss to the next year. There is no option. After adjusting business loss of Rs. 1,00,000, on remaining Rs. 1,30,000 he will have to pay tax during the current year.

Moreover, partial set off is not permissible when full loss can be otherwise set off.

For instance, if an individual has property income of Rs. 1,20,000 and business loss of Rs. 90,000, he can set off the entire loss and taxable income will be Rs. 30,000 on which no tax is payable. He cannot claim the set off of

†Section 71 [and not section 32(2)] is applicable in the case of inter-head adjustment of losses.

business loss of only Rs. 10,000 to reduce taxable income to Rs. 1,10,000 (on which no tax is payable) and claim carry forward of remaining Rs. 80,000.

5. Where income from a particular source is exempt from tax, *e.g.*, incomes exempt under section 10, loss from such source cannot be set off against income chargeable to tax. For the purpose of section 71, loss of profits must be a loss of taxable profits—*Ramjilal Rais* v. *CIT* [1965] 58 ITR 181 (All.). No specific provision is required to be incorporated in the Act for denying the set off of such a loss against an assessee's taxable income.

Carry forward of loss

229. If a loss cannot be set off either under the same head or under the different heads because of absence or inadequacy of the income of the same year, it may be carried forward and set off against the income of the subsequent year.

Under the Act, the following losses can be carried forward :

a. loss under the head "Income from house property" [sec. 71B, applicable from the assessment year 1999-2000—*see* para 229.5].

b. loss under the head "Profits and gains of business or profession" (*i.e.*, loss from speculative or non-speculative business) [secs. 72 and 73, *see* paras 229.1 and 229.2].

c. loss under the head "Capital gains" (*i.e.*, short-term or long-term capital loss) [sec. 74, *see* para 229.3].

d. loss from the activity of owning and maintaining race horses [sec. 74A, *see* para 229.4].

Other remaining losses cannot be carried forward.

229.1 *Carry forward and set off of business loss other than speculation loss [Sec. 72]* - The right of carry forward and set off of loss arising in a business or profession is to be understood in the light of the following propositions :

229.1-1 *SUCH LOSS CAN BE SET OFF ONLY AGAINST BUSINESS INCOME* - The following points should be noted:

1. It is not necessary that business loss of year one should be set off against income from the same business in year two. In other words, loss of Business A of year one can be set off against profit of business A or some other business in year two.

2. A loss under the head, "Profits and gains of business or profession" can be set off against *profits of any business* in the subsequent year. For this purpose, business profits would also include profits derived from a business activity but assessable under a head other than "Profits and gains of business or profession"[1].

For instance, where shares are held by an assessee as a part of his trading assets, deemed dividend under section 2(*22*)(*e*) on such shares would form part of business income† and, consequently, he will be entitled to claim set off of business loss brought forward from earlier years against dividend of the current year—*Western States Trading Co. (P.) Ltd.* v. *CIT* [1971] 80 ITR 21 (SC).

3. Section 64 v. *Section 72* - Business income of wife or minor child, clubbed under provision of section 64, with the income of assessee can be set off against any loss brought forward by assessee in respect of a business carried on by him—*CIT* v. *J.H. Gotla* [1985] 156 ITR 323 (SC).

229.1-2 *LOSS CAN BE CARRIED FORWARD BY THE ASSESSEE WHO INCURRED THE LOSS* - The loss can be carried forward and set off against the profits of the assessee who incurred the loss.

229.1-2a EXCEPTIONS - This rule has the following exceptions :

1. Accumulated business loss of an amalgamating company under section 72A [*see* para 516.5].

2. Accumulation business loss of an amalgamating banking company under section 72AA [*see* para 516.5-1].

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1. In three cases, income from a business activity is taxable under other heads of income— *see* para 101.6.

† Such dividend is taxable under the head "Income from other sources".

3. Accumulated business loss of a demerged company [*see* para 517.5].

4. Accumulated business loss of a proprietary concern or a firm when its business is taken over by a company by satisfying conditions of section 47(*xiii*)/(*xiv*) [*see* paras 518.2 and 519.3].

5. Loss of business acquired by inheritance under section 78—*CIT* v. *Bai Maniben* [1960] 38 ITR 80 (Bom.). The term "inheritance" means only a transmission of the assets and liabilities of one person to another by the personal law applicable to them and not by any other mode of transfer known to law—*Hindustan Aeronautics Ltd.* v. *CIT* [1983] 15 Taxman 265 (Kar.). Where legal heirs of a deceased-proprietor enters into partnership and carries on the same business in the same premises under the same trade name, there is succession by inheritance as contemplated in section 78(2) and the assessee-firm is entitled to carry-forward and set-off of the deceased's business loss against its income for subsequent years—*CIT* v. *Madhukant M. Mehta* [2002] 124 Taxman 130 (SC).

229.1-3 ***LOSS CAN BE CARRIED FORWARD FOR EIGHT ASSESSMENT YEARS*** - The loss cannot be carried forward for more than eight assessment years. An assessee would not be entitled to carry forward a business loss beyond the period of eight years notwithstanding the fact that there was no assessment for one assessment year during the said period of eight assessment years — ***CIT*** v. ***Covelong Beach Hotel (India) Ltd.*** [2003] 129 Taxman 473/262 ITR 544 (Mad.).

- *Exception one - Section 33B* - The unabsorbed business loss of the undertaking which is discontinued in the circumstances stated in section 33B (including the past business losses of that undertaking brought forward from earlier years) is eligible for being carried forward and set off against profits of the re-established, re-constructed or revived business up to a period of 8 years, reckoned from the year in which the business is re-established, re-constructed or revived by the assessee (*i.e.*, the assessment year relevant to the previous year in which business is re-established, reconstructed or revived and next 7 assessment years).

- *Exception two - Section 41(5)* - The second exception to the rule that business or profession loss can be carried forward only for 8 years is given by section 41(5). This exception is applicable if the following conditions are satisfied :

Condition 1	The business or profession is discontinued.
Condition 2	Loss of such business or profession pertaining to the year in which it is discontinued could not be set-off against any other income of that year.
Condition 3	Such business is not a speculation business.
Condition 4	After discontinuation of such business or profession, there is a receipt which is deemed as business income under section 41(1), (3), (4) or (4A).

The unabsorbed loss pertaining to the year in which business/profession was discontinued is permitted to be set off against notional business income under section 41(1), (3), (4) or (4A) even after 8 years. It can be set off even if the return of loss is not submitted in time*.

For instance, a business (not being a speculation business) is discontinued on December 10, 1982. At that time there is unadjusted business loss of Rs. 40,000 (*i.e.*, Rs. 10,000 pertaining to the previous year 1980-81, Rs. 5,000 of the previous year 1981-82 and Rs. 25,000 pertaining to the period commencing on April 1, 1982 and ending on December 10, 1982). On May 20, 2008, the assessee recovers a debt of Rs. 48,000 from a debtor which was allowed as bad debt in 1976-77 (or maybe some other year). The notional profit chargeable to tax for the previous year 2008-09 will be as under :

	Rs.
Recovery of debt earlier allowed as bad debt [chargeable to tax under section 41(4) in spite of the fact that the business was discontinued on December 10,1982]	48,000
Less : Unabsorbed business loss of the previous year in which the business was discontinued (*i.e.*, April 1,1982 to December 10, 1982) by virtue of section 41(5)	25,000
Business income chargeable to tax for the assessment year 2009-10	23,000

* ... 80 does not override section 41(5). It overrides only sections 66 to 79.

In the aforesaid case, suppose the amount recovered from the defaulting debtor is Rs. 17,000 on May 10, 2007, Rs. 3,000 on June 10, 2008 and Rs. 28,000 on December 15, 2009, then the notional business income chargeable to tax for the assessment years will be as under :

	Assessment years		
	2008-09 Rs.	*2009-10* Rs.	*2010-11* Rs.
Recovery of debt chargeable to tax under section 41(4)	17,000	3,000	28,000
Less : Unabsorbed business loss of the year in which business was discontinued	17,000	3,000	5,000
Business income under section 41	*Nil*	*Nil*	23,000

229.1-4 ***RETURN OF LOSS SHOULD BE FILED UNDER SECTION 139(3) [SEC. 80]*** - A loss cannot be carried forward unless it is determined in pursuance of a return filed within the time allowed under section 139(3) [*i.e.*, the time allowed under section 139(1)*—*see* para 353.3]. In other words, if an assessee fails to file his return of loss on or before the due date of furnishing of return as prescribed by section 139(1)†, then, by virtue of section 80, the following losses (of the assessment year for which the return is not submitted in time) cannot be carried forward :

a. loss of a speculative or non-speculative business (not being unabsorbed depreciation, etc., given in para 229.1-6) ;

b. short or long-term capital loss ; and

c. loss (not being unabsorbed depreciation, etc., given in para 229.1-6) from the activity of owning and maintaining race horses.

Right to carry forward the aforesaid losses will be lost if return is not filed in time for the year in which the loss was incurred. In order to ensure that such right is not lost—

a. loss should be determined in pursuance of a return filed within the time limit of section 139(1), and

b. such loss should be notified by the Assessing Officer to the assessee by an order in writing under section 157. It may be noted that right to set off and carry forward the loss of past years (other than the relevant previous year) is not affected even if the return of the current year is not submitted in time. Moreover, set off of losses of the current previous year against the current year's income is permissible even if the return is submitted belatedly.

229.1-4P1 *X Ltd. files its return of loss for the assessment year 2009-10 on December 1, 2009. The following data is taken from return submitted by the company :*

Income/loss of the previous year 2008-09

	Rs.
Business loss for the previous year 2008-09 (before depreciation and capital expenditure on scientific research)	*1,70,000*
Depreciation	*30,000*
Capital expenditure for scientific research	*20,000*
Short-term capital loss	*45,000*
Long-term capital gain	*10,000*
Income from other sources	*23,000*
Brought forward loss of the earlier years which has been determined in pursuance of return filed within the time limit of section 139(1)	
Unabsorbed depreciation pertaining to the assessment years 1994-95 and 1997-98	*57,000*

*By filing a loss return in pursuance of a notice under section 148 but beyond time available for filing a voluntary return under section 139(1), the assessee cannot be entitled to determination of loss for the purpose of carry forward and set off— *Koppind (P.) Ltd.* v. *CIT* [1994] 207 ITR 228/77 Taxman 359 (Cal.).

	Rs.
Business loss of the previous year 2005-06	*18,000*
Capital loss of the previous year 2007-08	*35,000*

SOLUTION : In this case the return is not filed within the time-limit prescribed by section 139(1) (*i.e.*, September 30, 2009).

Computation of loss	*Rs.*	*Rs.*
Long-term capital gain	10,000	
Less : Short-term capital loss	10,000	
Capital gain		*Nil*
Income from other sources	23,000	
Less : Business loss	23,000	
Income from other sources		*Nil*
Net income		*Nil*

Computation of loss to be carried forward

	Loss which will be carried forward		*Loss which cannot be carried forward*
	Amount Rs.	*Assessment year up to which it will be carried forward*	Rs.
Business loss of the assessment year 2009-10	—	—	1,47,000†
Depreciation of the assessment year 2009-10	30,000	No time-limit	—
Capital expenditure on scientific research	20,000	No time-limit	—
Short-term capital loss of the assessment year 2009-10	—	—	35,000†
Unabsorbed depreciation of earlier years	57,000	No time-limit	—
Business loss of the assessment year 2006-07	18,000	2014-15	—
Capital loss of the assessment year 2008-09	35,000	2016-17	—

The following conclusions may be drawn :

- If return of the current year is not submitted in time, losses of the past years are not affected—*K. Aboo Bakar* v. *CIT* [2003] 86 ITD 412 (Hyd.).
- Unabsorbed depreciation and capital expenditure on scientific research/family planning of the current year can be carried forward even if return is not submitted in time.
- If return is filed late, then set off of loss under section 70 or 71 is permitted but right to carry forward loss under sections 72, 73, 74 and 74A will be lost.†

229.1-5 ***CONTINUITY OF BUSINESS NOT NECESSARY*** - The business or profession in which the loss was originally suffered may or may not continue to be carried on by the assessee during the year in which brought forward loss is sought to be set off.

229.1-6 ***CARRY FORWARD OF UNABSORBED DEPRECIATION, CAPITAL EXPENDITURE ON SCIENTIFIC RESEARCH AND FAMILY PLANNING EXPENDITURE*** - The above rules are not applicable in the case of carry forward of depreciation which is not absorbed during the current year, unabsorbed capital expenditure on scientific research and family planning expenditure. These losses are governed by section 32(2) and not by section 72. In other words, the rules discussed in paras 229.1-1 to 229.1-5 *supra* are not

†The delay in return of loss may be condoned provided a few conditions are satisfied [*see* para 432.1]—Circular No. 8/2001, dated May 16, 2001.

applicable in the case of carry forward of unabsorbed depreciation, capital expenditure on scientific research and capital expenditure on family planning. These losses are governed by section 32(2) which is discussed in para 109.9.

229.1-7 *OTHER POINTS* - The following other points one should keep in view :

1. Where losses sustained are not set off against the profits of the immediately succeeding year or years, they cannot be set off against profits at a later date—*B. C. S. Kartar Chit Fund and Finance Co. (P.) Ltd.* v. *CIT* [1989] 179 ITR 137 (Punj. & Har.).

2. In case where profits are insufficient to absorb brought forward losses, current depreciation and current business losses, the same should be deducted in the following order :

- Current scientific research expenditure [Sec. 35(1)].
- Current depreciation [Sec. 32(1)].
- Brought forward business losses [Sec. 72(1)].
- Unabsorbed family planning promotion expenditure [Sec. 36(1)(*ix*)].
- Unabsorbed depreciation [Sec. 32(2)].
- Unabsorbed scientific research capital expenditure [Sec. 35(4)].
- Unabsorbed development allowance [Sec. 33A(2)(*ii*)].
- Unabsorbed investment allowance [Sec. 32A(3)(*ii*)].

3. Loss from a source which is not taxable cannot be carried forward—*see CIT* v. *Harprasad & Co. (P.) Ltd.* [1975] 99 ITR 118 (SC).

229.2 *Carry forward and set off of speculation loss [Sec. 73]* - By virtue of section 73, loss from a speculative business can be set off only against income from a speculative business (it may be the same or some other speculative business). The impact of section 73 and other related provisions are given below —

229.2-1 *WHAT IS A SPECULATION BUSINESS [EXPLANATION 2 TO SEC. 28]* - In view of section 43(*5*), "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.

In other words, if there is a contract for purchase/sale of an article (not being share, stock or commodity) it would not be a speculative transaction.

If a contract for purchase/sale of share, stock or commodity is ultimately settled otherwise than by actual delivery or transfer of commodity, it would be a speculative transaction, even if at the time of entering into the contract there was no intention to gamble. On the other hand, if actual delivery of commodity takes place, the transaction would be a non-speculative transaction, even if it is highly speculative otherwise.

229.2-1a SPECULATIVE BUSINESS IN THE CASE OF A COMPANY [EXPLN. TO SEC. 73] - This provision is applicable if the following conditions are satisfied—

1. Taxpayer is a company.

2. It is not a company whose gross total income consists mainly of income chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources". Alternatively, it is a company whose principal business is other than that of banking or the granting of loans and advances.

3. The business of the company consists (wholly or partly) of the purchase and sale of shares of other companies.

If the above conditions are satisfied, such company shall be deemed to be carrying on a speculation business to the extent to which the business consists of purchase/sale of such shares. This rule is applicable even if there is no avoidance of tax by the assessee.

■ As can be seen from the above conditions, the above *Explanation* to section 73 does not apply to the following companies :

Exception 1 - Companies whose gross total income consists mainly of income which is chargeable under the heads 'Income from house property', 'Capital gains' and 'Income from other sources'.

Exception 2 - Companies whose principle business is the business of banking or the business of granting loans and advances.

Exception 3 - Companies not doing business in shares.

Exception 4 - Companies doing business in units of UTI (as units are not "shares")—*CIT* v. *Appollo Tyres Ltd.* [1998] 101 Taxman 167 (Ker.).

Exception 5 - Companies dealing in Government securities—***ANZ Grindlays Bank*** v. ***CIT*** [2004] 88 ITD 53 (Delhi).

229.2-1a[1] *Exceptions 1 and 2 - Cumulative impact - Exception 1* is available in the case of a company whose gross total income consists mainly of income which is chargeable under the heads 'Income from house property', 'Capital gains' and 'Income from other sources'. *Exception 2* is applicable in the case of a company whose principal business is the business of banking or the granting of loans and advances.

▪ *What is requirement of Exception 1 - Exception 1* is identified by the composition of its gross total income. The words used in the statute provide thrust on the composition of the gross total income of that company. If the gross total income of the company mainly consists of income falling under the above mentioned heads, *Explanation* to section 73 does not apply. If the gross total income of the company is mainly made up of income under the head 'Profits and gains of business or profession', it is caught by the mischief of *Explanation* to section 73. In *Exception 1*, what has to be seen is only the composition of the gross total income and not the percentage of the funds of the assessee held as investments—***Melville Finvest Ltd.*** v. ***CIT*** [2004] 89 ITD 528 (Hyd.).

▪ *What is requirement of Exception 2 - Exception 2* is concerned on the nature of business carried on by the company. If the company is carrying as its principal business, the business of banking or the granting of loans and advances, *Explanation* to section 73 does not apply. The company is excluded from the ambit of *Explanation* on the basis of the nature of the principal business carried on by it.

▪ *Comparison of Exception 1 and Exception 2 - Exceptions 1* and *2* are based on two independent tests laid down in the *Explanation* itself. In *Exception 1* where the test is that of the character of gross total income, the other test relating to the nature of principal business carried on by it does not apply. Conversely in *Exception 2* the test is the nature of the principal business carried on by it, the test of the gross total income does not apply. The two exceptions provided in *Explanation* to section 73 are governed by two different tests laid down in the said *Explanation* itself. Therefore, the examination of the exceptions provided in *Explanation* to section 73 is to be done strictly in accordance with the tests laid down in the *Explanation*—***CIT*** v. ***Concord Commercials (P.) Ltd.*** [2005] 146 Taxman 64.

▪ *Other points* - One should also keep in view the following—

1. Explanation to section 73 is not applicable if shares are purchased as investment or if the assessee-company is not engaged in the business of purchase and sale of shares— *Western Metal Caps Ltd.* v. *CIT* [2000] 110 Taxman 237 (Ahd.) (Mag.). Where, however, the assessee is carrying on business of trading in shares and the assessee does not fall in exceptions provided in *Explanation* to section 73, the entire loss, claimed by the assessee, relating to share transactions as well as loss resulting on valuation of closing stock, can be treated as a speculation loss—*Prudential Construction Co. Ltd.* v. *CIT* [2000] 75 ITD 338 (Hyd.), ***Khazana Holdings (P.) Ltd.*** v. ***CIT*** [2007] 17 SOT 367 (Mum.).

2. It is not a requirement of section 73 that both purchase and sale of shares should take place in same year; what is required to attract section 73 is that business of assessee should consist of purchase and sale of shares—***CIT*** v. ***Aakrosh Investment & Leasing (P.) Ltd.*** [2004] 90 ITD 287 (Mum.).

3. If the business of a banking company consists of purchase and sale of shares without delivery, it will not be covered by the above provisions of *Explanation* to section 73. However, such business

would itself fall within the scope of section 43(*5*)†, read with *Explanation 2* to section 28 and, consequently, the losses incurred in such business would not be allowed to set off against other income in view of the main provisions of section 73 itself and there would be no occasion to apply the *Explanation* to such section.

Where the case of assessee fell within the scope of section 43(5), losses in transactions of purchase and sale of share/units and securities without actual delivery cannot be set off against normal income from banking in view of the main provisions of section 73—***ANZ Grindlays Bank*** v. ***CIT*** [2004] 88 ITD 53 (Delhi).

4. The expression used in *Explanation* to section 73 is "consist in the purchase and sale of shares of other companies." It is remarkable that the conjunction "and" has been employed between purchase and sale. The business should consist in purchase and sale of shares in conjunction. In the case of share brokerage business, the transactions ordinarily comprise of either a contract of purchase of shares on behalf of the constituent or a contract of sale of shares on behalf of the constituent. The contract of purchase or, as the case may be, of sale is executed independent of each other. It is not necessary for a constituent selling certain shares through a particular sharebroker to purchase also from the same broker and *vice versa.* The business of a sharebroker does not consist in purchase and sale of shares conjointly. It would, therefore, appear that the provision is intended to apply to the business where shares are purchased with the intention to sell them at profit. Thus, there is no force in the argument that if the provisions of *Explanation* to section 73 are to be applied, they should be applied both to the income from share trading as well as income from share brokerage—***CIT*** v. ***Frontline Capital Services Ltd.*** [2005] 4 SOT 473 (Delhi).

5. It is clear from the above provision that sale and purchase of shares of other companies, within the ambit of the *Explanation,* must be carried out as an activity of business. The term 'business' has been defined in section 2(*13*). Noting the definition of 'business' from the view point of *Explanation* to section 73, it has been observed by the Karnataka High Court in the case of *Mysore Rolling Mills (P.) Ltd.* v. *CIT*[1992] 195 ITR 404/63 Taxman 416 that any kind of venture would not fall within this inclusive definition. The venture or the adventure will have to be in the nature of trade, commerce or manufacture. Basically, the concept of business involves a frequent activity of a particular nature. Therefore, to find out that the assessee carried on purchase and sale of shares of other companies as its business in a given case, the facts of that case will have to be examined and the tests which can determine such situation are - (*i*) nature of assessee's business in general, (*ii*) the purpose behind the particular transaction, and (*iii*) the effect of the transaction etc.—***Parkar Securities Ltd.*** v. ***CIT*** [2006] 8 SOT 258 (Ahd.).

229.2-2 ***SPECULATIVE LOSS CAN BE SET OFF ONLY AGAINST SPECULATIVE INCOME*** - Loss in a speculation business can be carried forward to the subsequent year and set off only against the profits of a speculation business carried on in that year.

- The following points should be noted—

1. Loss suffered by an assessee-sharebroker on account of purchase of shares on his own account, (which is deemed to be speculative business in terms of section 73) cannot be set off against receipts of brokerage earned from activity of sale and purchase of shares on behalf of its clients or any other income declared by the assessee under heads 'Capital gains' or 'Income from other sources'— ***SRJ Securities Ltd.*** v. ***CIT*** [2003] 86 ITD 583 (Delhi).

2. Explanation to section 73 cannot be overlooked while giving effect to provisions of sections 70, 71 and 72 — ***R.P.G. Industries Ltd.*** v. ***Asstt. CIT*** [2003] 85 ITD 105 (Kol.) (TM).

229.2-3 ***CAN BE CARRIED FORWARD FOR 4 YEARS**** - Such loss can be carried forward for four assessment years* (from the assessment year 2006-07), immediately succeeding the assessment year for which the loss was first computed.

†Under section 43(*5*), a transaction is treated as "speculative transaction" if it is settled without taking delivery. There is no exception for banking company.

*8 assessment years up to the assessment year 2005-06.

229.2-4 *CONTINUITY OF BUSINESS NOT NECESSARY* - It is not necessary that the speculation business in which the loss was incurred should continue to be carried on in the subsequent year in which the assessee wants to set off of the loss. But the assessee should be the same.

229.2-5 *RETURN OF LOSS SHOULD BE SUBMITTED IN TIME* - *See* para 229.1-4.

229.2-6 *DIFFERENT RULES FOR UNABSORBED DEPRECIATION* - *See* para 109.9.

229.2-7 *OTHER POINTS* - The following other points one should note —

1. Loss incurred in speculative business in banned items cannot be carried forward to the next year—*CIT* v. *Kurji Jinabhai Kotecha* [1977] 107 ITR 101 (SC).

2. Loss in a speculative transaction entered into on behalf of principal, is non-speculative loss of agent—*CIT* v. *Shah Pratapchand Nowpaji* [1983] 139 ITR 149 (AP).

3. Income from forward transactions entered into on behalf of constituents is not income from speculation business carried on by the assessee—*CIT* v. *Pangal Vittal Nayak & Co. (P.) Ltd.* [1969] 74 ITR 754 (SC).

4. A transaction cannot be described as a "speculative transaction" where there is a breach of contract and on a dispute between the parties damages are awarded as compensation by an arbitration award—*CIT* v. *Shantilal (P.) Ltd.* [1983] 14 Taxman 1 (SC).

229.3 ***Carry forward and set-off of capital loss [Sec. 74]*** - If the net result of the computation under the head "Capital gains" is a loss, the whole of the loss shall be carried forward to the following assessment year as follows—

1. Long-term capital loss can be set off only against long-term capital gains. Short-term capital loss can be set off against short-term or long-term capital gains.

2. Such loss can be carried forward for eight assessment years immediately succeeding the assessment year in which the loss was first computed.

3. Such loss cannot be carried forward unless return is filed within the time limit of section 139(1) [*see* para 353.3].

229.3-1 *PROVISIONS ILLUSTRATED* - The following illustrations are given to have a better understanding—

1. During the previous year 2008-09, X Ltd. has generated short-term capital gains of Rs. 80,000. It has brought forward capital loss—short-term: Rs. 10,000 and long-term: Rs. 15,000. In this case, while short-term capital loss of Rs. 10,000 can be set off against short-term capital gains of Rs. 80,000, the brought forward long-term capital loss of Rs. 15,000 cannot be adjusted against short-term capital gains.

2. During the previous year 2008-09, X has long-term capital gains of Rs. 1,16,000. He has brought forward capital loss—long-term: Rs. 40,000 and short-term: Rs. 8,000. In this case, long-term capital loss of Rs. 40,000 as well as short-term capital loss of Rs. 8,000, can be set off against the long-term capital gains of Rs. 1,16,000 (there is no option available).

229.4 ***Carry forward and set off of loss from activity of owning and maintaining of race horses [Sec. 74A(3)]*** - Losses incurred by owner of race horses in the activity of owning and maintaining race horses can be set off only against income, if any, from the activity of owning and maintaining race horses in the same assessment year. Such unabsorbed loss can. be carried forward to a subsequent year and set off only against income from the activity of owning and maintaining race horses.

The following points one should keep in view :

- Such loss can be carried forward only if the activity of owning and maintaining of race horses is carried on by the assessee in the previous year in which the brought forward loss is sought to be set off.
- Such loss can be carried forward for four assessment years immediately succeeding the assessment year in which the loss was first computed.
- Such loss cannot be carried forward unless return is filed within the time limit of section 139(1) [*see* para 229.1-4].

■ In a case where the taxpayer has no income by way of stake money in relevant year, the whole of the revenue expenditure laid out or expended by him wholly and exclusively for the purposes of maintaining race horses will be regarded as the loss incurred by him in the activity of owning and maintaining such horses. For this purpose, loss shall be calculated as follows—

Amount of stake money	xxxx
Less: Revenue expenditure incurred by the taxpayer wholly and exclusively for the purposes of maintaining such horses	xxxx
Balance (if negative is taken as loss from the activity of owning and maintaining race horses)	xxxx

■ The *Explanation* to section 74A(3) refers to maintenance of race horses. If the horses are maintained for the purpose of racing, the requirement of section 74A(3) is fully met. Further requirement that such horses should have participated in the race in the year relevant to the assessment year cannot be read into the section—*CIT* v. *R.M.S. & Sons* [2002] 120 Taxman 237 (Mad.).

■ Words 'horses maintained by him' used in the concerned section should not be construed to mean that the assessee should personally look after the horses — ***H.E. Nasser Abdulla Hussain*** v. ***CIT*** [2003] 84 ITD 43 (Mum.).

■ The aforesaid provisions of section 74A are applicable only in the case of loss from the activity of owning and maintaining race horses. Loss from the activity of owning and maintaining other race animals is governed by section 72 and not by section 74A.

229.4-1 *PROVISIONS ILLUSTRATED* - X and Y submit the following information pertaining to the previous year 2008-09—

	Business income		***Any other income Rs.***
	Income from the activity of owning and maintaining race horses Rs.	***Any other business income (including income from the activity of owning and maintaining any other animal for races) Rs.***	
CASE OF X			
Income of current year	80,000	90,000	12,000
Less: Brought forward business losses pertaining to the assessment year 2007-08	(-) 70,000	(-) 95,000	-
Total	10,000	(-) 5,000	12,000
CASE OF Y			
Income of current year	1,90,000	70,000	60,000
Less: Brought forward business losses pertaining to the assessment year 2007-08	(-) 2,10,000	(-) 55,000	-
Total	(-) 20,000	15,000	60,000

In the case of Y, the brought forward loss from the activity of owning and maintaining race horses (to the extent it could not be set off against income from such activity, *i.e.*, Rs. 20,000) cannot be set off against income from other businesses. It can be carried forward up to the assessment year 2011-12. However, in the case of X, the brought forward loss from other businesses (to the extent it could not be set off against business income, *i.e.*, Rs. 5,000) can be set off against income from the activity of owning and maintaining race horses (X does not have any other option).

229.5 ***Carry forward and set off of loss from house property [Sec. 71B]*** - If the assessee incurs any loss under the head "Income from house property" and such loss is not fully adjusted under other heads of income in the same assessment year, then from the assessment year 1999-2000 the balance

loss shall be allowed to be carried forward and set-off in subsequent years (subject to a limit of 8 assessment years) against income from house property. However, only losses pertaining to the assessment year 1999-2000 onwards can be carried forward. In other words, if the loss pertains to the assessment year 1998-99 (or earlier years), it cannot be adjusted against current year's income.

229.6 *Loss on sale of shares, securities or units [Sec. 94(7)]* - Sub-section (7) has been inserted in section 94 from the assessment year 2002-03.

- *Record date* - To understand the impact of section 94(7), one must first know the meaning of "record date."

Record date means such a date as may be fixed by a company/mutual fund/UTI for the purposes of entitlement of the holder of the securities/shares/units to receive dividend (or income).

- *Condition* - Section 94(7) is applicable if the following conditions are satisfied—

Condition 1	Any person buys or acquires any securities/shares/units within a period of 3 months before the record date.
Condition 2	Such a person sells or transfers such securities/shares/units within a period of 3 months (9 months in the case of units, after the record date).
Condition 3	The dividend or income on such securities/shares/units received (or receivable) by such person is exempt from tax.

- *Consequences if the above conditions are satisfied* - The above conditions are cumulative and not alternative—***ITO* v. *Shambhu Mercantile Ltd.*** [2008] 23 SOT 177 (Delhi). If the above three conditions are simultaneously satisfied, then the provisions of section 94(7) shall be applicable as follows—

a. find out the amount of loss from a transaction which satisfies the above conditions;

b. find out the amount of dividend/income received or receivable on the record date which is exempt from tax.

If (*a*) is less than or equal to (*b*), then loss cannot be adjusted. Conversely, if (*a*) is more than (*b*), then (*a*) *minus* (*b*) can be set off against income under the head "Capital gains".

229.6-P1 *X purchases on May 10, 2008, 1000 equity shares of Rs. 10 each in A Ltd. @ Rs. 55.55. On October 20, 2008, he transfers 800 equity shares @ Rs. 37 per share and remaining 200 shares are transferred on December 20, 2008 @ Rs. 20 per share. A Ltd. declares 50 per cent dividend (record date: August 3, 2008). During the previous year 2008-09, he has generated long term capital gain of Rs. 76,000 on sale of gold.*

SOLUTION :

	800 shares Rs.	200 shares Rs.
Sale consideration	29,600	4,000
Less : Cost of acquisition	44,440	11,110
Short-term capital gain	(-) 14,840	(-)7,110
Dividend	4,000	1,000
Whether section 94(7) is applicable	Yes	No

Computation of income	
Long-term capital gain on sale of gold	76,000
Less :	
Short-term capital loss on sale of 800 shares [Rs. 14,840 – Rs. 4,000]	(-) 10,840
Short-term capital loss on sale of 200 shares	(-) 7,110
Long-term capital gain	58,050

229.7 *Loss arising in the case of bonus stripping [Sec. 94(8)]* - To prevent the practice of bonus stripping, section 94(8) has been inserted.

229.7-1 CONDITIONS - Section 94(8) is applicable if the following conditions are satisfied—

1. The taxpayer buys or acquires any unit (hereinafter referred to as "original unit") within a period of 3 months prior to the record date.

2. Such person is allotted additional units without any payment on the basis of holding of such units (hereinafter referred to as "bonus units") on such record date.

3. Such person sells or transfers all (or any) of the original units within a period of 9 months after such record date.

4. However, he continues to hold all (or any) of the bonus units.

229.7-2 CONSEQUENCES IF THE ABOVE CONDITIONS ARE SATISFIED - Section 94(8) imposes the following restrictions if the above conditions are satisfied—

1. The loss (if any) arising to the taxpayer on account of purchase and sale of all (or any) of the aforesaid original units shall be ignored for the purposes of computing his income chargeable to tax.

2. The amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of bonus units as are held by him on the date of such sale or transfer.

229.7-P1 *Compute capital gains in the following cases—*

Name of the units - Growth units of PNI Mutual Fund (face value: Rs. 10)

Record date for allotment of bonus unit - December 5, 2008 (a person holding 2 units will get 1 bonus unit).

X purchases 1000 above-mentioned units on October 1, 2008 at the rate of Rs. 23 per unit. On December 5, 2008 he gets 500 bonus units. Find out the tax consequences in the following different situations—

1. He transfers 800 original units on March 10, 2009 at the rate of Rs. 26 per unit. He does not transfer remaining original units and bonus units till the expiry of 9 months from the record date (i.e., September 5, 2009).

2. He transfers 800 original units on March 10, 2009 at the rate of Rs. 17 per unit. He does not transfer remaining original units and bonus units.

3. He transfers 900 original units on March 10, 2009 at the rate of Rs. 18 per unit. He does not transfer remaining original units till the expiry of 9 months from the record date (i.e., September 5, 2009). On May 1, 2009, he transfers 100 bonus units at the rate of Rs. 17 per unit.

4. He transfers 700 original units on March 10, 2009 at the rate of Rs. 14 per unit. He does not transfer remaining original units till the expiry of 9 months from the record date (i.e., September 5, 2009). On May 1, 2009, he transfers 400 bonus units at the rate of Rs. 13 per unit.

5. He transfers 400 original units on January 1, 2009 at the rate of Rs. 24 per unit. On March 1, 2009, he further transfers 200 original units at the rate of Rs. 19 per unit. He does not transfer remaining original units till the expiry of 9 months from the record date (i.e., September 5, 2009). However, 200 bonus units are transferred on September 10, 2009 at the rate of Rs. 15 per unit.

SOLUTION :

	Case 1 Rs.	Case 2 Rs.	Case 3 Rs.	Case 4 Rs.	Case 5 Rs.
Original units (case of loss)					
Sale consideration	-	13,600	16,200	9,800	3,800
Less: Cost of acquisition	-	18,400	20,700	16,100	4,600
Short-term capital gain	-	(-)4,800	(-)4,500	(-)6,300	(-)800
Short-term capital loss which cannot be adjusted against any other capital gain (a)	NA	4,800	4,500	6,300	800
Original units (case of gain)					
Sale consideration	20,800	-	-	-	9,600
Less: Cost of acquisition	18,400	-	-	-	9,200
Short-term capital gain	2,400	-	-	-	400
Units held by X after the aforesaid transactions					
Bonus units (b)	500	500	500	500	500
Cost of acquisition of bonus units (per unit) [(a) ÷ (b)]	*Nil*	9.6	9.0	12.6	1.6

	Case 1 Rs.	Case 2 Rs.	Case 3 Rs.	Case 4 Rs.	Case 5 Rs.
Bonus units					
Sale consideration	-	-	1,700	5,200	3,000
Less: Cost of acquisition	-	-	900	5,040	320
Short-term capital gain	-	-	800	160	2,680

229.7-P2 *The following information is given—*

Name of the units - Units of ITD Mutual Fund (equity based) (face value: Rs. 10).

Record date for allotment of bonus unit - November 3, 2008 (a person holding 3 units will get 1 bonus unit).

X purchases 6,000 above-mentioned units on August 26, 2008 at the rate of Rs. 70 per unit. On November 3, 2008, he gets 2,000 bonus units. After November 3, 2008, the following transactions take place—

Transaction 1 - On January 10, 2009, he transfers 500 original units at the rate of Rs. 75 per unit. The resulting short-term capital gain of Rs. 2,500 is chargeable to tax. Since there is no loss in this transaction, it does not have any consequence in respect of future transactions.

Transaction 2 - On February 12, 2009, he transfers 1,000 original units at the rate of Rs. 55 per unit. The resulting short-term capital loss of Rs. 15,000 shall be ignored. Rs. 15,000 will become cost of acquisition of 2,000 bonus units (*i.e.*, Rs. 7.5 per unit).

Transaction 3 - On February 26, 2009, he transfers 800 bonus units at the rate of Rs. 45 per unit. Cost of acquisition is taken as Rs. 7.5 per unit. The resulting short-term capital gain of Rs. 30,000 shall be chargeable to tax.

Transaction 4 - On February 28, 2009, he transfers 700 original units at the rate of Rs. 46 per unit. The resulting short-term capital loss of Rs. 16,800 shall be ignored. Rs. 16,800 will become cost of acquisition of remaining 1,200 bonus units (*i.e.*, Rs. 14 per unit *plus* Rs. 7.5 calculated after Transaction 2).

Transaction 5 - On March 3, 2009, he transfers 600 bonus units at the rate of Rs. 30 per unit. Cost of acquisition is taken as Rs. 21.5 per unit. The resulting short-term capital gain of Rs. 5,100 shall be chargeable to tax.

Note: If the above transactions are recorded in a recognized stock exchange in India, then the purchaser and seller of the unit will have to pay securities transaction tax. The long-term capital gain (if any) in the hands of the transferor from original and bonus units will be ignored. The cost of bonus units would be calculated as given above. The short-term capital gain would be taxable at the rate of 15 per cent (*plus* surcharge *plus* education cess).

229.8 *Provisions in brief* - The table given below highlights the rule of carry forward of loss —

Type of loss to be carried forward to next year(s)	*Income against which carried forward loss can be set off in*	*For how many years loss can be carried next year(s)*	*Should the business be continued forward*	*Is it necessary to submit return of loss in time*
1. House property loss [applicable from the assessment year 1999-2000]	Income under the head "Income from house property"	8 years	NA	No
2. Speculation loss (not being unabsorbed depreciation, etc. — *see* 3.1 below for tax treatment)	Speculation profits	4 years	Not necessary	Yes
3. Non-speculation business loss				
3.1 On account of unabsorbed depreciation, capital expenditure on scientific research and family planning	Any income but other income under the head "Salaries"	No time limit	Not Necessary	No

Type of loss to be carried forward to next year(s)	Income against which carried forward loss can be set off in	For how many years loss can be carried next year(s)	Should the business be continued forward	Is it necessary to submit return of loss in time
3.2 Other remaining business loss	Any business profit (whether from speculation or otherwise)	8 years	Not necessary	Yes
4. Capital loss				
4.1 Short-term capital loss	Any income under the head "Capital gains"	8 years	Not necessary	Yes
4.2 Long-term capital loss	Long-term capital gains	8 years	Not necessary	Yes
5. Loss from the activity of owning and maintaining race horses	Income from the activity of owning and maintaining race horses	4 years	Yes	Yes

Loss of partnership firms

230. *See* para 319.

Loss of closely held companies [Sec. 79]

231. *See* para 335.

Carry forward and set off of loss and depreciation - When permissible in the hands of amalgamated and demerged company or co-operative bank [Secs. 72A, 72AB and 72AA]

232. Generally depreciation and business loss can be carried forward by a person who has incurred the loss. Sections 72A and 72AA provide a few exceptions to this rule. The provisions of sections 72A and 72AA are as follows—

a. amalgamation of companies [*see* para 516.5] ;

b. amalgamation of banking company with banking institution [*See* para 516.5-1];

c. demerger [*see* para 517.5] ;

d. conversion of a proprietary concern/firm into company [*see* paras 518.2 and 519.3]; and

e. amalgamation or demerger of co-operative banks [*see* para 522.2].

Problems illustrating the provisions of set off and carry forward of losses

233-P1 *X, an individual, submits the following information relevant for the assessment year 2009-10:*

	Profit Rs.	Loss Rs.
Salary income	42,000	
Income from house property:		
House A	15,000	
House B		17,000
House C		21,000
Profits and gains of business or profession:		
Business A	8,000	
Business B		18,000

	Profit Rs.	Loss Rs.
Business C (speculative)	11,000	
Business D (speculative)		23,000
Capital gains :		
Short-term capital gains	6,000	
Short-term capital loss		28,000
Long-term capital gains on sale of building	12,500	
Income from other sources:		
Income from card games	8,000	
Loss from card games		7,010
Loss on maintenance of race horses		6,000
Interest on securities	4,000	

Determine the net income of X for the assessment year 2009-10.

SOLUTION :

Step 1 : Intra-Head Adjustment

Income from salary		42,000
Income from house property:		
House A	(+)15,000	
House B	(-)17,000	
House C	(-)21,000	
	(-)23,000	
Profits and gains of business or profession		
Non-speculative		
Business A	(+)8,000	
Business B	(-)18,000	
Non-speculative loss	(-) 10,000	
Speculative		
Business C	(+)11,000	
Business D	(-)23,000	
*It will be carried forward to the next year	(-)12,000*	
Capital gains		
Short-term capital gains	6,000	
Short-term capital loss	(-)28,000	
Short-term capital loss	(-)22,000	
Long-term capital gains	12,500	
*It will be carried forward to the next year	(-)9,500*	
Income from other sources:		
Income from card games [loss from card games cannot be deducted by virtue of section 58—see para 201.1-7]	8,000	
Interest on securities	4,000	12,000
Loss on maintenance of race horses	(-)6,000	[see Note]

Note: Loss on maintenance of race horses can be set off only against income from the business of owning and maintaining race horses. In the absence of such income, it cannot be set off. However, it can be carried forward to next year for claiming set off against income from such business.

Step 2 : Inter-head adjustment - The following position emerges after inter-source adjustment:

	Income	*Loss which can be set off against other incomes [see Note]*	*Loss which cannot be set off against other incomes but which can be carried forward*	*Loss which cannot be set off against other income, nor can it be carried forward*
	Rs.	*Rs.*	*Rs.*	*Rs.*
Salary	42,000	—	—	—
Income from house property	—	23,000	—	—
Profits and gains of business or profession	—	10,000	12,000	—
Capital gains	—	—	9,500	—
Income from other sources (income from card games : Rs. 8,000 interest on securities : Rs. 4,000)	12,000	—	6,000	7,010
Total	54,000	33,000	27,500	7,010

Note - The house property loss can be set off against salary income and/or interest on securities. It cannot be set off against income from card games. Business loss (non-speculative) can be set off against interest on securities. It cannot be set off against salary income and income from card games. Consequently income of X for the assessment year 2009-10 shall be calculated as follows—

	Salary *Rs.*	*Income from card games* *Rs.*	*Interest on securities* *Rs.*
Income	42,000	8,000	4,000
Less: Loss from house property	(-) 23,000	—	—
Less: Business loss (non-speculative)	—	—	(-)4,000
Balance	19,000	8,000	*Nil*
Net income (Rs. 19,000 + Rs. 8,000)			27,000
Loss to be carried forward			
Non-speculative business loss			6,000
Speculative business loss			12,000
Short-term capital loss			9,500
Loss from the activity of owning and maintaining race horses			6,000

233-P2 *X, a resident individual, submits the following information for the assessment year 2009-10 :*

	Rs.
Business A	
Loss of the year 2008-09	*(–)48,000*
Brought forward loss of the year 2007-08	*(–)39,000*
Business B	
Profit of year 2008-09	*1,56,000*
Business C (previous year ends on March 31, business discontinued on April 10, 2008)	
Profit of the period from April 1, 2008 to April 10, 2008	*Nil*
Brought forward loss of 2007-08	*(–)39,700*
Business D (previous year ends on March 31, business discontinued on March 31, 2008)	
Brought forward loss of 2007-08	*(–)40,000*

	Rs.
Income from other sources	
Loss from the activity of owning and maintaining camels for races	*(–)9,000*
Dividend on units of UTI held as investment	*75,000*
Interest on debentures held as investments	*90,000*
Long-term capital loss on sale of shares	*(–)14,900*
Income from house property	*57,600*

Determine the net income of X for the assessment year 2009-10. Also calculate the amount of loss which can be carried forward for being set off in the next assessment year.

SOLUTION :

Business income/loss for the assessment year 2009-10

	Rs.
Loss of business A for the year 2008-09	(–)48,000
Profit of business B for the year 2008-09	1,56,000
Profit of business C for the period April 1, 2008 to April 10, 2008	*Nil*
Loss from the activity of owning and maintaining camels for races	(-) 9,000
Current business profit	99,000
Less : Brought forward loss of Business A, Business C and Business D [*i.e.*, (Rs. 39,000 + Rs. 39,700 + Rs. 40,000) subject to the maximum of Rs. 99,000]	99,000
Business income	*Nil*

Computation of net income for the assessment year 2009-10

Income from house property	57,600
Profits and gains of business or profession	*Nil*
Income from other sources	
Interest on debentures	90,000
Dividend on units of UTI	*Nil*
Gross total income	1,47,600
Less : Deduction	*Nil*
Net income	1,47,600

Notes :

1. Though business D was not in existence at any time during the previous year 2008-09, yet the brought forward business loss of year 2007-08 can be set off against the income of the assessment year 2009-10.

2. Loss under the head "Capital gains" can be carried forward to the next year for set off against long-term capital gain.

3. The unadjusted brought forward business loss (*i.e.*, Rs. 19,700) can be carried forward.

233-P3 *X submits the following information relevant for the previous year ending on March 31, 2009 :*

	Rs.
Profits of business A carried on in India	*90,000*
Loss of business B carried on in India	*(–)30,000*
Profits of business C carried on in Canada (income is earned and received in Canada and business is controlled from Canada)	*52,000*
Loss of business D carried on in Canada (though profits are not received in India, business is controlled from Delhi)	*(–)46,000*
Unabsorbed depreciation of business D	*63,000*
Income from property situated in India	*22,000*
Income from property situated in Canada (received in Canada)	*1,92,000*

Determine the net income of X for the assessment year 2009-10 on the assumption that he is (a) resident and ordinarily resident in India (b) resident but not ordinarily resident in India, (c) non-resident in India.

SOLUTION :

	Resident and ordinarily resident Rs.	Resident but not ordinarily resident Rs.	Non-resident Rs.
Business income			
Business A	90,000	90,000	90,000
Business B	(–)30,000	(–)30,000	(–)30,000
Business C [*income is not taxable—see para 29]	52,000	*Nil**	*Nil**
Business D [**business income earned and received out of India is not taxable in the hands of non-resident ; loss arising from such business is, therefore, not deductible]	(-)46,000	(-)46,000	*Nil***
Unabsorbed depreciation of business D	(-)63,000	(-)63,000	*Nil*
Business income/loss	3,000	(-)49,000	60,000
Income from property situated in India	22,000	22,000	22,000
Income from property situated in Canada	1,92,000	*Nil*	*Nil*
Gross total income	2,17,000	(-)27,000	82,000
Less : Deductions under sections 80C to 80U	*Nil*	*Nil*	*Nil*
Net income/loss	2,17,000	(-)27,000†	82,000

†Loss of Rs. 27,000 will be carried forward.

CHAPTER ELEVEN

Deductions from gross total income and tax liability

Essential rules governing deductions

234. The following essential rules have to be kept in mind while calculating deductions under sections 80C to 80U :

- The aggregate amount of deduction under sections 80C to 80U cannot exceed gross total income [after excluding long-term capital gains, short-term capital gains under section 111A, winnings from lottery, races, etc., and incomes referred to in sections 115A, 115AB,115AC,115AD, 115BBA and 115D]. For instance, if gross total income is *nil*, the deductions under these sections cannot be claimed.
- Where an association of persons or body of individuals is entitled for deductions under section 80G, 80GGA, 80GGC, 80-IA, 80-IB or 80JJ, a member thereof cannot claim the same deduction in his individual assessment in relation to his share in the total income of the association of persons or body of individuals.
- These deductions are to be allowed only if the assessee claims these and establishes the circumstances warranting such deductions.
- Section 80AB provides that for the purpose of calculating the deductions specified in sections 80HH to 80TT, the net income as computed in accordance with the provisions of the Act (before making any deduction under Chapter VIA, *i.e.*, sections 80C to 80U) shall alone be regarded as the income which is received by the assessee and which is included in his gross total income. Accordingly, the deductions specified in the aforesaid sections will be calculated with reference to the net income as computed in accordance with the provisions of the Act (*viz.*, after deducting expenses under sections 30 to 43B and 57 and after adjusting losses but before making any deduction under sections 80C to 80U) and not with reference to the gross amount of such income, subject, however, to the other requirements of the respective sections.

Deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc. [Sec. 80C]

235. Section 80C has been inserted from the assessment year 2006-07 onwards. Section 80C provides deduction in respect of specified qualifying amounts paid or deposited by the assessee in the previous year.

235.1 ***Salient features of section 80C*** - The following are the main provisions of section 80C—

- Under section 80C, deduction is available from gross total income.
- Deduction under section 80C is available only to an individual or a Hindu undivided family.
- Deduction is available on the basis of specified qualifying investments/contributions/deposits/ payments (hereinafter referred to as "gross qualifying amount") made by the taxpayer during the previous year. Such investment, deposit, etc. can be made out of taxable income or otherwise.
- The gross qualifying amount is allowed as deduction subject to a maximum of Rs. 1,00,000.
- The maximum amount deductible under sections 80C, 80CCC and 8CCD cannot exceed Rs. 1 lakh.

235.2 ***Computation of deduction under section 80C*** - The deduction is calculated as per the following steps—

Step 1 - Gross qualifying amount [*see* para 235.2-1]

Step 2 - Amount of deduction [*see* para 235.2-2]

235.2-1 ***STEP 1 - GROSS QUALIFYING AMOUNT*** - Gross qualifying amount is the aggregate of the following :

Nature of payment
1. *Life insurance premium* (including payment made by Government employees to the Central Government Employees' insurance scheme and payment made by a person under children's deferred endowment assurance policy) [subject to a maximum of 20 per cent of sum assured (sum assured does not include any premium agreed to be returned or any benefit by way of bonus)] [*see* Note 1]
2. Payment in respect of *non-commutable deferred annuity* [*see* Note 2]
3. Any sum deducted from salary payable to a Government employee for the purpose of securing him a *deferred annuity* (subject to a maximum of 20 per cent of salary) [*see* Note 3]
4. Contribution (not being repayment of loan) towards *statutory provident fund and recognized provident fund*
5. Contribution (not being repayment of loan) towards 15 year public provident fund [*see* Notes 4 and 6]
6. Contribution towards an approved *superannuation fund*
7. Subscription to *National Savings Certificates*, VIII Issue [*see* Note 7]
8. Contribution for participating in the unit-linked insurance plan (*ULIP*) of Unit Trust of India [*see* Note 5]
9. Contribution for participating in the unit-linked insurance plan (*ULIP*) of LIC Mutual Fund (formerly known as Dhanraksha plan of LIC Mutual Fund) [*see* Note 5]
10. Payment for *notified annuity plan* of LIC (*i.e.*, New Jeevan Dhara, New Jeevan Akshay, New Jeevan Dhara 1, New Jeevan Akshay 1 and New Jeevan Akshay II or Jeevan Akshay III) or any other insurer.)
11. Subscription towards *notified units of Mutual Fund* or UTI
12. Contribution to *notified pension fund* set up by Mutual Fund or UTI (*i.e.*, Retirement Benefit Pension Fund of UTI)
13. Any sum paid (including accrued interest) as subscription to *Home Loan Account Scheme* of the National Housing Bank or contribution to any notified pension fund set up by the National Housing Bank
14. Any sum paid as subscription *to any scheme of*— *a.* public sector company engaged in providing long-term finance for purchase/construction of residential houses in India (*i.e.*, public deposit scheme of HUDCO); *b.* housing board constituted in India for the purpose of planning, development or improvement of cities/towns
15. Any sum paid as *tuition fees* (not including any payment towards development fees/donation/payment of similar nature) whether at the time of admission or otherwise to any university/college/educational institution in India for full time education of any two children of the individual.
16. Any payment towards the *cost of purchase/construction of* a residential property (including repayment of loan taken from Government, bank, cooperative bank, LIC, National Housing Bank, assessee's employer where such employer is public company/public sector company/university/co-operative society) [*see* Note 9]
17. Amount invested in *approved debentures* of, and *equity shares* in, a public company engaged in infrastructure including power sector or units of a mutual fund proceeds of which are utilised for the developing, maintaining, etc., of a new infrastructure facility
18. Amount deposited as term deposit for a period of 5 years or more in accordance with a scheme framed by the Central Government.
19. Subscription to any notified bonds of National Bank for Agriculture and Rural Development (NABARD).
20. Amount deposited under Senior Citizens Saving Scheme.
21. Amount deposited in five year time deposit scheme in post office.

Notes:

1. In the case of an individual policy should be taken on his own life, life of the spouse or any child (child may be dependent/independent, male/female, minor/major or married/unmarried). In the case of a Hindu undivided family, policy may be taken on the life of any member of the family.

2. Annuity plan should be taken in the name of the individual, his wife/her husband or any child of such individual.

3. It should be for the benefit of the individual, his wife or children.

4. According to the Public Provident Fund Scheme, an individual can open public provident fund account in his own name or in the name of minor of whom he is guardian. However, according to the Income-tax Act, to get the benefit of the deduction under section 80C, amount deposited by an individual in his own account or in the account of his/her spouse or in the account of any child (in the case of HUF in the account of any member of the family) is eligible for deduction.

5. In the case of an individual, ULIP should be taken on his own life, life of the spouse or any child (child may be dependent/independent, male/female, minor/major or married/unmarried). In the case of a Hindu undivided family, ULIP may be taken on the life of any member of the family.

6. There is no maximum ceiling under the Income-tax Act. However, under the public provident fund scheme, the maximum contribution is Rs. 70,000.

7. Accrued interest (which is deemed as reinvested) is also qualified for deduction for first 5 years.

8. While an individual can make payment in any of the above referred investments, an HUF cannot invest in points 2, 3, 5, 6, 7, 12 and 14 mentioned above.

9. The following payment made towards the *cost of purchase/construction of a new residential house property* is qualified for the purpose of section 80C :

a. any instalment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board or other authority engaged in the construction and sale of house property on ownership basis ; or

b. any instalment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member‡ towards the cost of the house property allotted to him (it is not applicable if the assessee is not a shareholder or member of the company/co-operative society which provides house to the assessee); or

c. repayment of the amount borrowed by the assessee from —

i. the Central Government or any State Government, or

ii. any bank, including a co-operative bank, or

iii. the Life Insurance Corporation of India, or

iv. the National Housing Bank, or

v. any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under section 36(1)(*viii*), or

vi. any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or

vii. the assessee's employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or

viii. the assessee's employer where such employer is a public company or public sector company, or a university established by law or a college affiliated to such university or local authority or co-operative society ;

d. stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee.

The following payments are not qualified for the purpose of section 80C :

a. the admission fee, cost of the share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member ; or

b. the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property (or any part thereof) has either been occupied by the assessee or any other person on his behalf or been let out ; or

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‡To claim benefit under section 80C of instalment paid or part-payment made towards cost of house property allotted to assessee, he must be a member/shareholder of company or co-operative society to when instalment or part-payment is made—*Sandeep S. Shah* v. *ITO* [2002] 123 Taxman 696 (Mad.).

c. any expenditure in respect of which deduction is allowable under the provisions of section 24.

235.2-1a OTHER POINTS REGARDING COMPUTATION OF GROSS QUALIFYING AMOUNT - The following points are also relevant while calculating the gross qualifying amount :

- *Investment/deposits are qualified on payment basis* - The aforesaid sums qualify, for the purpose of this section, on "payment" basis. Payments made under the aforesaid heads during the previous year are qualified for the purpose of this section, regardless of the fact whether the payments relate to the previous year or years preceding or ensuing the previous year.
- *Minimum period of holding in some cases* - In respect of the investments/deposits/contributions eligible for deduction under section 80C, in some cases the law provides a minimum period of holding. Such cases are given below—

Nature of investments/deposits	*Number of item as per table given in para 235.2-1*	*Minimum period of holding*
Unit-linked insurance plan (ULIP)	8 and 9	5 years
Life insurance premium	1	2 years
Cost of purchase/construction of a residential house property including repayment of loan	16	5 years
Deposit under Senior Citizen Saving Scheme	20	5 years
Time deposit in Post Office	21	5 years

ULIP terminated before 5 years - Where a member participating in Unit-linked insurance plan, terminates his participation before making contribution for 5 years, then following consequences should be noted—

Whether any deduction would be available in respect of any contribution towards the above plan in the previous year in which the taxpayer terminates participation in the above plan before completing 5 years	Any contribution made towards the above plan in the said previous year will not be qualified for deduction under section 80C.
What will be the tax treatment in respect of deduction already taken in the preceding years	The quantum of deduction already taken in the preceding years would be deemed as income of the taxpayer in the year in which contribution to the plan is terminated.

Other cases - A similar rule is applicable in respect of termination of life insurance policy before 2 years and transfer of residential house property before 5 years.

In the case of withdrawal before 5 years by the depositor during his lifetime from amount deposited under Senior Citizen Saving Scheme or time deposit in Post Office, the amount withdrawn (excluding interest which has already been taxed in earlier years) will be taxable in the year of withdrawal.

235.2-2 *AMOUNT OF DEDUCTION* - Gross qualifying amount is the figure derived in para 235.2-1. However, amount deduction under section 80C is computed as under:

- Gross qualifying amount; or
- Rs. 1,00,000,

whichever is lower. It may be noted that the aggregate amount of deduction under sections 80C, 80CCC and 80CCD cannot exceed Rs. 1,00,000.

235.3 ***Further deduction on accrued interest in respect of investment in National Savings Certificates VIII Issue - How to claim*** - According to rule 15 of the NSC (VIII Issue) Rules, 1989, the interest as specified in the Table below shall accrue to the holder or holders of the certificate at the end of each year and the interest so accruing at the end of each year up to the end of the fifth year shall be deemed to have been re-invested on behalf of the holder and aggregated with the amount of face value of the certificate.

The year for which interest accrues	*Amount of interest (Rs.) accruing on certificates of Rs. 100 denomination*			
	If NSC (VIII Issue) is purchased after January 14, 2000 but before March 1, 2001	*If NSC (VIII Issue) is purchased after February 28, 2001 but before March 1, 2002*	*If NSC (VIII Issue) is purchased on or after March 1, 2002 but before March 1, 2003*	*If NSC (VIII Issue) is purchased on or after March 1, 2003*
First year	11.30	9.72	9.20	8.16
Second year	12.58	10.67	10.05	8.83
Third year	14.00	11.71	10.97	9.55
Fourth year	15.58	12.85	11.98	10.33
Fifth year	17.35	14.10	13.09	11.17
Sixth year	19.31	15.47	14.29	12.08

Note : The amount of interest accruing on a certificate of any other denomination shall be proportionate to the amount specified in the Table above.

Interest is chargeable to tax on the basis of annual accrual specified above. Moreover the accrued interest for the first 5 years is deemed as re-investment and the same is entitled for deduction under section 80C.

235.3-P1 *X, whose annual salary (after standard deduction) is Rs. 5,45,000, purchased Rs. 30,000 National Savings Certificates (VIII Issue) on December 10, 2002. He annually deposits Rs. 10,000 in National Children's Fund. Determine the amount of tax payable for the assessment years 2003-04 to 2009-10, on assumption that he does not intend to make any other investment up to the financial year 2008-09.*

SOLUTION :

ASSESSMENT YEARS

	2003-04 Rs.	2004-05 Rs.	2005-06 Rs.	2006-07 Rs.	2007-08 Rs.	2008-09 Rs.	2009-10 Rs.
Salary income	5,45,000	5,45,000	5,45,000	5,45,000	5,45,000	5,45,000	5,45,000
Interest accrued on NSC Issue	—	2,760	3,015	3,291	3,594	3,927	4,287
Gross total income	5,45,000	5,47,760	5,48,015	5,48,291	5,48,594	5,48,927	5,49,287
Less : Deductions							
Under section 80C	*Nil*	*Nil*	*Nil*	3,291[4]	3,594[5]	3,927[6]	*Nil*[7]
Under section 80G	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Under section 80L	*Nil*	2,760	3,015	*Nil*	*Nil*	*Nil*	*Nil*
Net income	5,40,000	5,40,000	5,40,000	5,40,000	5,40,000	5,40,000	5,44,290
Tax	1,36,000	1,36,000	1,36,000	1,12,000	1,12,000	1,11,000	68,287
Less : Rebate under section 88	6,000[1]	552[2]	603[3]	*Nil*	*Nil*	*Nil*	*Nil*
Balance	1,30,000	1,35,448	1,35,397	1,12,000	1,12,000	1,11,000	68,287
Add : Surcharge	6,500	-	-	-	-	-	-
Tax and surcharge	1,36,500	1,35,448	1,35,397	1,12,000	1,12,000	1,11,000	68,287
Add: Education cess	*Nil*	*Nil*	2,708	2,240	2,240	2,220	1,366
Add: Secondary and higher education cess	*Nil*	*Nil*	*Nil*	*Nil*	*Nil*	1,110	683
Tax payable	1,36,500	1,35,448	1,38,105	1,14,240	1,14,240	1,14,330	70,340

1. 20% of Rs. 30,000
2. 20% of Rs. 2,760
3. 20% of Rs. 3,015

4. Rs. 3,291 is deductible under section 80C.
5. Rs. 3,594 is deductible under section 80C.
6. Rs. 3,927 is allowable as deduction under section 80C.
7. Since interest of sixth year (due on December 10, 2008) is paid at the time of maturity of bonds (*i.e.*, on December 10, 2008) and is not reinvested in NSC VIII Issue, the same is not eligible for deduction under section 80C.

235.4 ***Problems*** - The following problems are given to have a better understanding of section 80C—

235.4-P1 *Income of a resident is Rs. 12,50,000 (inclusive of interest on Government securities of Rs. 15,000). He invests Rs. 1 lakh in schemes and deposits qualified for deduction under section 80C. He is eligible for deduction of Rs. 10,000 under section 80CCC. He pays Rs. 25,000 on account of mediclaim insurance premium. Find out the tax liability for the assessment year 2009-10 if the taxpayer is (a) a senior citizen, (b) a resident woman, or (c) any other individual/any Hindu undivided family.*

SOLUTION :

	Assessment year 2009-10		
	Case (a) Rs.	Case (b) Rs.	Case (c) Rs.
Gross total income	12,50,000	12,50,000	12,50,000
Less: Deductions			
Under section 80C	1,00,000	1,00,000	1,00,000
Under section 80CCC	-	-	-
Under section 80D	20,000	15,000	15,000
Under section 80L	-	-	-
Net income	11,30,000	11,35,000	11,35,000
Income-tax	2,44,000	2,42,500	2,45,500
Add : Surcharge	24,400	24,250	24,550
Income-tax and surcharge	2,68,400	2,66,750	2,70,050
Add : Education cess (2% of tax and surcharge)	5,368	5,335	5,401
Add : Secondary and higher education cess [1% of tax and surcharge]	2,684	2,668	2,701
Tax liability (rounded off)	2,76,450	2,74,750	2,78,150

235.4-P2 *X is a salaried employee. His basic salary is Rs. 40,000 per month. He gets one month salary as bonus. He has been provided a rent-free unfurnished house which is owned by the employer company at the place of his posting, i.e., Chennai. He gets bank interest of Rs. 10,000. He makes the following investments/deposits every year—*

	Rs.
Life insurance premium on his own life (sum assured: Rs. 40,000)	*9,000*
Notified equity linked saving scheme of UTI	*12,000*
Repayment of loan taken on July 1, 2002 for purchasing a house property (which is self-occupied by his family at Pune)	*27,000*
Payment of interest on the above loan	*1,60,000*
Tuition fees of two children (Rs. 14,000 + Rs. 26,000)	*40,000*
Notified bonds of infrastructure company	*3,000*

	Rs.
Deposit in home loan account scheme of NHB	*9,000*
Mediclaim insurance premium	*16,000*
Pension fund of LIC qualified for deduction under section 80CCC	*14,000*

On March 10, 2007, he purchases Rs. 10,000 National Saving Certificate VIII issue. No other investment is made by X. Find out the net income and tax liability for the assessment year 2009-10.

SOLUTION :

	Rs.
Basic salary	4,80,000
Bonus	40,000
Rent-free unfurnished house	78,000
Gross salary	5,98,000
Less: Standard deduction	-
Income from salary	5,98,000
Income from house property	(–)1,50,000
Bank interest	10,000
Interest on NSC VIII issue purchased on March 10, 2007	883
Gross total income	4,58,883
Less : Deductions	
Under section 80C [see Note]	99,883
Under section 80CCC	117
Under section 80D	15,000
Under section 80L	-
Net income (rounded off)	3,43,880
Tax on net income	23,776
Add : Education cess	476
Add : Secondary and higher education cess	238
Tax liability (rounded off)	24,490

Note - Gross qualifying amount for the purpose of section 80C is calculated as follows -

Life insurance premium (maximum 20% of Rs. 40,000)	8,000
Notified equity linked saving scheme of UTI	12,000
Repayment of loan taken for purchasing a house property	27,000
Tuition fees of two children (Rs. 14,000 + Rs. 26,000)	40,000
Home loan account scheme	9,000
Interest accrued on NSC VIII issue (8.83% of Rs. 10,000)	883
Notified bonds of infrastructure company	3,000
Gross qualifying amount	99,883
Amount deductible under section 80C (100% of gross qualifying amount subject to maximum of Rs. 1,00,000)	99,883

235.4-P3 *X (age : 32 years), posted at Bombay, receives a salary of Rs. 18,000 per month during 2008-09 from A Ltd. His employer contributes Rs. 26,500 towards provident fund. His other allowances are : special allowance : Rs. 1,14,000 and medical allowance : Rs. 11,100 and 0.5 per cent commission on sales achieved by him. During the year, turnover achieved by X is Rs. 4,80,000. Employer provides a Maruti-800 car with a chauffeur for his private*

and official purposes with effect from November 10, 2008. The amount of interest credited to provident fund on May 10, 2008 @ 11 per cent per annum comes to Rs. 12,830.

Income of X from other sources is Rs. 7,54,000.

Payments/contributions :

	Rs.
❑ *Insurance premium paid on own life (sum assured : Rs. 22,500)*	6,500
❑ *Insurance premium paid on the life of mother*	3,800
❑ *Insurance premium paid on the life of father*	500
❑ *Insurance premium paid on the life of Mrs. X (sum assured : Rs. 1,00,000)*	4,000
❑ *Insurance premium paid on the life of his major son (sum assured : Rs. 20,000)*	3,100
❑ *Insurance premium due before March 31, 2009 but paid on April 4, 2009 on own life*	1,000
❑ *Contribution towards employees' provident fund*	50,000
❑ *Contribution towards public provident fund*	1,000
❑ *Contribution made for participating in unit-linked insurance plan*	2,000
❑ *Repayment of loan taken from LIC for purchase of a house (whose construction is completed on March 10, 1987 and used by him for his residence)*	22,000
❑ *Tuition fee of X's son*	12,500
❑ *Investments in units of a notified Mutual Fund for financing infrastructural facility*	2,000

Determine the amount of tax liability on the assumption that provident fund is (a) statutory provident fund, (b) recognised provident fund, (c) unrecognised provident fund.

SOLUTION :

	SPF Rs.	RPF Rs.	UPF Rs.
Salary (*i.e.*, Rs. 18,000 × 12)	2,16,000	2,16,000	2,16,000
Special allowance	1,14,000	1,14,000	1,14,000
Medical allowance	11,100	11,100	11,100
Commission ½% of Rs. 4,80,000	2,400	2,400	2,400
Free motor car	—	—	—
Free chauffeur	—	—	—
Employer's contribution towards provident fund in excess of 12% of salary [*i.e.*, Rs. 26,500 – 12% of (Rs. 2,16000 + Rs. 2,400)]	—	292	—
Interest credited in provident fund in excess of 9.5% per annum	—	1,750	—
Gross salary	3,43,500	3,45,542	3,43,500
Less : Standard deduction	—	—	—
Salary income	3,43,500	3,45,542	3,43,500
Income from other sources	7,54,000	7,54,000	7,54,000
Gross total income	10,97,500	10,99,542	10,97,500
Less : Deduction under section 80C [see Note]	1,00,000	1,00,000	51,100
Net income (rounded off)	9,97,500	9,99,540	10,46,400
Tax on net income [see Appendix 1 for tax rates]	2,04,250	2,04,862	2,18,920
Add : Surcharge (*not applicable as net income does not exceed Rs. 10,00,000)	—*	—*	21,892
Tax and surcharge	2,04,250	2,04,862	2,40,812
Add : Education cess (2% of tax and surcharge)	4,085	4,097	4,816
Add : Secondary and higher education cess [1% of tax and surcharge]	2,043	2,049	2,408
Tax payable (rounded off)	2,10,380	2,11,010	2,48,040

Note : It is calculated as follows - Rs. 4,500 + Rs. 4,000 + Rs. 3,100 + Rs. 50,000 + Rs. 1,000 + Rs. 2,000 + Rs. 22,000 + Rs. 12,500 + Rs. 2,000 (subject to a maximum of Rs. 1,00,000). X's contribution towards unrecognised provident fund is not qualified for deduction.

Deduction in respect of deposit under National Savings Scheme [Sec. 80CCA]

235A. Deduction under section 80CCA was available only for the assessment years 1988-89 to 1992-93. For the assessment years 1988-89 to 1992-93, a deduction was available in the case of an individual and a Hindu undivided family. This deduction was in relation to :

a. deposits in a scheme notified by the Government, *i.e.*, the National Savings Scheme, and

b. amounts paid to effect or to keep in force any contract for an annuity plan of the Life Insurance Corporation of India (*i.e.*, Jeevan Dhara and Jeevan Akshay).

235A.1 ***Amount of deduction*** - Maximum amount of deduction was as under :

- For the assessment year 1988-89 : Rs. 20,000.
- For the assessment years 1989-90 and 1990-91 : Rs. 30,000
- For the assessment years 1991-92 and 1992-93 : Rs. 40,000.
- From the assessment year 1993-94 onwards : *Nil.*

Deduction was available only when the aforesaid sum was paid out of income chargeable to tax.

235A.2 ***Amount taxable in the year of withdrawal*** - After claiming deduction, if any amount is withdrawn, it taxable under the head "Income from other sources"—*Uma Borkar* v. *ITO* [2002] 83 ITD 453 (Mum.).

235A.2-1 RECIPIENT IS TAXABLE IN THE CASE OF PARTITION OF HUF - Where a Hindu undivided family has effected a partition and is dissolved after a deduction has been allowed to it under section 80CCA, the amount withdrawn or received, as the case may be, shall be deemed to be the income of the recipient and taxed accordingly.

235A.2-2 LEGAL HEIRS NOT CHARGEABLE TO TAX - Where the amount of National Savings Scheme or Gross Insurance Value Element (GIVE) under Jeevan Dhara or Jeevan Akshay plans is paid on the death of the assessee to his legal heirs, the amount so paid will not be chargeable to tax in the hands of legal heirs—Circular No. 532, dated March 17, 1989.

235A.3 ***Provisions illustrated*** - The consequences of the above provisions and other related issues as applicable to the assessment year 2009-10 are explained with the help of problem 235.3-P1 given below —

235A.3-P1 *During 2008-09, X gets the following payments —*

	Date	Principal Rs.	Interest Rs.	Bonus Rs.	Total Rs.
National Savings Scheme, 1987	*July 1, 2008*	*30,000**	*5,000*	-	*35,000*
National Savings Scheme, 1992	*May 1, 2008*	*65,000*	*15,000*	-	*80,000*
Jeevan Dhara	*March 1, 2009*	*10,000**	-	*2,000*	*12,000*

**Deduction was allowed under section 80CCA in the year of deposit.*

Ascertain the amount chargeable to tax for the assessment year 2009-10, assuming that on transfer of a short-term capital asset on April 1, 2008, he gets income of Rs. 14,60,000.

SOLUTION :

	Rs.	Rs.
Short-term capital gain		14,60,000
Income from other sources		
- National Savings Scheme, 1987	35,000	
- Interest on National Savings Scheme, 1992	15,000	
- Jeevan Dhara	12,000	62,000

	Rs.
Gross total income	15,22,000
Less : Deduction under section 80L [not available]	—
Net income	15,22,000

Note :

1. Contribution to the National Savings Scheme, 1992 was not deductible under section 80CCA. Out of the amount withdrawn from the National Savings Scheme, 1992, only interest is chargeable to tax.

2. Contribution to National Savings Scheme, 1987 was deductible under section 80CCA. If the amount is withdrawn from National Savings Scheme, 1987, then the entire amount (including interest) is taxable.

Equity Linked Savings Scheme [Sec. 80CCB]

236. A deduction was allowed for the assessment years 1991-92 and 1992-93 in the case of an assessee, being an individual and a Hindu undivided family, in relation to the investment made in the units of any plan, framed in accordance with the Equity Linked Savings Scheme of the Mutual Funds specified under clause *(23D)* of section 10 or Unit Trust of India. The deduction was allowed on so much of the amount invested as does not exceed Rs. 10,000. However, no deduction is available in relation to any amount invested on or after April 1,1992.

236.1 ***Taxable in the year when amount is returned*** - When any amount in respect of which deduction had been allowed is returned to the assessee either by way of repurchase of the units by the Fund or the Trust or on the termination of the plan, it will be deemed to be his income for the previous year in which the amount is returned. Further, where a Hindu undivided family has effected a partition after a deduction has been allowed to it on an amount invested in accordance with the Scheme, such amount on its return shall be deemed to be the income of the recipient. The difference between the repurchase price of the units and the amount invested therein by the assessee shall be deemed to be the capital gains and taxed accordingly.[1]

236.2 ***Provisions illustrated*** - The consequences of the above provisions and other related issues as applicable to the assessment year 2009-10 are explained with the help of problem 236.2-P1 given below —

236.2-P1 *On March 10, 1992, X purchases 1,500 MEP92 units of Rs. 10 of UTI (being a notified Equity Linked Savings Scheme for section 80CCB) and claims a deduction of Rs. 10,000 under section 80CCB for the assessment year 1992-93.*

On March 3, 1994, X purchases 1,700 units of MEP94 units of Rs. 10 of UTI (being a notified Equity Linked Savings Scheme for section 88) and claims a tax rebate of Rs. 2,000 (i.e., 20 per cent of Rs. 10,000) under section 88 for the assessment year 1994-95.

On March 6, 2009, X transfers MEP92 and MEP94 at the rate of Rs. 50 and Rs. 40 respectively (securities transaction tax is not applicable). Find out the net income of X for the assessment year 2009-10 assuming that the business income of X is Rs. 7,86,000.

SOLUTION :

	Rs.	Rs.
Business income		7,86,000
Capital gains		
Sale proceeds of MEP92 (Rs. 50 × Rs. 1,500)	75,000	
Less : Indexed cost of acquisition [Rs. 10 × 1,500 × 582/199]	43,869	
Capital gain (a)	31,131	
Sale proceeds of MEP94 (Rs. 40 × 1,700)	68,000	
Less : Indexed cost of acquisition [Rs. 10 × 1,700 × 582/244]	40,549	
Capital gain (b)	27,451	

1. For tax deduction at source under section 194F, *see* para 415.

	Rs.
Long-term capital gain [(a) + (b)]	58,582
Income from other sources [Rs. 10,000, being the amount of deduction under section 80CCB, will be taxable when units MEP92 are transferred]	10,000
Gross total income	8,54,582
Less : Deductions under sections 80C to 80U	*Nil*
Net income (rounded off)	8,54,580

Notes—

1. The benefit of indexation of cost of acquisition is allowable—*Kirti Babulal Shah* v. *ITO* [2002] 77 TTJ (Mum.) 30.

2. If securities transaction tax is applicable, long-term capital gain (*i.e.*, Rs. 31,131 + Rs. 27,451) is not chargeable to tax.

Deduction in respect of pension fund [Sec. 80CCC]

237. The provisions of section 80CCC are given below :

237.1 ***Conditions*** - The following conditions one has to satisfy —

Condition 1	The taxpayer is an individual (maybe resident or non-resident, Indian citizen or foreign citizen).
Condition 2	During the previous year, he has paid/deposited a sum under an annuity plan of the Life Insurance Corporation of India or any other insurer for receiving pension.
Condition 3	The aforesaid amount is paid out of income chargeable to tax. It is, however, not necessary that it should be paid out of the income of the current year. It may be paid even out of the taxable income of earlier years.

237.2 ***Amount of deduction*** - If the aforesaid conditions are satisfied, then the amount deposited or Rs. 1,00,000, whichever is lower, is deductible.

- Aggregate deduction under sections 80C, 80CCC and 80CCD cannot exceed Rs. 1 lakh.

237.3 ***Other points*** - One should keep in view the following points —

1. Where (after claiming deduction under section 80CCC) the assessee or his nominee surrenders the annuity before maturity date of such annuity, the surrender value shall be taxable in the hands of the assessee or his nominee, as the case may be, in the year of the receipt.

2. If deduction is claimed under section 80CCC and later on pension is received by the assessee (or his nominee), such pension will be taxable in the hands of recipient in the year of receipt.

3. If deduction is claimed under section 80C, in respect of the same investment, deduction is not available under section 80CCC.

Deduction in respect of contribution to pension scheme of Central Government or any other employer [Sec. 80CCD]

237A. The provisions of section 80CCD are given below :

237A.1 ***Conditions*** - Section 80CCD is applicable if the following conditions are satisfied—

Condition 1	The taxpayer is an individual.
Condition 2	He is employed by the Central Government or any other employer on or after January 1, 2004.
Condition 3	He has in the previous year paid or deposited any amount in his account under a pension scheme notified by the Central Government.

237A.2 ***Consequences if the above conditions are satisfied*** - If the above conditions are satisfied, the following consequences given by section 80CCD should be noted—

1. Employee's contribution to the notified pension scheme is deductible in the year in which contribution is made. However, no deduction is available in respect of employee's contribution which is in excess of 10 per cent of the salary of the employee.

2. Contribution by the employer to the notified pension scheme is deductible in the hands of the concerned employee in the year in which contribution is made. However, no deduction is available in respect of employer's contribution which is in excess of 10 per cent of the salary of the employee.

3. The amounts standing to the credit of the employee in the pension account, for which a deduction has already been claimed by him, and accretions to such account, shall be taxed as income in the year in which such amounts are received by the employee (or his nominee) on closure of the account or his opting out of the said scheme or on receipt of pension from the annuity plan.

4. If deduction is claimed under section 80C, in respect of the same investment, deduction is not available under section 80CCD.

5. "Salary" for the purpose of points 1 and 2 (*supra*) includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

6. The aggregate amount of deduction under sections 80C, 80CCC and 80CCD cannot exceed Rs. 1,00,000.

237A-P1 *X (26 years) is employed by the Central Government in the Ministry of Labour (date of joining : March 6, 2006). During the previous year 2008-09, basic salary (including dearness allowance) is Rs. 36,000 per month. Government contributes 10 per cent of his salary towards notified pension scheme. Contribution of X is Rs. 45,000 Central Government. He annually contributes Rs. 15,000 to public provident fund. Further, he contributes Rs. 16,000 towards LIC's pension for the purpose of section 80CCC. Compute the tax liability of X for the assessment year 2009-10.*

SOLUTION :

		Rs.
Basic salary (Rs. 36,000 × 12)		4,32,000
Contribution by the Central Government towards pension scheme (10% of Rs. 4,32,000)		43,200
Gross salary		4,75,200
Less: Standard deduction		—
Income from salary		4,75,200
Any other income		*Nil*
Gross total income		4,75,200
Less : Deduction		
Under section 80C	15,000	
Under section 80CCC	16,000	
Under section 80CCD		
- Contribution of X [Maximum : Rs. 43,200, being 10% of salary]	43,200	
- Contribution by employer	43,200	
Total	1,17,400	
Amount deductible under sections 80C, 80CCC and 80CCD		1,00,000
Net income		3,75,200
Tax		30,040
Add : Education cess		601
Add : Secondary and higher education cess		300
Tax liability (rounded off)		30,940

Deduction in respect of medical insurance premia [Sec. 80D]

238. The salient features of the provisions of section 80D are given below :

238.1 ***Conditions*** - To get deduction under section 80D one should satisfy the following conditions —

Condition 1	The taxpayer is an individual (maybe resident/non-resident or Indian citizen/foreign citizen) or a Hindu undivided family (maybe resident or non-resident).
Condition 2	Insurance premium is paid by the taxpayer in accordance with the scheme framed in this behalf by the General Insurance Corporation of India and approved by the Central Government. The scheme is known as "mediclaim" insurance policy. The amount deposited in a similar scheme of any other insurer who is approved by the Insurance Regulatory and Development Authority shall also be eligible for deduction.
Condition 3	The aforesaid premium can be paid by any mode other than cash.
Condition 4	It is paid out of income chargeable to tax.

Note - Mediclaim policy is taken on the health of the following person —

Taxpayer	*Insured person*
■ Individual	On the health of the taxpayer, spouse, dependent parents or dependent children of the taxpayer.
■ Hindu undivided family	On the health of any member of the family

238.2 ***Amount of deduction*** - The table given below highlights the provisions of section 80D before and after the amendment—

	HUF	*Individual*		
On whose life health insurance premium can be taken	*Any member of the family*	*Individual taxpayer, his or her spouse, his or her dependent children*	*Additional deduction for parents of the taxpayer whether dependent or not*	*Total*
	Rs.	*Rs.*	*Rs.*	*Rs.*
General deduction	15,000	15,000	15,000	30,000
Additional deduction if insurance policy is taken on the health of a senior citizen (*i.e.*, resident in India who is at least 65 years of age at any time during the previous year)	5,000	5,000	5,000	10,000
Total	20,000	20,000	20,000	40,000

Provisions illustrated - The table given below highlights the amount of deduction under section 80D (in all cases, taxpayer is X and health insurance premium is paid during the previous year 2008-09)—

	On the health of X, Mrs. X, dependent children			*On the health of parents of X (whether dependent upon X or not)*			*Amount deductible under section 80D for the AY 2009-10*
	For persons other than senior citizens	*For senior citizens*	*Deduction*	*For persons other than senior citizens*	*For senior citizens*	*Deduction*	
	Rs.	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*
Case 1	16,000	*Nil*	15,000	17,000	*Nil*	15,000	30,000
Case 2	15,000	5,000	20,000	15,000	6,000	20,000	40,000
Case 3	*Nil*	20,000	20,000	*Nil*	20,000	20,000	40,000
Case 4	16,000	6,000	20,000	17,000	7,000	20,000	40,000
Case 5	21,000	1,000	16,000	*Nil*	Nil	*Nil*	16,000
Case 6	*Nil*	*Nil*	*Nil.*	16,500	500	15,500	15,500
Case 7	7,000	1,000	8,000	26,000	1,000	16,000	24,000
Case 8	40,000	*Nil*	15,000	*Nil*	2,000	2,000	17,000
Case 9	17,000	4,000	19,000	3,000	34,000	20,000	39,000
Case 10	*Nil*	1,000	1,000	20,000	1,000	16,000	17,000
Case 11	*Nil*	2,000	2,000	1,000	20,000	20,000	22,000

Deduction in respect of maintenance including medical treatment of a dependent being a person with disability - When and to what extent available [Sec. 80DD]

239. The provisions of section 80DD are given below :

239.1 *Conditions* - The following conditions should be satisfied—

1. The taxpayer is resident in India (maybe ordinarily resident or not ordinarily resident).

2. The resident taxpayer is an individual (maybe an Indian citizen or foreign citizen) or a Hindu undivided family.

3. The taxpayer has opted for any (or both) of the following options—

Option 1	*Option 2*
The taxpayer has incurred an expenditure for the medical treatment (including nursing), training and rehabilitation of a dependent (being a person with disability)	The taxpayer has paid or deposited under any scheme framed in this behalf by the Life Insurance Corporation or any other insurer, or the administrator[1] or specified company[2] and approved by the Board in this behalf, for maintenance of dependent (being a person with disability)

4. For the above purpose, a "dependent being a person with disability" is a person who satisfies the following points—

a. in the case of an individual, dependent means the spouse, children, parents, brothers and sisters of the individual or any of them;

b. in the case of a Hindu undivided family, "dependent" means a member of a Hindu undivided family;

c. such person is wholly or mainly dependent upon such individual or Hindu undivided family for support and maintenance;

d. such person has not claimed any deduction under section 80U in computing his total income for the assessment year relating to the previous year;

e. "disability" shall have the meaning assigned to it in section 2(*i*) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [*see* para 267.1-3];

f. "person with disability" means a person having any "disability" stated above of not less than 40 per cent.

Autism Cerebral Palsy and Multiple Disability - The meaning of the expression "disability" has been enlarged from the assessment year 2005-06 to include "autism", "cerebral palsy" and "multiple disability" referred to in clauses (*a*), (*c*) and (*h*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. A similar amendment has been made in the definition of "medical authority", "person with disability" and "person with severe disability".

5. Under *option 2*, the scheme provides for payment of an annuity or a lump sum amount for the benefit of dependent, being a person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made.

6. Under *option 2*, the assessee nominates either the dependent (being a person with disability) or any other person or a trust to receive the payment on his behalf, for the benefit of such dependent.

7. For claiming the deduction, the assessee shall have to furnish a copy of the certificate issued by the medical authority [*see* para 267.1-4] along with the return of income† [the certificate shall be in

1. "Administrator" means the Administrator as referred to in clause (*a*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

2. "Specified company" means a company as referred to in clause (*h*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

†It is not possible to attach any certificate with new income-tax return forms. The assessee should himself retain the certificate. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

Form No. 10-IA where the person is suffering from autism, cerebral palsy or multiple disability or in the form prescribed under Persons with Disabilities Act in any other case]. Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned on the original certificate in order to continue to claim the deduction.

239.2 ***Amount of deduction*** - The amount deductible is a fixed deduction of Rs. 50,000 whenever the conditions specified above are satisfied, irrespective of the amount incurred or deposited under *Option 1* and/or *Option 2.*

A higher deduction of Rs. 75,000 shall be allowed, where such dependant is a person with severe disability having disability of 80 per cent or more.

239.3 ***If dependent predeceases the taxpayer*** - If the dependent with disability predeceases the individual or the member of the Hindu undivided family referred to above, an amount equal to the amount paid or deposited as stated above shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

> ***239-P1*** *X is a resident individual. He annually deposits a sum of Rs. 15,000 with LIC for the maintenance of his handicapped grandfather who is wholly dependent upon him. The disability comes under section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. A copy of certificate from medical authority is submitted. Determine the amount of deduction available under section 80DD for the assessment year 2009-10.*
>
> **SOLUTION** : As grandfather does not come within the definition of "dependent" in the section, nothing shall be deducted under section 80DD.
>
> ***239-P2*** *Suppose in 239-P1, the person with disability is a dependent brother (disability upto 40 per cent).*
>
> **SOLUTION** : As brother comes in the definition of "dependent", Rs. 50,000 is deductible for the assessment year 2009-10. If, however, the dependent brother is a person with severe disability over 80%, then Rs. 75,000 is deductible.

Deduction in respect of medical treatment, etc. [Sec. 80DDB]

240. The provisions of section 80DDB are given below—

240.1 ***Conditions*** - One has to satisfy the following conditions—

1. The taxpayer is resident in India (maybe ordinarily resident or not ordinarily resident).

2. The taxpayer is an individual (maybe an Indian citizen or a foreign citizen) or a Hindu undivided family.

3. The taxpayer has actually paid any amount for the medical treatment of a specified disease or ailment as prescribed by the Board under rule 11DD.

4. The expenditure is actually incurred for medical treatment of the assessee himself or wholly/ mainly dependent husband/wife, children, parents, brothers and sisters of the taxpayer. If the taxpayer is a Hindu undivided family, the expenditure is actually incurred for the medical treatment of any member of the family who is wholly/mainly dependent upon the family.

5. The assessee shall have to submit a certificate in the prescribed form [Form No. 10-I]* from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist, as may be prescribed, working in a Government hospital.

240.2 ***Amount of deduction*** - If all the aforesaid conditions are satisfied, the amount of deduction is Rs. 40,000 or the expenditure actually incurred, whichever is lower.

- Where the expenditure incurred is in respect of the assessee or his dependant or any member of a Hindu undivided family of the assessee and who is a senior citizen (*i.e.*, an individual who is resident in India and who is at least 65 years of age at any time during the previous year), then Rs. 60,000 or actual expenditure, whichever is lower, will be available.

*It is not possible to attach any certificate with new income-tax return forms. The assessee should himself retain the certificate. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

■ Deduction under this section shall be reduced by the amount received, if any, under an insurance from an insurer, or reimbursed by an employer, for the medical treatment of the person referred to above.

240.3 *Other points* - The following points shall be noted—

1. For this purpose "Government hospital" includes a departmental dispensary (whether full-time or part-time) established and run by a department of the Government for employees, a hospital maintained by a local authority and any other hospital with which arrangements have been made by the Government for the treatment of Government servants.

2. The requirement is only of working in a Government hospital. It does not require employment in a Government hospital on regular basis. A surgeon rendering honorary service at a Government hospital is as such a surgeon working in a Government hospital—*Snehlata C. Chandrakant Chalishazar* v. *Thanvi* 1999 Tax LR 759 (Guj.).

240-P1 *X (35 years) is a resident individual. During the previous year, he incurs the following expenditure—*

	Actual expenditure Rs.	Amount reimbursed by insurance company Rs.	Amount reimbursed by employer of X Rs.
Medical treatment (specified disease) of X in a Government hospital	*30,000*	*Nil*	*28,000*
Medical treatment (specified disease) of Mrs. X in a hospital recognised by Chief Commissioner	*14,000*	*3,000*	*6,000*

Salary of X is Rs. 4,00,000. In the two cases, disease is specified in the rules made by the Board. Find out the net income of X for the assessment year 2009-10.

SOLUTION :

	Rs.
Salary	4,00,000
Perquisite in respect of medical treatment of X and his spouse	*Nil*
Gross salary	4,00,000
Less : Standard deduction	—
Salary	4,00,000
Any other income	*Nil*
Gross total income	4,00,000
Less : Deduction under section 80DDB [see Note]	3,000
Net income	3,97,000

Note - The amount deductible is as follows—

a. actual expenditure (*i.e.*, Rs. 30,000 + Rs. 14,000); or

b. Rs. 40,000 (Rs. 60,000 in the case of senior citizen),

whichever is less.

Rs. 40,000 is deductible if nothing is recovered from the insurance company or employer. From the amount deductible (*i.e.*, Rs. 40,000 in this case), the amount received from insurance company as well as employer shall be deducted. Therefore, Rs. 40,000 – Rs. 3,000 – Rs. 28,000 – Rs. 6,000, *i.e.*, Rs. 3,000 is deductible.

240-P2 *Find out the amount of deduction under section 80DDB in the following cases for the assessment year 2009-10—*

Name of the taxpayer	X	Y	Z	A	B
Residential status of the taxpayer	*Resident*	*Resident*	*Resident*	*Resident*	*Non-resident*
Expenditure incurred on medical treatment of dependent mother in a hospital recognised by the Chief Commissioner (amount in rupees)	*10,000*	*26,000*	*80,000*	*1,00,000*	*34,000*

Name of the taxpayer	X	Y	Z	A	B
Age of mother	*60 years*	*60 years*	*67 years*	*67 years*	*65 years*
Residential status of dependent mother	*Resident*	*Non-resident*	*Resident*	*Non-resident*	*Resident*
Whether the disease is specified under rule 11DD made by the Board	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*
Amount received from insurance company (amount in rupees)	*4,000*	*14,000*	*70,000*	*15,000*	*7,000*
Amount received from the employer of the taxpayer (amount in rupees)	*2,000*	*3,000*	*4,000*	*20,000*	*16,000*

SOLUTION :

Amount of deduction under section 80DDB	X Rs.	Y Rs.	Z Rs.	A Rs.	B Rs.
Deduction under section 80DDB if no money is recovered from insurance company and employer	10,000	26,000	60,000	40,000	*Nil*
Less : Amount received from insurance company and employer	6,000	17,000	74,000	35,000	23,000
Amount of deduction under section 80DDB	4,000	9,000	*Nil*	5,000	*Nil*

Note - The perquisite in respect of reimbursement of medical expenditure by employer is not chargeable to tax.

240-P3 *Suppose in problem 240-P2, the expenditure is incurred on medical treatment of dependent grandmother.*

SOLUTION :

Deduction under section 80DDB is not available from the assessment year 2005-06. Moreover, the perquisite in respect of medical treatment reimbursement of medical expenditure is taxable (even deduction of Rs. 15,000 is not available).

Deduction in respect of repayment of loan taken for higher studies [Sec. 80E]

241. Deduction under section 80E is available if the following conditions are satisfied :

Condition 1	The assessee is an individual.
Condition 2	He had taken a loan from any bank, financial institution [*i.e.*, a banking company or notified financial institution] or an approved charitable institution [*i.e.*, an institution approved for the purpose of section 10(*23C*) or 80G(2)(*a*)].
Condition 3	The loan was taken for the purpose of pursuing higher education [*i.e.*, full-time studies for any graduate or post-graduate course in engineering (including technology, architecture), medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics].
Condition 4	The loan was taken by the taxpayer for the purpose of pursuing his own higher education or for the purpose of higher education of his relatives, *i.e.*, spouse/any child.
Condition 5	Amount is paid by the individual during the previous year by way of interest on such loan.
Condition 6	Such amount is paid out of his income chargeable to tax.

241.1 ***Amount deductible*** - If the above conditions are satisfied, the entire amount paid by way of interest is deductible under section 80E. However, the following points should be noted—

1. The above deduction is allowed in computing the taxable income of the initial assessment year (*i.e.*, the assessment year relevant to the previous year in which the assessee starts paying the interest on the loan) and 7 immediately succeeding assessment years (or until the above interest is paid in full, whichever is earlier).

2. From the assessment year 2006-07, no deduction will be available under section 80E in respect of repayment of principal amount.

Deduction in respect of donation to certain funds, charitable institutions, etc. [Sec. 80G]

242. Deduction under section 80G is available to any taxpayer (maybe individual, firm, HUF, company; resident or non-resident). For calculating the deduction admissible under this section, the following three steps have to be observed :

Step 1 : Find out gross qualifying amount [*see* para 242.1].

Step 2 : Find out the net qualifying amount [*see* para 242.2].

Step 3 : Find out the amount deductible [*see* para 242.3].

242.1 ***Step 1 : Gross qualifying amount*** - Gross qualifying amount is the aggregate of the donations made to any of the institutions/fund given in *column 1* in the table given in para 242.3. Donation made in kind shall not be included.

242.2 ***Step 2 : Net qualifying amount*** - Net qualifying amount is limited to 10 per cent of adjusted gross total income of the assessee.

■ *"Adjusted gross total income"* for this purpose is gross total income as reduced by the following :

a. amount deductible under sections 80C to 80U (but not section 80G) ;

b. such sum on which income-tax is not payable [*see* para 326.4] ;

c. long-term capital gains ;

d. short-term capital gain taxable under section 111A;

e. income referred to in sections 115A, 115AB, 115AC, 115AD and 115D.

■ *When the above ceiling is not applicable* - The aforesaid ceiling limit does not apply in relation to donations made to funds specified in (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*), (*o*), (*p*), (*q*), (*r*), (*s*), (*t*), (*u*), (*zc*) and (*zd*) of column 1 of the table given in para 242.3.

242.3 ***Step 3 : Amount deductible*** - Net qualifying amount is eligible for deduction on the following basis :

Donee	*Maximum limit*	*Deduction (as a percentage of net qualifying amount)*
a. National Defence Fund set up by Central Government	Not applicable	100 per cent
b. Jawaharlal Nehru Memorial Fund	Not applicable	50 per cent
c. Prime Minister's Drought Relief Fund	Not applicable	50 per cent
d. Prime Minister's National Relief Fund	Not applicable	100 per cent
e. Prime Minister's Armenia Earthquake Relief Fund	Not applicable	100 per cent
f. Africa (Public Contributions - India) Fund	Not applicable	100 per cent
g. National Children's Fund	Not applicable	50 per cent
h. Indira Gandhi Memorial Trust	Not applicable	50 per cent
i. Rajiv Gandhi Foundation	Not applicable	50 per cent
j. National Foundation for Communal Harmony	Not applicable	100 per cent
k. A university or any other educational institute of national eminence as may be approved by the authority prescribed under section 80G(2)(*iiib*) [*see* para 242.4]	Not applicable	100 per cent
l. The Maharashtra Chief Minister's Relief Fund during October 1, 1993 and October 6, 1993 and the Chief Minister's Earthquake Relief Fund	Not applicable	100 per cent
m. Any fund set up by the Government of Gujarat for providing relief to victims of earthquake in Gujarat	Not applicable	100 per cent

Donee	*Maximum limit*	*Deduction (as a percentage of net qualifying amount)*
n. Zila Saksharta Samiti	Not applicable	100 per cent
o. National Blood Transfusion Council and State Councils for Blood Transfusion	Not applicable	100 per cent
p. Fund set up by a State Government for the medical relief to the poor	Not applicable	100 per cent
q. Central Welfare Fund of the Army and Air Force and the Indian Naval Benevolent Fund	Not applicable	100 per cent
r. Andhra Pradesh Chief Minister's Cyclone Relief Fund	Not applicable	100 per cent
s. National Illness Assistance Fund	Not applicable	100 per cent
t. Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund	Not applicable	100 per cent
u. National Sports Fund or National Cultural Fund or Fund for Technology Development and Application	Not applicable	100 per cent
v. Any other fund or any institution which satisfies conditions mentioned in section 80G(5)	As given below	50 per cent
w. Government or any local authority to be utilised for any charitable purpose other than the purpose of promoting family planning	As given below	50 per cent
x. Any authority referred to in section 10(*20A*) [*i.e.*, an authority constituted in India for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning/development of towns, villages, etc.]	As given below	50 per cent
y. A corporation specified in section 10(*26BB*) for promoting the interest of minority community	As given below	50 per cent
z. Government or any approved local authority, institution or association to be utilised for the purpose of promoting family planning	As given below	100 per cent
za. Any notified temple, mosque, gurdwara, church or other place (for renovation or repair)	As given below	50 per cent
zb. The Indian Olympic Association or to any other notified association or institution for the development of infrastructure for sports and games in India or the sponsorship of sports and games in India (deduction is available only if donation is given by a company)	As given below	100 per cent
zc. Any trust, institution or fund to which section 80G(5C) applies for providing relief to victims of earthquake in Gujarat (contribution can be made between January 26, 2001 and September 30, 2001)	Not applicable	100 per cent
zd. National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities	Not applicable	100 per cent

Maximum amount - Where the aggregate of the sums mentioned in (*v*), (*w*), (*x*), (*y*), (*z*), (*za*) or (*zb*) *supra* exceeds 10 per cent of the adjusted gross total income, the amount in excess of 10 per cent of the adjusted gross total income will be ignored while computing the aggregate of the sums in respect of which deduction is to be allowed.

242.3-1 ***PROOF OF PAYMENT*** - Proper proof of payment must be submitted to claim deduction — *Golecha Properties (P.) Ltd.* v. *CIT* [1988] 171 ITR 47 (Raj.).

▪ The following points should be noted—

1. Simply because a receipt which is produced before the Assessing Officer is defective (not affixed with revenue stamps) it does not automatically invalidate the donation itself — *Ecto Engg. Co. Ltd.* v. *ITO* [1987] 27 TTJ (Hyd.) 350.

2. A receipt issued by the donee-institute should be submitted to get the benefit of deduction. If, however, donations are made to the National Defence Fund, the Army Central Welfare Fund, Indian Naval Benevolent Fund, Air Force Central Welfare Fund, Prime Minister's National Relief Fund, the Chief Minister's Relief Fund, the Lieutenant Governor's Relief Fund through the employer by a consolidated cheque, deduction will be available on the basis of certificate issued by DDO/employer

in this behalf — Circular No. 777, dated July 1, 1999, Circular No. 782, dated November 13, 1999, *Circular No. 7/2001*, dated March 21, 2001 and **Circular No. 2/2005,** dated January 12, 2005.

242.3-2 *OTHER POINTS* - The following points should be noted—

1. In order to be eligible for deduction under section 80G, donations need not necessarily come out of income chargeable to tax and that too of the previous year concerned — ***Parkside Holdings Ltd.*** v. ***CIT*** [2003] 86 ITD 252 (Chennai).

2. The generic and the natural meaning of the word 'donation' is that a person gives money to another without any material return, voluntarily and without any consideration. Donation made for purpose of acquiring an engineering seat cannot be said to be donation coming within the qualifying net of section 80G — ***Manoj Kumar*** v. ***ITO*** [2003] SOT 412 (Hyd.).

3. Cheques issued on March 31, 2008 in respect of donations to trusts, even though realized on April 11, 2008, are treated as donations made during the accounting year ending on March 31, 2008 relevant to the assessment year 2008-09 — ***Parkside Holdings Ltd.*** v. ***CIT*** [2003] 86 ITD 252 (Chennai).

242.3-3 *DOUBLE DEDUCTION NOT PERMISSIBLE* - In a case where an assessee has claimed and has been allowed any deduction under this section in respect of any amount of donation, the same amount does not again qualify for deduction under any other provision of the Act for the same or any other assessment year. For example, where an assessee claims a deduction under section 80G in respect of any donation to a scientific research association or to be used for scientific research, he is not entitled to claim deduction in respect of the same donation under section 35. It is, however, open to him to claim deduction under section 35 instead of section 80G.

Moreover, it is not right to say that once a claim is made under section 80G, an alternative claim under section 37(1) is not permissible — *ITO* v. *Sandur Manganese & Iron Ores Ltd.* [1986] 18 ITD 9 (Bang.).

242.3-P1 *X (24 years), an Indian citizen, gives the following particulars of his income and expenditure for the previous year 2008-09 :*

	Rs.
Business income	*3,00,000*
Long-term capital gain on transfer of gold	*1,00,000*
Short-term capital gains on sale shares taxable under section 111A	*30,000*
Other short-term capital gain	*20,000*
Income from other sources (including interest from a bank deposit of Rs. 16,000)	*28,700*
Donation to the National Defence Fund	*24,000*
Donation to the Government of India for promotion of family planning	*27,700*
Donation to Prime Minister's National Relief Fund	*18,000*
Donation to Africa (Public Contributions - India) Fund	*5,000*
Donation to National Trust for Welfare of Persons with Autism	*7,000*
Donation to an approved charitable trust	*22,000*
Donation in kind to an approved charitable trust	*3,000*
Donation to an approved university	*7,500*
Payment of mediclaim insurance premium	*6,000*

Determine the net income of X for the assessment year 2009-10.

SOLUTION :

Business income	3,00,000
Capital gains	1,50,000
Income from other sources	28,700
Gross total income	4,78,700
Less : Deductions under sections 80C to 80U	
Under section 80D	6,000
Under section 80G [see Note 1]	92,485
Net income (rounded off)	3,80,220

Note :

1. Computation of deduction under section 80G :

	Gross qualifying amount Rs.	Net qualify-ing amount Rs.	Rate of deduction	Amount of deduction Rs.
National Defence Fund	24,000	24,000	100%	24,000
Prime Minister's National Relief Fund	18,000	18,000	100%	18,000
Africa (Public Contributions - India) Fund	5,000	5,000	100%	5,000
National Trust for Welfare of Persons with Autism	7,000	7,000	100%	7,000
Approved university	7,500	7,500	100%	7,500
Charitable trust (given in kind)	*Nil*	*Nil*	*NA*	*Nil*
Charitable trust (in cash)	22,000	6,570 [see Note 2]	50%	3,285
Government of India for promoting family planning	27,700	27,700 [see Note 2]	100%	27,700
Total	1,11,200	95,770	-	92,485

2. In respect of donation for family planning and approved charitable trust, amount to be included in net qualifying amount is the lower of (*a*) Rs. 49,700 (being amount of donation) or (*b*) Rs. 34,270 (being 10% of adjusted gross total income computed under Note 3). Rs. 34,270 (being the lower sum) is to be included. As the amount of Rs. 34,270 represents aggregate amount of net qualifying donations in respect of family planning and to charitable trust, separate amounts in respect of these will be as under :

	Rs.
Donation to the Government for promoting family planning	27,700
Donation to approved charitable institution (*i.e.*, Rs. 34,270 — Rs. 27,700)	6,570
	34,270

3. Adjusted gross total income

Gross total income	4,78,700
Less : Long-term capital gain	1,00,000
Less : Short-term capital gain under section 111A	30,000
Balance	3,48,700
Less : Amount of deductions under sections 80C to 80U (except section 80G)	6,000
Adjusted gross total income	3,42,700

242.3-P2 *From the following information, find out the net income and tax liability of X (28 years), a resident individual, for the assessment year 2009-10 —*

	Rs.
Salary	*3,69,000*
Business income	*(-) 32,000*
Capital gain	
Long-term	*50,000*
Short-term	*16,000*
Winning from horse races (gross)	*35,000*
Total	*4,38,000*

	Rs.
Mediclaim insurance on his own health	*6,250*
Contribution towards pension fund of LIC	*9,750*
Expenditure on medical treatment of a dependent relative (being a person with disability)	*10,000*
Deposit for maintenance of a dependent relative (being a person with disability)	*25,000*
Donation to the Government of India for family planning	*1,20,000*
Donation to the Central Welfare Fund of Indian army	*4,000*
Life insurance premium on the life of Mrs. X.	*21,000*

SOLUTION :

In this case, taxable income does not exceed Rs. 5,00,000. The maximum marginal rate of tax is 20% which is not more than the tax incidence on long-term capital gain. Therefore, it is better to set off business loss of Rs. 32,000 against long-term capital gain of Rs. 50,000. Consequently, long-term capital gain is reduced to Rs. 18,000.

Tax liability shall be determined as under —

	Rs.
Gross total income (which includes long-term capital gain of Rs. 18,000 and winnings from races of Rs. 35,000)	4,38,000
Less : Deductions under sections 80C to 80U	
Under section 80C	21,000
Under section 80CCC	9,750
Under section 80D	6,250
Under section 80DD [see Note 1]	50,000
Under section 80G [see Note 2]	37,300
Net income	3,13,700
Tax on net income	
Tax on winning from races [30% of Rs. 35,000]	10,500
Tax on income other than long-term capital gain [tax on (Rs. 3,13,700 — Rs. 35,000 — Rs. 18,000)]	11,070
Tax on long-term capital gain [20% of Rs. 18,000]	3,600
Tax	25,170
Add : Surcharge (not applicable in case net income does not exceed Rs. 10 lakh)	*Nil*
Add : Education cess	503
Add : Secondary and higher education cess	252
Tax payable (rounded off)	25,930

Notes :

1. The amount of deduction under section 80DD is Rs. 50,000 irrespective of the expenditure incurred or deposited.

2. *Deduction under section 80G* - First one has to compute adjusted gross total income which is as follows —

	Rs.
Gross total income	4,38,000
Less :	
Long-term capital gain	(-) 18,000
Amount of deduction under sections 80C to 80U (but not section 80G) [*i.e.*, Rs. 21,000 + Rs. 9,750 + Rs. 6,250 + Rs. 50,000]	(-) 87,000
Adjusted gross total income	3,33,000

Amount of deduction - It is determined as follows —

	Rs.
Donation for family planning [*i.e.*, maximum : Rs. 33,300, being 10% of adjusted gross total income; rate of deduction : 100%]	33,300
Donation to Central Welfare Fund of Indian army [no maximum ceiling, rate of deduction : 100%]	4,000
Total	37,300

242.4 ***Prescribed authority*** - For the purpose of section 80G(2)(*iiif*), the prescribed authority,—

a. in relation to a University or any non-technical institution of national eminence shall be the Director General (Income-tax Exemptions) who shall grant approval with the concurrence of the Secretary, University Grants Commission;

b. in relation to any technical institution of national eminence shall be the Director General (Income-tax Exemptions) who shall grant approval with the concurrence of the Secretary, All India Council of Technical Education.

Deduction in respect of rent paid [Sec. 80GG]

243. The provisions of section 80GG are given below :

243.1 ***Conditions*** - The following conditions should be satisfied—

243.1-1 *CONDITION ONE* - The taxpayer is an individual.

243.1-2 *CONDITION TWO* - The taxpayer is a self-employed person. Alternatively, the taxpayer is an employee but he does not get house rent allowance from the employer at any time during the previous year.

243.1-3 *CONDITION THREE* - The following persons should not own any residential accommodation at the place where the taxpayer resides, performs the duties of his office, or employment or carries on his business or profession—

a. the taxpayer;

b. his/her spouse;

c. his/her minor child (including minor step child and minor adopted child); and

d. the Hindu undivided family of which the taxpayer is a member.

243.1-4 *CONDITION FOUR* - If the taxpayer owns a residential accommodation at a place other than the place noted above, then in respect of that house the concession in respect of self-occupied property is not claimed by him [under section 23(2)(*a*) or 23(4)(*a*)].

243.1-5 *CONDITION FIVE* - The taxpayer files* a declaration in Form No. 10BA regarding the expenditure incurred by him towards payment of rent.

243.2 ***Amount of deduction*** - If the above five conditions are satisfied, the amount deductible under section 80GG is the least of the following three—

a. Rs. 2,000 per month ;

b. 25 per cent of total income [*see* para 243.2-1 for meaning of total income]; or

c. the excess of actual rent paid over 10 per cent of total income [*see* para 243.2-1 for meaning of total income].

243.2-1 *MEANING OF TOTAL INCOME FOR THE PURPOSE OF SECTION 80GG* - For the purpose of section 80GG, total income shall be calculated as follows—

*It is not possible to attach any declaration with new income-tax return forms. The assessee should himself retain the declaration in Form 10BA. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

Find out gross total income	xxxx
Less: Long-term capital gains	xxxx
Less: Short-term capital gains taxable under section 111A at the rate of 15 per cent	xxxx
Less: Income referred to in section 115A	xxxx
Less: Amount deductible under sections 80CCC to 80U (except section 80GG)	xxxx
Total income for the purpose of section 80GG	xxxx

243-P1 *Gross total income of X, a tax consultant based at Bombay, is Rs. 6,50,000 [professional income/salary : Rs. 6,00,000, interest on bank deposit : Rs. 50,000]. He pays Rs. 9,500 as mediclaim insurance premium deductible under section 80D and Rs. 80,000 as house rent. He deposits Rs. 24,000 in public provident fund. Compute his taxable income for the assessment year 2009-10.*

SOLUTION :

	Rs.
Professional income/salary	6,00,000
Interest on bank deposit	50,000
Gross total income	6,50,000
Less : Deductions under sections 80CCC to 80U	
Under section 80C	24,000
Under section 80D	9,500
Under section 80GG (computed as per details given below)	18,350
Under section 80L	*Nil*
Net income	5,98,150

Deduction under section 80GG is the least of the following : (a) Rs. 24,000 ; (b) Rs. 1,54,125 (being 25% of Rs. 6,16,500, *i.e.*, Rs. 6,50,000 – Rs. 24,000 – Rs. 9,500) ; or (c) Rs. 18,350 (being the excess of rent paid over 10% of total income of Rs. 6,16,500).

243-P2 *Continuing the problem 243-P1, how would you compute taxable income if X makes a donation of Rs. 95,000 to a notified charitable institution, an institution recognised under section 80G(5).*

SOLUTION :

		Rs.
Gross total income		6,50,000
Less : Deductions under sections 80C to 80U	Rs.	
Under section 80C	24,000	
Under section 80D	9,500	
Under section 80G* [see Note *infra*]	29,759	
Under section 80GG* [see Note *infra*]	21,326	
Under section 80L	*Nil*	84,585
Net income		5,65,420

*Computation of deduction under section 80G depends upon adjusted gross total income [*i.e.*, gross total income *minus* deduction under sections 80C to 80U (except sec. 80G)]. Therefore, one has to compute the amount deductible under sections 80C, 80D and 80GG. Though the amount deductible under sections 80C and 80D is Rs. 33,500, amount of deduction under section 80GG depends upon 25% and 10% of total income (before making any deduction under section 80GG). In other words, deduction under section 80GG cannot be ascertained unless one knows the amount of deduction under section 80G. Thus, computation of deduction under section 80G depends upon the amount deductible under section 80GG and *vice versa*.

Let us assume that the deduction under section 80GG is x. The maximum qualifying donation under section 80G would be Rs. 61,650 *minus* .1 x [*i.e.*, 10% of (Rs. 6,50,000, being gross total income *minus* Rs. 24,000, being deduction under section 80C *minus* Rs. 9,500, being deduction under section 80D *minus* x, being deduction under section 80GG)]. The deductible amount under section 80G will, therefore, be Rs. 30,825—0.05x [being 50% of (Rs. 61,650—.1x)].

The admissible deduction under section 80GG will be the least of (a) Rs. 24,000; (b) Rs. 1,46,419+0.0125x [being 25% of (Rs. 6,50,000—Rs. 24,000—Rs. 9,500—Rs. 30,825+0.05x)]; (c) Rs. 21,433—.005x [being the excess of rent paid, *i.e.*, Rs. 80,000, over 10% of (Rs. 6,50,000— Rs. 24,000—Rs. 9,500—Rs. 30,825+0.05x)]. Rs. 21,433—0.005x, being the least of three, is the amount deductible under section 80GG, which is equal to x.

Therefore, x = Rs. 21,433—0.005x = Rs. 21,326.

Hence, the deduction under section 80GG is Rs. 21,326 and under section 80G is Rs. 29,759 (*i.e.*, Rs. 30,825 — 0.05x).

Deduction in respect of certain donations for scientific research or rural development [Sec. 80GGA]

244. An assessee (other than an assessee whose gross total income includes income chargeable under the head "Profits and gains of business or profession") is entitled to deduction in the computation of his total income in respect of the following payments/donations* :

- Sum paid to a scientific research association which has as its object the undertaking of scientific research, or to a university, college or other institution to be used for scientific research where such association, university, college or institution has been approved by the prescribed authority for the purpose of section 35(1)(*ii*).
- Sum paid to a university, college or other institution to be used for research in social science or statistical research provided such university, college or institution is approved for the purposes of section 35(1)(*iii*).
- Sum paid to an approved association or institution which has as its object the undertaking of any programme of rural development to be used for the purposes of carrying out any programme of rural development approved for the purposes of section 35CCA provided the assessee furnishes the certificate referred to in section 35CCA(2).
- Sum paid to an approved association or institution which has as its object the training of persons for implementing programmes of rural development provided the assessee furnishes a certificate referred to in section 35CCA(2A).
- Sum paid to a public sector company, local authority or an approved association or institution for carrying out any eligible project or scheme, referred to in section 35AC provided the assessee furnishes a certificate referred to in section 35AC(2)(*a*).
- Sum paid to the National Fund for Rural Development set up and notified by the Central Government for the purpose of carrying out rural development.
- Sums paid to the notified National Urban Poverty Eradication Fund.

244.1 ***Double deduction not permissible*** - Where deduction under this section is claimed and allowed, deduction will not be allowed in respect of the same payment under any other provision of the Act for the same or any other assessment year.

244-P1 *During the previous year 2008-09, X makes the following contributions : (a) contribution to an approved scientific research association for carrying out research in natural science : Rs. 6,000 and (b) contribution to National Fund for Rural Development : Rs. 7,000. Determine the taxable income of X if he is (a) salaried employee, drawing Rs. 60,000 as taxable salary, or (b) a businessman whose income from business (without deducting the aforesaid payment) is Rs. 60,000.*

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*With effect from the assessment year 2006-07, deduction available under section 80GGA shall not be denied merely on the ground that after the contribution made by the assessee to above institutions, the approval granted to these institutions have been withdrawn. In other words, contribution to these institutions will be qualified for deduction even if after the date of making contribution, the approval granted to these institutions have been withdrawn.

SOLUTION :

	Salaried employee Rs.	Business-man Rs.
Salary	60,000	—
Income from business : Rs. 60,000		
Less : Deductions under sections 80C to 80U		
Under section 35 : Rs. 6,000 × 1.25		
Under section 35CCA : Rs. 7,000	—	45,500
Gross total income	60,000	45,500
Less : Deduction under section 80GGA (*Rs. 6,000 + Rs. 7,000, **Not available in the case of an assessee where income includes income chargeable under the head "Profits and gains of business or profession")	13,000*	*Nil* **
Net income	47,000	45,500

Deduction in respect of contributions given by companies to political parties [Sec. 80GGB]

245. In computing the total income of an Indian company, any sum contributed by it (in the previous year) to any political party is deductible.

The word "contribute" has the meaning assigned to it under section 293A of the Companies Act, 1956. Political party means any political party registered under section 29A of the Representation of the People Act, 1951.

Deduction in respect of contributions given by any person to political parties [Sec. 80GGC]

246. In computing the total income of an assessee (not being local authority and every artificial juridical person wholly or partly funded by the Government), any amount of contribution made by him (in the previous year) to a political party is deductible.

"Political party" means a political party registered under section 29A of the Representation of the People Act, 1951.

Deduction in respect of profits and gains from projects outside India [Sec. 80HHB]

247. No deduction under section 80HHB is available from the assessment year 2005-06 onwards.

Deduction in respect of profits and gains from housing projects aided by World Bank [Sec. 80HHBA]

248. No deduction under section 80HHBA is available from the assessment year 2005-06 onwards.

Tax incentives for exports [Sec. 80HHC]

249. No deduction under section 80HHC is available from the assessment year 2005-06 onwards.

Deduction in respect of earnings in convertible foreign exchange [Sec. 80HHD]

250. No deduction under section 80HHD is available from the assessment year 2005-06 onwards.

Deduction in respect of profit from export of computer software [Sec. 80HHE]

251. No deduction under section 80HHE is available from the assessment year 2005-06 onwards.

Deduction in respect of profits and gains from export or transfer of films software [Sec. 80HHF]

252. No deduction under section 80HHF is available from the assessment year 2005-06 onwards.

Deduction in respect of profits and gains from industrial undertaking or enterprises engaged in infrastructure development etc. - How to find out [Sec. 80-IA]

253. Deduction under section 80-IA is available only to the following undertakings† :

Case 1	Provision of infrastructure facility	*See* para 253.1
Case 2	Telecommunication services	*See* para 253.2
Case 3	Industrial parks	*See* para 253.3
Case 4	Power generation, transmission and distribution or substantial renovation and modernisation of existing distribution lines	*See* para 253.4
Case 5	Undertaking set up for reconstruction of a power unit	*See* para 253.5
Case 6	(From the assessment year 2008-09 onwards) a cross-country natural gas distribution network	*See* para 253.6

253.1 ***Infrastructure facility*** - The provision of section 80-IA (as applicable to an undertaking providing infrastructure facility) are given below —

253.1-1 *CONDITIONS* - An undertaking providing infrastructure facility must satisfy the following conditions —

Condition 1	It should provide infrastructure facility	*See* para 253.1-1a
Condition 2	It should be owned by an Indian company	*See* para 253.1-1b
Condition 3	There should be an agreement with the Central Government	*See* para 253.1-1c
Condition 4	It should start operation on or after April 1, 1995	*See* para 253.1-1d
Condition 5	Return of income should be submitted on or before due date of submission of return of income	*See* para 253.1-1e

253.1-1a IT SHOULD PROVIDE INFRASTRUCTURE FACILITY - The enterprise must carry on the business of (*a*) developing, or (*b*) maintaining and operating, or (*c*) developing, maintaining and operating any infrastructure facility. It is not ncessary that the entire infrastructure project is to be developed by one enterprise—***Patel Engineering Ltd.*** v. ***CIT*** [2004] 84 TTJ (Mum.) 646.

If an assessee is engaged in developing infrastructure facility (*i.e.*, road) but not engaged in "operating and maintaining" said facility, it can claim the benefits of deduction under section 80-IA—***CIT*** v. ***Bharat Udyog Ltd.*** [2008] 24 SOT 412 (Mum.).

253.1-1a[1] *Meaning of "infrastructure facility"* - The Finance Act, 2001, has modified the definition of "infrastructure facility". Under the modified version, the term "infrastructure facility" from the assessment year 2002-03 means —

†However, deduction under section 80-IA is not available to a person who executes a works contract entered into with the undertaking or enterprise given above.

a. a road including toll road, a bridge or a rail system;

b. a highway project including housing or other activities being an integral part of the highway project;

c. a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

d. a port, airport, inland waterway or inland port†; and

e. (from the assessment year 2008-09) navigational channel in the sea.

■ *BOT/BOOT scheme* - If a taxpayer begins operating and maintaining an infrastructure facility on Build-Operate-Transfer (BOT) or on Build-Own-Operate-Transfer (BOOT) basis, then section 80-IA deduction is available if other conditions are satisfied.

■ *BOLT scheme of Indian Railways* - Indian Railways have formulated a Build-Own-Lease-Transfer (BOLT) Scheme. Under this scheme, a private enterprise will provide the necessary and crucial components of a railway system, own them for a stipulated period but will not maintain or operate the same. Instead, the enterprise will lease the asset (only necessary and crucial components of a railway system) back to Indian Railways for maintenance and operation, and shall ultimately transfer it to Indian Railways. The private enterprise can claim the benefit of deduction under section 80-IA in respect of infrastructure facility meant for development of rail system and not to any other infrastructure facility including rolling stocks— Circular No. 733, dated January 3, 1996.

■ *Structures at port* - Structures at ports for storage, loading and unloading etc., will be included in the definition of "port" if the concerned port authority has issued a certificate that the said structures form part of the port—**Circular No. 10/2005**, dated December 10, 2005.

■ *Treatment of effluents* - Under the treatment of effluents and its conveyance system, the effluents emanating from chemical industries are to be conveyed inside the sea through onshore pipeline and before discharging effluent through pipeline, entire load of effluent is to be treated to marine standards. Therefore, it is a part of 'water treatment system' and would accordingly, qualify as an infrastructure facility for the purposes of tax benefit under section 80-IA—**Circular No. 1/2006**, dated January 12, 2006.

253.1-1b OWNED BY AN INDIAN COMPANY - The enterprise is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act.

253.1-1c AGREEMENT - The enterprise has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing, maintaining and operating a new infrastructure facility.

253.1-1d COMMENCEMENT - The enterprise starts operating and maintaining the infrastructure facility on or after April 1, 1995.

253.1-1e RETURN OF INCOME - Return of income should be submitted on or before the due date of submission of return of income given by section 139(1)‡. If return is not submitted or return is submitted belatedly, deduction under this section is not available.

253.1-2 ***AMOUNT OF DEDUCTION*** - If all the aforesaid conditions are satisfied, then 100 per cent of the profit is deductible for the first 10 years. The deduction commences from the initial assessment year [*see* also paras 253.1-2a and 253.1-2b].

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†The definition of 'infrastructure facility', introduced with effect from April 1, 2002 excludes 'any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette'. Under the earlier provisions, several public facilities have already been notified by the Board as 'infrastructure facilities'. In this connection, a need has been felt to clarify doubts as to whether such notified "infrastructure facilities" would continue to be eligible for such benefit on or after April 1, 2002. The Board has clarified that such projects, for which agreements have been entered into on or after April 1, 1995 but on or before March 31, 2001 and which have been notified by the Board on or before March 31, 2001, would continue to be exempt, subject to the fulfilment of the conditions prescribed in section 80-IA(4)(*i*)(*b*), as it existed prior to its substitution by the Finance Act, 2001—Circular No. 7/2002, dated August 26, 2002.

‡*See* para 353.3.

253.1-2a WHAT IS INITIAL ASSESSMENT YEAR - Initial assessment year, for this purpose, means the assessment year specified by the assessee at his option to be the initial year. But it does not fall beyond the fifteenth* assessment year starting from the previous year in which the enterprise begins operating and maintaining the infrastructure facility.

However, the benefit of deduction is available only for 10 consecutive assessment years falling within a period of fifteenth* assessment years beginning with the assessment year in which an assessee begins operating and maintaining infrastructure facility.

Provisions illustrated - A company which begins operating and maintaining an infrastructure facility (being inland port project) during the previous year 2008-09 may choose the initial assessment year as follows —

Initial assessment year as selected by the assessee	*Assessment years for which 100 per cent deduction is available under section 80-IA*
1	2
Option 1 : 2009-10	2009-10 to 2018-19
Option 2 : 2010-11	2010-11 to 2019-20
Option 3 : 2011-12	2011-12 to 2020-21
Option 4 : 2012-13	2012-13 to 2021-22
Option 5 : 2013-14	2013-14 to 2022-23
Option 6 : 2014-15	2014-15 to 2023-24
Option 7 : 2015-16	2015-16 to 2023-24
Option 8 : 2016-17	2016-17 to 2023-24
Option 9 : 2017-18	2017-18 to 2023-24
Option 10 : 2018-19	2018-19 to 2023-24
Option 11 : 2019-20	2019-20 to 2023-24
Option 12 : 2020-21	2020-21 to 2023-24
Option 13 : 2021-22	2021-22 to 2023-24
Option 14 : 2022-23	2022-23 and 2023-24
Option 15 : 2023-24	2023-24

A taxpayer may select any one of the aforesaid options. However, *options 7 to 15* should be avoided as deduction under these options will be lower than that of *option 6*.

253.1-2b HOUSING AND OTHER DEVELOPMENT ACTIVITIES WHICH ARE INTEGRAL PART OF HIGHWAY PROJECT - By virtue of section 80-IA(6), the quantum of deduction mentioned in para 253.1-2 is not applicable in the case of an undertaking which is engaged in providing housing and other development activities. Section 80-IA(6) is applicable if the following conditions are satisfied :

1. Housing or other activities are an integral part of the highway project.

2. Profits are computed on such basis and manner as may be prescribed [*see* para 253.1-2b[1]].

3. Such profit is not liable to tax where the profit has been transferred to a special reserve account. Later on the reserve account should be actually utilised for highway project excluding housing and other activities but before the expiry of 3 years following the previous year in which such amount was transferred.

4. The amount remaining unutilised shall be chargeable to tax as income of the year in which transfer to reserve account took place.

5. Every assessee should maintain separate books of account of the aforesaid activities and shall submit† a certificate in Form No. 10CCC from a chartered accountant.

*"Twentieth" if the "infrastructure facility" is a highway project including housing or other activities being an integral part of the highway project and (from the assessment year 2002-03 onwards) road including toll road, a bridge or a rail system or a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system.

†It is not possible to attach any certificate with new income-tax return forms. The assessee should himself retain the certificate in Form No. 10CCC. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

253.1-2b[1] *How to compute profit of housing and other activities which are integral part of highway project*- The profits of housing or other activities, which are integral part of a highway project, shall be computed on the basis and manner specified below :

a. in a case where the annual profits of the housing or other activities which are integral part of a highway project can be arrived at in accordance with the regular method of accounting followed, the profits so arrived at as computed under the provisions of the Act ; or

b. in any other case, the amount of profits arrived at based on the percentage of completion of the activities referred to above during the relevant previous year.

Provisions illustrated - X Ltd. has constructed a hotel on Delhi Agra highway. Profit from the hotel construction for the previous year 2008-09 is Rs. 80 lakh which is transferred to a special reserve account and, consequently, it is not chargeable to tax. The special reserve account shall be utilised up to March 31, 2012 for highway projects but excluding housing and other activities. If suppose only Rs. 70 lakh is utilised for highway projects up to March 31, 2012, then the unutilised amount of Rs. 10 lakh is taxable for the previous year 2008-09 (*i.e.*, the assessment year 2009-10).

253.1-3 *OTHER POINTS* - One should also keep in view the following points —

253.1-3a AUDIT REPORT - The deduction under section 80-IA or 80-IB is admissible only if the accounts of the undertaking have been audited by a chartered accountant, and the audit report duly signed and verified by such accountant is furnished along with the return of income* (Form No. 10CCB).

The following points one should also keep in mind :

- The words "along with" merely mean that the audit report should also be furnished so that it is available to the Assessing Officer at the time of the assessment. In other words, if audit report is not filed along with return of income but it is made available to the Assessing Officer before completion of assessment, the benefit under section 80-IA or 80-IB cannot be denied—*CIT* v. *Trehan Enterprises* [2000] 108 Taxman 189 (J & K), *CIT* v. *Panama Chemical Works* [2000] 245 ITR 684 (MP), *Amber Sales Mfg. Corpn.* v. *ITO* [1984] 19 TTJ (Chd.) 177, *Mahalaxmi Rice Factory* v. *ITO* [1983] 5 ITD 238 (Chd.), *Gujarat Oil & Allied Industries* v. *ITO* [1982] 2 ITD 454 (Ahd.). If audit report is not submitted along with original return, but it is submitted along with return filed in pursuance of notice under section 148, deduction under section 80-IA cannot be denied—*Hemsons Industries* v. *ITO* [1987] 23 ITD 364 (Hyd.).
- A separate report is to be furnished* by each undertaking or enterprise of the assessee claiming deduction under section 80-IA or 80-IB or 80-IC and shall be accompanied by the Profit and Loss Account and Balance Sheet of the undertaking or enterprise as if the undertaking or the enterprise were a distinct entity.
- In the case of an enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining an infrastructure facility, the audit report in Form 10CCB shall be accompanied† by a copy of the agreement of the enterprise with the Central Government or the State Government or the local authority for carrying on the business of developing or operating and maintaining or developing, operating and maintaining the infrastructure facility.
- In any other case, the audit report in Form 10CCB shall be accompanied by a copy of the agreement, approval or permission, as the case may be, to carry on the activity signed or issued by the Central Government or the State Government or the local authority for carrying on the eligible business—*Notification No. 240/2002,* dated September 6, 2002.

253.1-3b DOUBLE DEDUCTION NOT POSSIBLE - Where an amount of profits and gains of an industrial undertaking, is claimed and allowed as deduction under section 80-IA, the profits to that extent shall not qualify for deduction for any assessment year under any other provision of Chapter VIA and in no case shall exceed the eligible profit of the industrial undertaking, as the case may be.

253.1-3c COMPUTATION OF PROFIT - While computing profit eligible for deduction under section 80-IA, the following guiding principles one has to keep in mind :

*It is not possible to attach any report, agreement or approval with new income-tax return forms. The assessee should himself retain the report, agreement or approval. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

1. The deduction has to be strictly construed, and the language of the enactment prevents the extension of the benefits to income which is merely incidental or ancillary to the industrial undertaking but which does not arise from and out of it—*CIT* v. *Standard Motor Products of India Ltd.* [1962] 46 ITR 814 (Mad.). The real test is whether the business carried on by the assessee through the non-industrial unit is essential to the subsistence of the industrial undertaking of the assessee—*Industrial Gases Ltd.* v. *CIT* [1965] 58 ITR 317 (Cal.).

2. In the case of composite business, relief is confined only to profits of industrial undertaking—*Ashok Motors Ltd.* v. *CIT* [1961] 41 ITR 397 (Mad.).

3. Interest on fixed deposits made out of accumulated profits and reserves is income derived from industrial undertaking for deduction—*Pondicherry Distilleries Ltd.* v. *ITO* [1984] 8 ITD 39 (Mad.).

4. Income voluntarily disclosed under the Amnesty Scheme can be said to have been derived from the industrial undertaking, in the absence of any evidence to the contrary brought on record by the revenue and thus, eligible for deduction—*Kashmir Steel Rolling Mills* v. *Dy. CIT* [1991] 55 Taxman 424 (Asr.).

5. Cash compensatory assistance and duty drawbacks received from Government by a newly established industrial undertaking constitute income/profit derived from undertaking and are eligible for relief—*India Gelatine & Chemicals Ltd.* v. *ITO* [1989] 45 Taxman 22 (Ahd.) (Tax.-Mag.).

6. Where installation and after sale services are inextricably linked with manufacturing of equipments, service charges received thereon cannot be disentitled from benefit of section 80-IA or 80-IB—***CIT*** v. ***Unitherm Engineers (P.) Ltd.*** [2004] 141 Taxman 38 (Mum.)

7. Income from sale of empty drums/containers and sale of useless materials cannot be ignored as it is closely and directly connected with the outcome of manufacturing process itself and there is a direct nexus between sale of those items and carrying on of business of industrial undertaking—***CIT*** v. ***Maxcare Laboratories Ltd.*** [2005] 142 Taxman 25 (Ctk.)

253.1-3d ADJUSTMENT OF LOSSES - Section 80-IA(5) provides that for the purpose of determining the quantum of deduction under section 80-IA for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, the profits and gains from the eligible business shall be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

For instance, X Ltd. owns two undertakings : A (eligible for the purpose of section 80-IB) and B (not eligible for the purpose of section 80-IB). Date of commencement of production in the two cases is : December 10, 1999. Profit made by the two units is as follows :

(Rs. in lakh)

	Unit A	*Unit B*	*Gross total income*	*Carried forward of loss to the next year*
Asst. year 2000-01	(-) 5	(-) 2	*Nil*	(-) 7
Asst. year 2001-02	(-) 12	1	*Nil*	(-) 18
Asst. year 2002-03	(-) 8	5	*Nil*	(-) 21
Asst. year 2003-04	(-) 3	17	*Nil*	(-) 7
Asst. year 2004-05	(-) 1	21	13	*Nil*
Asst. year 2005-06	4	6	10	*Nil*
Asst. year 2006-07	19	12	31	*Nil*
Asst. year 2007-08	14	13	27	*Nil*
Asst. year 2008-09	16	18	34	*Nil*
Asst. year 2009-10	19	(-) 7	12	*Nil*

In the aforesaid case, the "initial previous year" is the previous year 1999-2000 (*i.e.*, the year in which production was started). However, no deduction is available under section 80-IB till the assessment year 2004-05 as income from Unit A is negative. The entire loss of Unit A has been set off under sections 70 and 72 till the assessment year 2004-05. There is no loss brought forward from earlier years for the assessment year 2005-06 (or subsequent year).

However, to compute profit eligible for tax holiday under section 80-IA, it is assumed that unit A is the only unit owned by X Ltd. Consequently, deduction will be available as under :

(Rs. in lakh)

	Asst. year 2005-06	*Asst. year 2006-07*	*Asst. year 2007-08*	*Asst. year 2008-09*	*Asst. year 2009-10*
Profit of Unit A	4	19	14	16	19
Profit of Unit B	6	12	13	18	(-) 7
Gross total income (*a*)	10	31	27	34	12
Less : Deduction under section 80-IB in respect of Unit A					
Current year profit of Unit A	4	19	14	16	19
Less : Notionally brought forward loss from earlier years	-29	-25	-6	*Nil*	*Nil*
Balance	-25	-6	8	16	19
Deduction under section 80-IB (it is assumed that deduction is available @ 100%) (*b*)	*Nil*	*Nil*	8	16	19
Net income [(*a*) — (*b*)]	10	31	19	18	(-)7

It may be noted that for the assessment year 2009-10 profit of Unit A for the purpose of deduction under section 80-IB will not be reduced by the loss incurred in Unit B.

The aforesaid example explains the provisions regarding deduction available under section 80-IB in cases where in the initial assessment year (and in a few subsequent years) the eligible unit incurs loss. Under section 80-IB (and also under sections 80-IC, 80-ID and 80-IE), the first year in which production is started, is taken as initial previous year. The concept explained with the help of above example is, therefore, equally applicable in sections 80-IC, 80-ID and 80-IE.

Under sections 80-IA and 80-IAB, however, initial assessment year may be selected by the assessee (it may be the first year of commencement of activity or a subsequent year as selected by the assessee for the purpose of claiming deduction under sections 80-IA or 80-IAB). Deduction under sections 80-IA and 80-IAB is available from the initial assessment year (selected by the assessee) and not from the first year in which the business was commenced. In such cases, the concept of adjustment of losses discussed above requires some modification which is explained with the help of another example as follows—

Y Ltd. owns a power generating unit (eligible for deduction under section 80-IA). The business of power generating was started during the financial year 1999-2000. However, the company is in the business of manufacturing of chemicals since 1970. The following data is available from income-tax records of the company -

Previous years	*Income from power generating unit Rs. (in lakh)*	*Income from chemical manufacturing Rs. (in lakh)*	*Interest income taxable under section 56 Rs. (in lakh)*
1999-00	(-) 4010	2870	-
2000-01	(-) 4120	9580	-
2001-02	(-) 3570	3740	-
2002-03	(-) 2730	2500	-
2003-04	(-) 102	1800	-
2004-05	(-) 92	3700	-
2005-06	70	3810	-
2006-07	(-) 10	4020	-
2007-08	4060	5310	800
2008-09	6080	(-) 210	800
2009-10	7010	7600	800

Y Ltd. is entitled for deduction under section 80-IA at the rate of 100 per cent profit from the activity of power generation. This tax holiday will be available for 10 years. Section 80-IA(2) permits deduction, at the option of assessee, for any ten consecutive assessment years out of fifteen years beginning from the year in which the

activity of power generation was commenced. As there is no profit before March 31, 2005, the company has opted for the previous year 2005-06 as the initial previous year for the purpose of claiming the benefit of deduction under section 80-IA.

Since in this case, the initial previous year is the previous year 2005-06, the provisions of section 80-IA will be applicable only from the previous year 2005-06. In other words, from the previous year 2005-06, it will be assumed that only source of income of Y Ltd. is income from generation of power for the purpose of computing the quantum of deduction available under section 80-IA. To put it differently, losses pertaining to the previous year prior to 2005-06 will not be taken into consideration for calculating the amount of deduction under section 80-IA which is available from the previous year 2005-06 onwards—***Mohan Breweries & Distilleries Ltd.*** v. ***CIT*** [2008] 23 SOT 32 (Chennai)(URO). The taxable income of the Y Ltd. for different assessment years will be as follows—

Previous years	*Assessment years*	*Income from power generating unit* Rs. (in lakh)	*Income from chemical manufacturing* Rs. (in lakh)	*Adjustment of brought forward losses under section 72* Rs. (in lakh)	*Gross total income* Rs. (in lakh)	*Deduction under section 80-IA* Rs. (in lakh)	*Total income* Rs. (in lakh)
1999-00	2000-01	(-) 4010	2870	-	-	-	*Nil*
2000-01	2001-02	(-) 4120	9580	(-) 1140	4320	-	4320
2001-02	2002-03	(-) 3570	3740	-	170	-	170
2002-03	2003-04	(-) 2730	2500	-	-	-	*Nil*
2003-04	2004-05	(-) 102	1800	(-) 230	1468	-	1468
2004-05	2005-06	(-) 92	3700	-	3608	-	3608
2005-06	2006-07*	70	3810	-	3880	70	3810
2006-07	2007-08	(-) 10	4020	-	4010	-	4010
2007-08	2008-09	4060	5310	-	10170**	4050***	6120
2008-09	2009-10	6080	(-) 210	-	6670**	6080	590
2009-10	2010-11	7010	7600	-	15410**	7010	8400

*Initial assessment year

**Includes interest income of Rs. 800 lakh taxable under section 56

***It is after adjusting (notionally) the loss of Rs. 10 lakh pertaining to the earlier year.

253.1-3e POWER OF THE ASSESSING OFFICER TO RECOMPUTE PROFIT - The Assessing Officer has the power to recompute profit in the following two situations—

- *Transfer between two businesses/units owned by the taxpayer* - The following conditions should be satisfied—

1. The taxpayer carries on two or more businesses. At least one of them is qualified for deduction under section 80-IA/80-IB.

2. From the business which is eligible for deduction under section 80-IA/80-IB, some goods are transferred to any other business carried on by the taxpayer which is not eligible for deduction under section 80-IA/80-IB, or *vice versa.*

3. The consideration for such transfer, which is recorded in the books of account, is not equal to market value of such goods on the date of transfer. The expression 'market value' means the price that such goods or services would ordinarily fetch in the open market. Where, however, the price is fixed between a buyer and a seller in a negotiation done under the shadow of legislatively mandated compulsion, the price so determined cannot be "market value"—***CIT*** v. ***Jindal Steel & Power Ltd. (Delhi)*** [2007] 16 SOT 511 (Delhi).

When the aforesaid conditions are satisfied, the Assessing Officer will recompute profits of the business qualified for deduction under section 80-IA/80-IB as if the transfer in either case had been made at the market value of the goods on the date of transfer.

Provisions illustrated - X Ltd. has two undertakings - Unit A (which is eligible for deduction @ 100 per cent under section 80-IA/80-IB) and Unit B (which is not eligible for a similar deduction). Goods are transferred from Unit A to

Unit B. For accounting purposes, the transaction is recorded at a price, which is higher than market value. Consequently, the accounting profit of Unit A has increased (which is not chargeable to tax because of 100 per cent deduction under section 80-IA/80-IB) and the profit of Unit B has been reduced (which is taxable at regular rates). To check this practice, the Assessing Officer has the power to recalculate the profit as if the transaction is recorded at the market value.

- *Transfer by the assessee to any other person* - The following conditions should be satisfied—

1. The taxpayer (eligible for deduction under section 80-IA/80-IB) has some business transactions with any other person.

2. The business transaction is so arranged that the business transacted between them produces to the taxpayer more than the ordinary profits that might be expected to arise in such eligible business.

3. This is due to close connection between the taxpayer and the other person or due to any other reason.

If the aforesaid conditions are satisfied, the Assessing Officer shall (in computing the profits of the business eligible for deduction under section 80-IA/80-IB for the purpose of deduction under that section) take the amount of the profits as may be reasonably deemed to have been derived therefrom.

Provisions illustrated - X Ltd. has an undertaking which is eligible for deduction @ 100 per cent under section 80-IA/80-IB. Y Ltd. is not eligible for a similar deduction. Goods are purchased by X Ltd. from Y Ltd. at a price which is lower than market value. Consequently, the accounting profit of X Ltd. has increased (which is not chargeable to tax because of 100 per cent deduction under section 80-IA/80-IB) and the profit of Y Ltd. has been reduced (which is taxable at regular rates). The aggregate tax bill of the two companies has been reduced. The two-companies are controlled by the same group. To check this practice, the Assessing Officer has the power to recalculate the amount of profits as may be reasonably deemed to have been derived therefrom.

253.1-3f CONSEQUENCES OF MERGER/AMALGAMATION - If a company which is entitled for deduction under section 80-IA is amalgamated/demerged with another company (before claiming tax holiday for 10 years), the amalgamated company/resulting company can avail the benefit under section 80-IA for the unexpired period of tax holiday (including the previous year in which amalgamation/demerger takes place. However, this facility is available only when transferor-company and transferee-company are Indian companies.

- The aforesaid benefit in the case of section 80-IA is available only when amalgamation/demerger takes place before April 1, 2007.
- The aforesaid benefit in the case of sections 10A, 10AA, 10B, 80-IAB, 80-IB, 80-IC and 80-IE is available irrespective of date of amalgamation or demerger (or even if date of amalgamation/demerger is on or after April 1, 2007).

253.1-3g CONSEQUENCES OF TRANSFER OF UNDERTAKING - These provisions are given below—

1. An infrastructure facility is transferred on or after April 1, 1999.

2. It is transferred by an enterprise which developed such infrastructure facility (*i.e.*, transferor enterprise).

3. It is transferred to another enterprise (*i.e.*, transferee enterprise).

4. It is transferred for the purpose of operating and maintaining the infrastructure facility on behalf of the transferor.

5. It is transferred in accordance with the agreement with the Central Government, State Government, local authority or statutory body.

If the above conditions are satisfied, deduction under section 80-IA shall be available to the transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

253.2 *Telecommunication services* - An industrial undertaking which provides telecommunication service can claim deduction under section 80-IA—

253.2-1 *CONDITIONS* - The following conditions should be satisfied—

Condition 1	It should be a new undertaking	*See* para 254.4-1a
Condition 2	It should not be formed by transfer of old plant and machinery	*See* para 254.4-1b
Condition 3	The activity should commence during the specified period given below	—
Condition 4	Return of income should be submitted on or before due date of submission of return of income	—

An undertaking is engaged in providing telecommunication services. It should starts providing telecommunication services (whether basic* or cellular, including radio paging, domestic satellite service, network of trunking, broad-band network and internet services) at any time after March 31, 1995 but before March 31, 2005 is eligible for deduction under section 80-IA. "Domestic satellite" for this purpose means a satellite owned and operated by an Indian company for providing telecommunication service.

253.2-2 ***AMOUNT OF DEDUCTION*** - If all the aforesaid conditions are satisfied, then deduction is available under section 80-IA as follows —

Assessee-enterprises	*% of profit deductible*	*Period of deduction commencing from the initial assessment year*
❑ Owned by a company or any other person	100 30	First 5 years Next 5 years

253.2-2a INITIAL ASSESSMENT YEAR - Initial assessment year means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking begins providing telecommunication services [*see* para 253.1-2a for a detailed study].

253.2-3 ***OTHER POINTS*** - One should also keep in view the following points —

1. Audit report [*see* para 253.1-3a].

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

253.3 ***Industrial parks/special economic zone†*** - An undertaking which develops and operates industrial park or special economic zone must satisfy the following conditions in order to avail the benefit of section 80-IA —

Condition 1	It develops, develops and operates or maintains and operates an industrial park or a special economic zone (notified for this purpose in accordance with any scheme framed and notified by the Central Government).
Condition 2	The industrial park must start operating during April 1, 2006 and March 31, 2009 and it should be notified by the Central Government** under the Industrial Park Scheme, 2008 or the special economic zone must start operating during April 1, 1997 and March 31, 2005.
Condition 3	Return of income should be submitted on or before due date of submission of return of income.

253.3-1 ***AMOUNT OF DEDUCTION*** - If all the aforesaid conditions are satisfied, 100 per cent of profit is deductible for 10 years commencing from initial assessment year.

253.3-1a INITIAL ASSESSMENT YEAR - Initial assessment year means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking begins operating developing industrial park [*see* para 253.1-2a for a detailed study].

*In the context of an ordinary user, basic telecommunication service means the services provided directly to an end customer—***Videsh Sanchar Nigam Ltd.** v. ***CIT*** [2007] 16 SOT 547 (Mum.)

†*See* also para 253A.

**For procedure for approval, *see* Notification No. 3/2008, dated January 8, 2008.

253.3-3 *OTHER POINTS* - One should also keep in view the following points —

1. Audit report [*see* para 253.1-3a].

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

6. Where an undertaking develops an industrial park on or after April 1, 1999 or a special economic zone on or after April 1, 2001 and transfers the operation and maintenance of such industrial parks or special economic zone to another undertaking (*i.e.*, transferee undertaking), the deduction shall be allowed to such transferee undertaking for the remaining period (*i.e.*, within in the ten consecutive assessment years in a manner as if the operation and maintenance were not so transferred to the transferee undertaking).

253.4 ***Power generation/distribution*** - An industrial undertaking which generates/distributes power can claim deduction under section 80-IA.

253.4-1 CONDITIONS - The following conditions should be satisfied :

Condition 1	It should be a new undertaking	*See* para 253.4-1a
Condition 2	It is set up in any part of India for the generation or generation and distribution of power	*See* para 253.4-1b
Condition 3	It should not be formed by transfer of old plant and machinery	*See* para 253.4-1c
Condition 4	The activity should commence during the specified period	*See* para 253.4-1d
Condition 5	Return of income should be submitted on or before due date of submission of return of income	*See* para 253.4-1e

253.4-1a IT SHOULD BE A NEW UNDERTAKING - The industrial undertaking is not formed by splitting up, or the reconstruction, of a business already in existence.

■ *Exception one* - This condition will not apply where the business is re-established, reconstructed or revived by the same assessee after the business of any industrial undertaking carried on by him in India is discontinued due to extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee (and used for the purpose of such business) as a direct result of (*i*) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or (*ii*) riot or civil disturbance, or (*iii*) accidental fire or explosion, or (*iv*) action by any enemy or action taken in combating an enemy (whether with or without a declaration of war).

For detailed discussion, *see* para 254.1-1a.

■ *Exception two* - In view of the ongoing reforms of the State Electricity Boards, it is provided that the restrictions imposed on the transfer of old plant and machinery and splitting up of an old business shall not apply in the case of splitting up or, reconstruction, or re-organisation of State Electricity Boards (applicable from the assessment year 2005-06).

253.4-1b SET UP IN ANY PART OF INDIA FOR GENERATION/DISTRIBUTION OF POWER - It is set up anywhere in India for generation or generation and distribution of power. The word 'power' shall mean the energy only. The energy can be of any form, electrical, wind, thermal. Steam, on the principle of interpretation of statute, shall only be termed as power and shall qualify for the benefits available under section 80-IA—***Sial SBEC Bioenergy Ltd.*** v. ***CIT*** [2004] 83 TTJ (Delhi) 866. Deduction is available even if the assessee uses power for self-consumption—***West Coast Paper Mills Ltd.*** v. ***CIT*** [2006] 103 ITD 19/100 TTJ 833 (Mum.).

253.4-1c IT SHOULD NOT BE FORMED BY TRANSFER OF MACHINERY OR PLANT PREVIOUSLY USED FOR ANY PURPOSE - It is not formed by a transfer to a new business of machinery and plant previously used for any purpose.

253.4-1c[1] *TWO EXCEPTIONS* - In the two cases, the aforesaid rule is not applicable—

■ *20 per cent old machinery is permitted* - If the value of the old plant and machinery does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been satisfied.

■ *Second-hand imported machinery is treated as new* - 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 the following conditions are fulfilled :

1. Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.

2. Such machinery or plant is imported into India from any country outside India.

3. No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

For detailed discussion, *see* para 254.1-1b.

253.4-1d COMMENCEMENT - The undertaking is set up in any part of India for the generation or generation and distribution of power and it begins the operation at any time during April 1, 1993 and March 31, 2010. Alternately, it starts transmission or distribution by laying a network of new transmission or distribution lines at any time between April 1, 1999 and March 31, 2010.

Alternatively, it undertakes substantial renovation and modernisation of the existing transmission or distribution lines at any time during the period commencing on April 1, 2004 an ending on March 31, 2010. The term "substantial renovation and modernisation" for this purpose means an increase in the book value of plant and machinery by 50 per cent as compared to book value of such plant and machinery on April 1, 2004.

253.4-1e RETURN OF INCOME - Return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under this section is not available.

253.4-2 *AMOUNT OF DEDUCTION* - If all the aforesaid conditions are satisfied, 100 per cent of profit is deductible for 10 years commencing from initial assessment year [*see* para 253.4-2b].

253.4-2a ELIGIBILE PROFIT - Profit which is eligible for deduction under section 80-IA is as follows —

Activity	*Profit available for deduction*
■ Only generation of power	Profit from generation of power
■ Generation and distribution of power	Profit from generation and distribution of power
■ Laying a network of new transmission or distribution lines for starting transmission/distribution of power or undertaking substantial renovation and modernisation of the existing transmission or distribution lines	Profit derived from such activity

253.4-2b INITIAL ASSESSMENT YEAR - Initial assessment year means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking generates power or commences transmission or distribution of power [*see* para 253.1-2a for a detailed study].

253.4-3 *OTHER POINTS* - One should also keep in view the following points —

1. Audit report [*see* para 253.1-3a].

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

253.5 ***Reconstruction of power unit*** - The provisions are given below—

253.5-1 *CONDITIONS* - The following conditions should be satisfied—

Condition 1	It should be owned by an Indian company and set up for reconstruction or revival of a power generating plant.
Condition 2	It should be formed before November 30, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before December 31, 2005 by the Central Government.
Condition 3	Such undertaking beings to generate or transmit or distribute power before March 31, 2008.
Condition 4	Return of income should be submitted on or before due date of submission of return of income.

253.5-2 *AMOUNT OF DEDUCTION* - *See* para 253.1-2.

253.5-3 *OTHER POINTS* - *See* para 253.1-3.

253.6 ***Laying and operating cross-country natural gas distribution network*** - Any undertaking carrying on the business of laying and operating cross-country natural gas distribution network, including gas pipelines and storage facilities being an integral part of the network, shall be eligible for deduction from the assessment year 2008-09.

253.6-1 *CONDITIONS* - The following conditions should be satisfied—

Condition 1	The undertaking is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act.
Condition 2	The undertaking has been approved by the Petroleum and Natural Gas Regulatory Board and notified by the Central Government.
Condition 3	One-third of its total pipeline capacity is available for use on common carrier basis by any person other than the assessee or an associated person.
Condition 4	It starts functioning on or after April 1, 2007.
Condition 5	It fulfils such other conditions as may be prescribed.
Condition 6	The undertaking should not be formed by way of reconstruction or splitting up or by transfer to a new business of old plant and machinery (subject to certain exceptions).

253.6-2 *DEDUCTIONS* - If the above conditions are satisfied, 100 per cent deduction will be available for 10 consecutive assessment years out of 15 years beginning from the year in which an undertaking lays and begins to operate the cross-country natural gas distribution network.

253.6-3 *ASSOCIATED PERSON* - For this purpose "associated person" in relation to the assessee means—

1. A person who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the assessee.

2. A person who holds, directly or indirectly, shares carrying not less than 26 per cent of the voting power in the assessee.

3. A person 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.

4. A person who guarantees not less than 10 per cent of the total borrowings of the assessee.

253.6-4 *OTHER POINTS* - *See* para 253.1-3.

Deductions in respect of profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone [Section 80-IAB]

253A. Section 80-IAB provides deduction to the developers of special economic zone from the assessment year 2006-07.

253A.1 ***Conditions*** - The following conditions should be satisfied—

1. The taxpayer is a developer of a special economic zone.

2. The gross total income of the taxpayer includes profits and gains derived by an undertaking from any business of developing a special economic zone.

3. Such special economic zone is notified on or after April 1, 2005.

4. The books of the account of the taxpayer are audited.

5. Return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under this section is not available.

253A.2 ***Amount of deduction*** - If the above conditions are satisfied, the taxpayer can claim 100 per cent deduction in respect of the aforesaid profit.

253A.2-1 *PERIOD OF DEDUCTION* - The aforesaid deduction is available for 10 consecutive assessment years. The deduction may be claimed, at the option of the taxpayer, for any 10 consecutive assessment years out of 15 years beginning from the year in which the special economic zone has been notified by the Central Government.

253A.2-2 *TRANSFER OF UNDERTAKING* - If a taxpayer who develops a special economic zone on or after April 1, 2005 ("transferor") transfers the operation/maintenance of such zone to another developer ("transferee"), then deduction shall be allowed to the transferee for the remaining period of 10 years as if the operation and maintenance were not so transferred. Similar rule will be applicable in the case of amalgamation or demerger of an Indian company which has developed a special economic zone with another Indian company†.

253A.3 ***Other points*** - One should also keep in view the following points—

1. The profits and gains from the eligible business shall be computed as if such eligible business were the only source of income of the assessee during the relevant assessment year.

2. The Assessing Officer has power to recompute profit in some cases. These cases of given by section 80-IA(8)/(10) [*see* para 253.1-3e].

3. Where any amount of profits and gains is claimed and allowed as deduction under section 80-IAB for any assessment year, deduction to the extent of such profits and gains shall not be allowed under sections 80HH to 80RRB and shall in no case exceeds profits and gains of such eligible business.

Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings - How to avail [Sec. 80-IB]

254. Deduction under section 80-IB is available to different industrial undertakings as follows —

Case 1	Business of an industrial undertaking	*See* para 254.1
Case 2	Operation of ship	*See* para 254.2
Case 3	Hotels	*See* para 254.3
Case 4	Industrial research	*See* para 254.4
Case 5	Production of mineral oil	*See* para 254.5
Case 6	Developing and building housing projects	*See* para 254.6
Case 7	Business of processing, preservation and packaging of fruits or vegetables or integrated handling, storage and transportation of food grains units	*See* para 254.7
Case 8	Multiplex theatres	*See* para 254.8
Case 9	Convention centre	*See* para 254.9
Case 10	Operating and maintaining a hospital in rural area	*See* para 254.10
Case 11	Hospital located in certain areas (applicable from the assessment year 2009-10).	*See* para 254.11

†A similar benefit in the case of merger/demerger is available when a person is entitled for deduction under sections 10A, 10AA, 10B, 80-IA, 80-IB, 80-IC and 80-IE. However, under section 80-IA the benefit is available only when amalgamation/demerger takes place before April 1, 2007.

254.1 *Industrial undertaking* - The provisions of section 80-IB as applicable to an industrial undertaking are given below —

254.1-1 CONDITIONS - To claim deduction under section 80-IB, an industrial undertaking must satisfy the following conditions—

Condition 1	It should be a new undertaking.	*See* para 254.1-1a
Condition 2	It should not be formed by transfer of old plant and machinery.	*See* para 254.1-1b
Condition 3	It should manufacture or produce articles other than non-priority sector items given in the Eleventh Schedule.	*See* para 254.1-1c
Condition 4	Manufacture or production should be started within a stipulated time limit.	*See* para 254.1-1d
Condition 5	It should employ 10/20 workers.	*See* para 254.1-1e
Condition 6	Return of income should be submitted on or before due date of submission of return of income	*See* para 254.4-1f

254.1-1a IT SHOULD BE A NEW UNDERTAKING - The industrial undertaking is not formed by splitting up, or the reconstruction, of a business already in existence. However, if new industrial undertaking is set up in an old building, deduction shall be admissible as this section provides for new undertaking [*see* para 254.1-1b] and does not provide for new building.

■ *What is splitting up of business* - The expression "splitting up of the business already in existence" indicates a case where the integrity of a business earlier in existence is broken up and different sections of the activities previously conducted are carried on independently—*CIT* v. *Hindustan General Industries Ltd.* [1982] 137 ITR 851 (Delhi).

In order to hold that there is a splitting up of a business already in existence, there must be some material to hold that either some asset of an existing business is divided and another business is set up from such splitting up of assets, or that the two businesses are the same and one formed was an integral part of the earlier one and it was only a question of breaking up of the same business. It implies a unity of control in regard to two businesses, *i.e.* earlier one in existence and a new one which is brought into existence — *T. Satish U. Pai* v. *CIT* [1979] 119 ITR 877 (Kar.).

Where an old business is carried on by an assessee and in commensurate with the growth of said business, new units are established, the benefit under section 80-IB will be available to the new unit, if said unit is in nature of an "undertaking". A unit qualifies to be called an "undertaking" when it undertakes production or manufacture of articles or things in its own right and produces such articles or things by itself as a separate and independent unit—***CIT* v. *Associated Capsules (P.) Ltd.*** [2008] 21 SOT 420 (Mum.).

■ *"Reconstruction"* - The "reconstruction" of an existing business must necessarily involve the concept that the original business is not to cease functioning and its identity is not to be lost and abandoned. The concept essentially rests on changes but the changes must be constructive and not destructive. The undertaking must continue to carry on the same business though in some altered or varied form. If the alterations and changes are substantial, there is little scope for describing what emerges as a reconstruction of the business. There would not be any "reconstruction" if the ownership of the business really and factually changes hands, mere reorganisation of the business on sounder lines, or alterations in the mode or method of the scope of the activities of the business, or changes in its personnel, or infusion of new blood in the management or control of the business which may even be by some changes in the constitution of persons interested in the undertaking. When one of partners of assessee firm retires and the remaining partners takes over the running business, it does not amount to reconstruction of business—***Abid & Co. Steels (P.) Ltd.*** v. ***CIT*** [2003] SOT 605 (Mum.). Similarly, process of amalgamation cannot be equated with reconstruction—***CIT*** v. ***B.R. Industries Ltd.*** [2005] 1 SOT 285 (Delhi).

Conclusion - The concept of "reconstruction" will not be attracted in cases where (*i*) a concern which is already running one industrial unit set up another industrial unit manufacturing identical goods, or (*ii*) a concern set up ancillary unit for manufacture of goods for captive consumption. Where the

new industrial undertakings are separate and independent production units in the sense that the commodities produced or the results achieved are commercially tangible products and the undertakings can be carried on separately without complete absorption and losing their identity in the old business, they are not to be treated as business formed by the reconstruction of the old business. Use by the assessee of the article produced in its existing business or the concept of expansion are not decisive tests. In order that a new undertaking can be said to be not formed out of the already existing business, there must be a new emergence of a physically separate industrial unit which may exist on its own as a viable unit. An undertaking is formed out of the existing business; the physical identity with the old business is preserved. The new activity may produce the same commodities of the old business or it may produce some other distinct marketable products or even products which may feed the old business. What must be certain is that the new undertaking must be an integrated unit by itself.

254.1-1a[1] *Exception* - The aforesaid condition of "new undertaking" is not applicable where the business is re-established, reconstructed or revived by the same assessee after the business of any industrial undertaking carried on by him in India is discontinued due to extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee (and used for the purpose of such business) as a direct result of (*i*) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or (*ii*) riot or civil disturbance, or (*iii*) accidental fire or explosion, or (*iv*) action by any enemy or action taken in combating an enemy (whether with or without a declaration of war).

254.1-1b IT SHOULD NOT BE FORMED BY TRANSFER OF MACHINERY OR PLANT PREVIOUSLY USED FOR ANY PURPOSE - It is not formed by a transfer to a new business of machinery and plant previously used for any purpose.

254.1-1b[1] *Two exceptions* - In the two cases given below, the aforesaid rule is not applicable —

- *20 per cent old machinery is permitted* - If the value of the transferred assets does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been satisfied.
- *Second-hand imported machinery is treated as new* - 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 the following conditions are fulfilled :

1. Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.

2. Such machinery or plant is imported into India from any country outside India.

3. No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

254.1-1b[2] *Guiding factors* - The following guiding factors one has to keep in mind :

1. The words "previously used for any purpose" are wide enough and cover all old and used machinery, no matter who used such machinery previously and from which source it was acquired—*Kanhiyalal Rameshwar Das* v. *CIT* [1985] 156 ITR 463 (Raj.), *Phagoo Mal Sant Ram* v. *CIT* [1969] 74 ITR 734 (Punj. & Har.). A contrary verdict is given in *Electronic Corpn. of India Ltd.* v. *CIT* [1985] 151 ITR 381 (AP), *CIT* v. *Sainthia Rice & Oil Mills* [1971] 82 ITR 778 (Cal.).

2. If a new industrial undertaking is "formed" by transfer of old machinery or plant, *Explanation 2* to section 80-IB(2) may be invoked and if the total value of second-hand plant and machinery does not exceed 20 per cent of plant and machinery used in the new business, the condition may still be regarded as fulfilled. Conversely, however, if the old plant and machinery is such that the new undertaking cannot be regarded as having been "formed" by their acquisition, the aforesaid condition for availing deduction must be taken as fulfilled even if the value of old plant and machinery exceeds 20 per cent of the value of plant/machinery used in the new industrial undertaking.

3. If an assessee is not entitled to deduction under section 80-IB in the year in which the industrial undertaking is started, because value of old machinery exceeds 20 per cent, he will be eligible for the deduction in the subsequent years, if the value of the old machinery in the subsequent years does not exceed 20 per cent of the total value of the machinery. In other words, deduction is not dependent upon the fact whether it was admissible in preceding assessment year — *CIT* v. *Seeyan Plywoods* [1991] 56 Taxman 296 (Ker.), *CIT* v. *Satellite Engg. Ltd.* [1978] 113 ITR 208 (Guj.), *CIT* v. *Suessin Textile Bearing Ltd.* [1982] 135 ITR 443 (Guj.). A contrary ruling given by the Karnataka High Court in *CIT* v. *Nippon Electronic (India) (P.) Ltd.* [1990] 181 ITR 518, it is submitted respectfully, requires reconsideration.

254.1-1c IT SHOULD NOT MANUFACTURE OR PRODUCE ARTICLES SPECIFIED IN THE ELEVENTH SCHEDULE - It manufactures or produces any article or thing (not being an article or thing specified in the list in the Eleventh Schedule) or operates cold storage plant, in any part of India.

254.1-1c[1] *Exception one - Small-scale undertakings or an undertaking in a backward State can manufacture any goods/article* - Deduction is admissible to all small-scale industrial undertakings and those undertakings which are specified in para 254.1-1d[2a] *infra* even if they are engaged in the production of articles listed in the Eleventh Schedule.

■ *Small scale industrial undertaking* - An industrial undertaking in which the investment in fixed assets in plant and machinery whether held on ownership terms or on lease, or by hire purchase does not exceed Rs. 1 crore* on the last day of the previous year is a small-scale industrial undertaking.

❑ No small scale or ancillary industrial undertaking referred to above shall be subsidiary of, or owned or controlled by other industrial undertaking.

❑ In calculating the value of plant and machinery the following shall be excluded namely : (*i*) the cost of equipment such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores ; (*ii*) the cost of installation of plant and machinery ; (*iii*) the cost of research and development equipment and pollution control equipment ; (*iv*) the cost of generation sets, extra transformer, etc., installed by the undertaking as per the regulations of the State Electricity Board; (*v*) the bank charges and service paid to the National Small Industries Corporation or the State Small Industries Corporation ; (*vi*) the cost involved in procurement or installation of cables, wiring, bus bars, electrical control panels (not those mounted or individual machines), oil circuit breakers/ miniature circuit breakers, etc., which are necessarily to be used for providing electrical power to the plant and machinery/safety measures ; (*vii*) the cost of gas producer plant ; (*viii*) transportation charges (excluding of taxes, *i.e.*, sales tax, excise, etc.) for indigenous machinery from the place of manufacturing to the site of the factory ; (*ix*) charges paid for technical know-how for erection of plant and machinery; (*x*) cost of such storage tanks which store raw materials finished products only and are linked with the manufacturing process ; and (*xi*) cost of fire fighting equipments.

Items like EPBX, CC TV, office equipments, vehicles, computers, safe deposit vault, etc., being not directly related to production have to be excluded while working out the value of plant and machinery installed in an industrial undertaking—*CIT* v. *Samir Diamond Mfg. (P.) Ltd.* [1998] 67 ITD 25 (Ahd.).

In the case of imported machinery, the following shall be included in calculating the value, namely : (*i*) import duty (excluding miscellaneous expenses as transportation from the port to the site of the factory, demurrage paid at the port ; (*ii*) the shipping charges ; (*iii*) customs clearance charges ; and (*iv*) sales tax.

254.1-1c[2] *Exception two* - From the assessment year 2005-06, an industrial undertaking in the State of Jammu and Kashmir should not manufacture or produce cigarettes/cigars, distilled and brewed alcoholic drinks, aerated branded beverages and their concentrates.

254.1-1d IT MUST START MANUFACTURING BETWEEN APRIL 1, 1991 AND MARCH 31, 1995 - It begins to manufacture or produce articles or things or to operate cold storage plant or plants, within a

*Rs. 5 crore in some cases—*see* Appendix 3.

specified time limit. The assessee need not own or possess plant and machinery and for this purpose manufacture may be either by assessee itself or by someone under assessee's supervisory control or direction—***Claas India Ltd.* v. *CIT*** [2008] 21 SOT 580 (Delhi).

254.1-1d[1] *Manufacture - Meaning of* - The transformation of a product to the extent that it becomes a commercially different commodity is manufacture. The moment there is a transformation into a new commodity having its own character, use and name, whether it be the result of one process or several processes, "manufacture" takes place — *CIT* v. *J.B. Kharwar & Sons* [1987] 163 ITR 394 (Guj.).

■ *Produce - Meaning of* - The expression "produce" is of wider import. According to *Webster's Third New International Dictionary*, the word "produce" is defined as "something that is brought forth or yielded either naturally or as a result of effort and work ; a result produced."

■ *Other judicial rulings* - One should also keep in view the following judicial rulings—

Construction of dam - It is difficult to say that the process of constructing a dam is a process of manufacture or a process of production. It is true that a dam is composed of several articles, *viz.*, stones, concrete, cement, etc. But to say that the end-product, the dam, is an article, is to be unfaithful to the normal connotation of the word. A dam is constructed ; it is not manufactured or produced. The expressions "manufacture" and "produce" are normally associated with movables, articles and goods, big and small, but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road or a building. Therefore, the activity of construction of a dam cannot be characterised as manufacture or producing of article or articles — *CIT* v. *N.C. Budharaja & Co.* [1993] 204 ITR 412 (SC), *Hydel Construction Co. (P.) Ltd.* v. *CIT* [1999] 102 Taxman 155 (Delhi), *CIT* v. *George Maijo* [1999] 107 Taxman 265 (Mad.).

Foodstuff - The foodstuff prepared by cooking or by any other process from raw materials such as cereals, pulses, vegetables, meat or the like cannot be regarded as a commercially distinct commodity and it cannot be held that such foodstuff is manufactured or produced—*Indian Hotels Co. Ltd.* v. *ITO* [2000] 112 Taxman 46 (SC).

Shrimps - The assessee buying shrimps, peeling them and freezing them cannot be said to be engaged in manufacture or production, in the absence of material on record to indicate what is done by the assessee and how it is done—*CIT* v. *Relish Foods* [1999] 103 Taxman 392/237 ITR 59 (SC).

Pile foundation work - The assessee engaged in pile foundation work cannot be said to be engaged in manufacture or production of any article or thing—*CIT* v. *Geo Tech Foundations and Constructions* [2000] 241 ITR 90 (Ker.).

Grinding of soap-stones - Process of grinding of soap-stones and minerals would not amount to manufacture of articles or things—*CIT* v. *Premier General Traders (P.) Ltd.* [2000] 242 ITR 654 (Bom.).

Pressure piling - Process of pressure piling does not amount to manufacture—*CIT* v. *M.S.J. Construction (P.) Ltd.* [2000] 245 ITR 475 (MP).

Development of chicks - The activity of rearing and development of chicks into broilers cannot be said to be "manufacturing" a product—*Indian Poultry* v. *CIT* [2001] 116 Taxman 493 (SC).

Duplication - The process of duplication by xerox machine does not result in manufacture of any goods, articles or things—*CIT* v. *B.N.B. Enterprises* [2001] 117 Taxman 712 (Mad.).

Extraction of granite - Extraction of granite cannot be regarded as the result of any manufacturing activity. Blasting of a granite block which is found on a natural formation involves only a process of cutting, or removing part of a larger mass and that activity of removing a part from the large block or hill, though it involves skill, labour and effort and perhaps use of machinery as well, is not an activity which can properly be regarded as manufacture, even after the widest possible meaning is ascribed to that term. The granite hills are a natural bounty and merely removing a portion of it does not involve a process of manufacture. It is more properly to be regarded as mining—*CIT* v. *Gomatesh Granites* [2001] 118 Taxman 141 (Mad.).

Mining of stone - If the assessee is engaged in the business of mining of limestones and marble blocks and thereafter cutting and sizing the same before being sold in the market, it does not amount to manufacture/production—*Lucky Mineral (P.) Ltd.* v. *CIT* [2001] 116 Taxman 1 (SC). Where, however an assessee transforms rough raw marble blocks into finished polished slabs by subjecting raw blocks to several processes like peeling, dressing, correcting natural flaws, padding, sorting, grading, shaping, sizing, polishing, etc., to produce finished products like polished marble slabs, tiles, table tops, etc., which is a commercially distinct commodity having distinctive name and use, it can be said that assessee is engaged in manufacture/production of polished marble slabs, tiles, table tops, etc.—***Aakash Stone Industries Ltd.*** v. ***CIT*** [2007] 13 SOT 50 (Mum.) (URO).

Reconditioning belt - It cannot be said that any new article comes into existence when the old belt is reconditioned and made fit for use for some more time. The life of a reconditioned belt is not the same as that of a new belt. The purpose which a reconditioned belt is to serve is the same as the purpose that the belt before reconditioning was serving. A new article does not come into existence as a result of reconditioning of the old belt—*CIT* v. *Neyveli Lignite Corporation Ltd.* [2001] 118 Taxman 230 (Mad.).

Conversion of trees into logs - Cutting of trees and conversion of timber obtained therefrom into logs and planks can be done by manual labour or mechanical process. However, by whichever method it is done, the process of conversion of the felled tree into logs, planks, etc., would amount to a manufacturing process—*CIT* v. *Abdul Ahad Najar* [2001] 114 Taxman 655 (J & K).

Conversion of raw coffee into coffee beans - Conversion of raw coffee berries into coffee beans amounts to a manufacturing activity—*Aspinwall & Co. Ltd.* v. *CIT* [2001] 118 Taxman 771 (SC).

Chicory - Conversion of chicory root into chicory powder is manufacture—*Sacs Eagles Chicory* v. *CIT* [2002] 255 ITR 178/123 Taxman 221 (SC).

Groundnuts - Decortication of groundnuts into kernel by the assessee involves a manufacturing process—*CIT* v. *Hemsons Industries* [2001] 118 Taxman 903 (AP).

Tendu leaves - Process of making green tendu leaves fit for use in making of bidis, does not amount to manufacture—*Ambika Enterprises* v. *CIT* [2001] 79 ITD 473 (Pune).

Printing on glass - Etching prints on glass involves activity of manufacturing or processing of an article or thing—*CIT* v. *Darshak Ltd.* [2001] 118 Taxman 863/247 ITR 489 (Kar.).

Ship breaking - Ship-breaking activities amount to manufacturing or production activities—*Ship Scrap Traders* v. *CIT* [2001] 251 ITR 806 (Bom.), ***CIT*** v. ***Hindustan Steel Industries India*** [2005] 94 TTJ ((Agra) 1094.

Refined oil - Conversion of crude oil into refined oil tantamounts to manufacture of an article or a thing—*CIT* v. *Oswal Woollen Mills Ltd.* [2002] 123 Taxman 264 (Punj. & Har.).

X-ray Centre - Production of x-ray photos and diagnostic reports by x-ray centre and diagnostic laboratory amounts to production of article or things—*CIT* v. *M.L. Sanghi* [2002] 125 Taxman 142 (Mag.).

Dyeing - An assessee engaged in the business of bleaching, dyeing, printing and processing of grey cloth, purchased from the market, and its resale, would be entitled to deduction under section 80-IB—*CIT* v. *Kashiram Textiles Mills (P.) Ltd.* [2002] 123 Taxman 831 (Guj.).

Crushing of large tobacco leaves - Where the assessee's business consisted of crushing large tobacco leaves and cutting them into smaller pieces, sieving them, *i.e.*, after removing the dust and unwanted stems from the tobacco leaves, and selling them to the bidi manufacturers, the aforesaid business involves manufacturing or processing of goods—*CIT* v. *Gordhanbhai Jethabhai Tobacco Industries (P.) Ltd.* [2002] 123 Taxman 825/258 ITR 727 (Guj.).

Surgical cotton - Processing of ordinary cotton into surgical cotton is a manufacturing activity—***Mamta Surgical Cotton Inds.*** v. ***CIT*** [2003] 130 Taxman 714 (Raj.).

Cycle pedals - An assessee engaged in production of bicycle pedals, is not engaged in manufacturing—***Sond Bharat Pedals (India)*** v. ***ITO*** [2003] 84 ITD 89 (Chd.).

Mud-logging - Activity of the assessee-company engaged in the business of deployment of mud-logging units for drilling of oil wells at the oil exploration site of the Oil and Natural Gas Commission amounts to manufacture—***Triveni Sperry Sun Ltd.*** v. ***CIT*** [2003] 133 Taxman 72 (Delhi) (Mag.).

Detergents - Deduction under section 80-IB cannot be denied to the assessee-company which is engaged in the manufacture of synthetic detergents—***Amar Poly Fabs (P.) Ltd.*** v. ***CIT*** [2003] SOT 426 (Chd.).

Dish antennas - Contract awarded to the assessee-company involving supply, fabrication, erection and commissioning of dish antennas amounts to manufacture—***CIT*** v. ***V.M. Jog Construction Ltd.*** [2003] 81 TTJ (Pune) 856.

Manufacture by third parties - Assessee will be entitled to deduction under section 80-IB even if a part of the production process is got done by third parties—***Swastik Textiles*** v. ***ITO*** [2003] SOT 327 (Jodh.), ***CIT*** v. ***G. Satheesh Nair*** [2003] 133 Taxman 601 (Kar.).

Blending tea - Blending various categories of teas and selling them after packaging with new brand name does not amount to manufacturing or production of a new commodity—***Brooke Bond India Ltd.*** v. ***CIT*** [2004] 137 Taxman 529 (Cal.).

Copper rods - Simply because hot rolling activity is done by outside parties, the assessee (manufacturing copper rods, etc.,) cannot be denied deduction under section 80-IB, particularly when hot rolling activity which is done by outside agencies is done under direct supervision, control and at risk of the assessee—***Sunrise Metal Industries*** v. ***ITO*** [2004] 89 ITD 406 (Mum.).

Processing of iron ore - Extraction and processing of iron ore amounts to "production"—***CIT*** v. ***SESA Goa Ltd.*** [2004] 271 ITR 331/142 Taxman 16 (SC).

Mineral water - Industrial activity involved in production of demineralised water does not amount to manufacture—***Acqua Minerals (P.) Ltd.*** v. ***CIT*** [2005] 96 ITD 417 (Ahd.).

Tin sheet - Transformation of the tin plates/tin sheet roll into small pieces of 'tin sheet cut to size' and embossing on them by machine with a process which is irreversible and marketing same as commodity different from the raw material, *i.e.*, tin plates/tin sheet rolls, is definitely a process of manufacture—***Comet Foods & Metal Ltd.*** v. ***ITO*** [2005] 4 SOT 173 (Mum.).

Computer stationery - Activity of manufacturing continuous stationery for computer printing by using paper rolls, gum, ink, carbon paper, etc., as raw material amounts to 'manufacture'—***ITO*** v. ***Punchline Forms*** [2005] 96 ITD 393 (Mum.).

Steel rods - Activity of annealing and straightening of steel rods is a manufacturing process—***Anil Steel Traders*** v. ***CIT*** [2005] 148 Taxman 61 (Ahd.) (Mag.).

Manufacture of bread - Conversion of maida, sugar, yeast, etc., into bread amounts to manufacturing and production of bread in terms of section 80-IB—*CIT* v. *Pankaj Jain Prop. Aagam Food Industries* [2006] 152 Taxman 80 (J&K).

Blending of tea - Mere activity of blending of tea of different qualities is not qualified for claiming deduction under section 80-IB—***CIT*** v. ***Tara Agencies*** [2007] 162 Taxman 337 (SC).

Ironing - The process of ironing, with the aid of power for making a garment marketable, amounted to manufacture—***ITO*** v. ***Ektara Exports (P.) Ltd.*** [2006] 152 Taxman-ITAT 19.

Identity cards - Activity of producing identity cards amounts to manufacture—***V.M. Jog Engg. Ltd.*** v. ***CIT*** [2006] 104 TTJ (Pune) 487.

Conversion of stone into sand - Conversion of stone or boulder or rock into sand amounts to manufacture—***V.M. Jog Engg. Ltd.*** v. ***CIT*** [2006] 104 TTJ (Pune) 487.

Conversion of tapes - Conversion of imported adhesive jumbo tapes of different kinds into different types of tapes, amounts to manufacture—***Fourways International*** v. ***ITO*** [2007] 11 SOT 437 (Mum.).

Film production - Production of films amounts to manufacture—***Yash Johar*** v. ***CIT*** [2007] 13 SOT 293 (Mum.).

Final product - For claiming deduction under section 80-IB it is not necessary that sale should be only of final product and not of intermediary product such as spare parts, components, etc.—***Claas India Ltd.*** v. ***CIT*** [2008] 21 SOT 580 (Delhi).

254.1-1d[2] *Time limit* - The undertaking must begin to manufacture or produce articles or things or to operate cold storage plant at any time during April 1, 1991 and March 31, 1995 (March 31, 2002 in the case of a small scale industrial undertaking) or such further period as may be extended by the Central Government.

In the following three cases, however, the time-limit is different.

254.1-1d[2a] *Industrial undertaking (including cold storage plant) set up in industrially backward State*† - In the case of an industrial undertaking located in an industrially backward State or Union Territory specified in the Eighth Schedule, it begins to manufacture/produce articles/things or operates its cold storage plant during April 1, 1993 and March 31, 2004 (March 31, 2012 for an industrial undertaking in the State of Jammu and Kashmir).

For this purpose, States and Union territories which are industrially backward are Arunachal Pradesh, Assam, Goa, Himachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura and the Union Territories of the Andaman and Nicobar Islands, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Pondicherry.

254.1-1d[2b] *Industrial undertaking (including cold storage plant) set up in backward district* - In the case of industrial undertaking set-up in a notified backward district of Category "A" or Category "B", it begins to manufacture/produce articles/things or operates its cold storage plant during October 1, 1994 and March 31, 2004. The Government has notified 53 districts under Category "A" and 70 districts under Category "B" for this purpose† [*see* Annex 4].

254.1-1d[2c] *Cold chain facility for agricultural produce* - In the case of an industrial undertaking deriving profit from the business of setting up and operating cold chain facility for agricultural produce, such facility must begin during April 1, 1999 and March 31, 2004.

254.1-1e IT SHOULD EMPLOY 10/20 WORKERS - In a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs 10 or more workers in a manufacturing process carried on with the aid of power, or employs 20 or more workers in a manufacturing process without the aid of power.

One should also keep in view the following—

- *Condition of 10/20 workers only for industrial undertakings* - This condition is applicable only for "industrial undertaking" and not for cold storage plant, ship or hotel.
- *Who is a worker* - In the absence of any definition of the word "worker", one has to take its ordinary meaning, which may mean a casual, permanent or temporary worker. There is no reason why the word "worker" should not include all these three categories — *CIT* v. *K.G. Yediyurappa & Co.* [1985] 152 ITR 152 (Kar.). The following tests are to be applied to find as to whether this condition is satisfied :

1. Only workers employed in connection with the manufacturing process (directly or indirectly) are to be considered (for instance, storekeeper who maintains record of stores and raw material and accountant who keeps a record of all works carried on in an industrial undertaking are included in the number of workers employed in the undertaking). Various process starting from the purchase of the raw material till the sale of the finished goods form an integral part of the manufacturing process and the workers and labourers employed in these processes are workers employed in the manufacturing process—***CIT*** v. ***Sultan & Sons Rice Mills*** [2005] 145 Taxman 506 (All.).

Even a factory manager and his assistant looking after various activities of a unit and ultimately responsible for production results would be considered as workers employed in manufacturing process for purpose of section 80-IB. However, persons employed in accounting and administrative

† *Vide* Notification No. 714(E), dated October 7, 1997.

functions cannot be considered as part of manufacturing process—***Shree Par Fragrance (P.) Ltd.*** v. ***ITO*** [2008] 20 SOT 440 (Mum.).

2. Such workers need not necessarily be the regular workers and, if casual workers are employed, for manufacturing purposes such workers have to be taken into account, by and large, in computing the said quota of 10 or 20 workers. Even if payment to workers is made on job work basis or piece-rate basis, persons doing work are to be considered as employees—*CIT* v. *V.B. Narania & Co.* [2002] 125 Taxman 905 (Guj.).

Where, however, the persons in question are not on pay roll of assessee but operate independently and the job work is done by them not only for the assessee but also for other persons, such persons cannot be taken into consideration—*CIT* v. *Apparel Express Co. (P.) Ltd.* [2001] 117 Taxman 411/251 ITR 733 (Delhi), ***R. & P. Exports*** v. ***CIT*** [2005] 146 Taxman 404 (All.).

3. Even in the absence of requirement that such workers should be employed throughout the previous year, it would be incorrect to conclude that employment of 10 or 20 workers only for a few days during the previous year is sufficient for this purpose. It, therefore, follows that 10 or 20 workers must have been employed for substantial period during the period for which relief is claimed—*CIT* v. *Sawyer's Asia Ltd.* [1979] 1 Taxman 547 (Bom.), *CIT* v. *Taluja Enterprises (P.) Ltd.* [2001] 117 Taxman 392 (Delhi). In other words, if for most of the period for which manufacturing process continues, the assessee has employed more than 10/20 workers, (maybe in the main manufacturing process and/or in subsidiary process relating thereto), then, it is substantial compliance of the provisions—***CIT*** v. ***Richa Chadha*** [2005] 3 SOT 55 (Mum.).

■ *Whether a partner is a "worker"* - In the case of an undertaking owned by a firm, a problem sometimes arises whether a working partner can be treated as worker for the aforesaid purpose, if the partners are employed in the manufacturing process. The general law is that a partner is not an employee of the firm, in the ordinary sense of the term, since all the partners are themselves the employers—*CIT* v. *R.M. Chidambaram Pillai* [1977] 106 ITR 292 (SC). However, the requirement of section 80-IB is that the undertaking (not the assessee or firm) employs 10/20 or more workers. It can reasonably be contended that there is nothing in the provisions to presume that the assessee should not be one of the 10 or 20 workers employed by the undertaking*. In any case, where the assessee is a firm as an entity and any person is admitted as a working partner only on the basis of his expertise or skill, his exclusion in determining 10 or more workers will be incorrect.

254.1-1f RETURN OF INCOME - Return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under this section is not available.

254.1-2 ***AMOUNT OF DEDUCTION*** - An industrial undertaking can claim deduction at the rates given in the table *infra*. The table also highlights conditions already mentioned in paras 254.1-1c and 254.1-1d.

	Small scale industrial undertaking	*Industrial undertaking (including cold storage) set up in an industrial backward State [Eighth Schedule]*	*Industrial undertaking (including cold storage) set up in Category A notified backward district*	*Industrial undertaking (including cold storage) set up in Category B notified backward district*	*Cold chain facility for agricultural produce*	*Any other*
1. Nature of articles to be produced	Any	Any [*see* Note 2]	Other than those given in Eleventh Schedule	Other than those given in Eleventh Schedule	Cold chain facility for agricultural produce	Other than those given in Eleventh Schedule

*The contrary view is, however, expressed by the Madras High Court in *CIT* v. *P.R. Alagappan* [1988] 173 ITR 82.

	Small scale industrial undertaking	*Industrial undertaking (including cold storage) set up in an industrial backward State [Eighth Schedule]*	*Industrial undertaking (including cold storage) set up in Category A notified backward district*	*Industrial undertaking (including cold storage) set up in Category B notified backward district*	*Cold chain facility for agricultural produce*	*Any other*
2. Time limit for commencement of production or operation	Between April 1, 1991 and March 31, 2002	Between April 1, 1993 and March 31, 2004 (March 31, 2012 for an industrial undertaking in the State of Jammu and Kashmir)	Between October 1, 1994 and March 31, 2004	Between October 1, 1994 and March 31, 2004	April 1, 1999 and March 31, 2004	Between April 1, 1991 and March 31, 1995
3. Amount of deduction (period of deduction commences from initial assessment year)						
3.1 Owned by a company	30% for first 10 years	100% for first 5 years and 30% for next 5 years	100% for first 5 years and 30% for next 5 years	100% for first 3 years and 30% for next 5 years	100% for first 5 years and 30% for next 5 years	30% for first 10 years
3.2 Owned by a co-operative society	25% for first 12 years	100% for first 5 years and 25% for next 7 years	100% for first 5 years and 25% for next 7 years	100% for first 3 years and 25% for next 9 years	100% for first 5 years and 25% for next 7 years	25% for first 12 years
3.3 Owned by any other person	25% for first 10 years	100% for first 5 years and 25% for next 5 years	100% for 5 years and 25% for next 5 years	100% for first 3 years and 25% for next 5 years	100% for first 5 years and 25% for next 5 years	25% for first 10 years

Note :

1. No deduction will be available under section 80-IB from the assessment year 2004-05 in respect of undertaking/enterprises eligible for deduction under section 80-IC.

2. From the assessment year 2005-06, an industrial undertaking in the State of Jammu and Kashmir should not manufacture or produce cigarettes/cigars, distilled and brewed alcoholic drinks, aerated branded beverages and their concentrates.

254.1-2a WHAT IS INITIAL ASSESSMENT YEAR - "Initial assessment year" means the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants.

For instance, if an industrial undertaking starts manufacture/production in Jammu and Kashmir on December 19, 2005, the initial assessment year will be 2006-07, and it will be eligible for deduction (subject to the satisfaction of the prescribed conditions in every year) for the assessment years 2006-07 to 2015-16 (in the case of co-operative society for the assessment years 2006-07 to 2017-18).

In the case of industrial undertaking initial assessment year is the year in which the industrial undertaking begins to manufacture articles. The "article" in this context is the final or end-product for which the undertaking is set up to manufacture.

254.1-2b GUIDING FACTORS - In this respect the following guiding principles one has to keep in mind :

1. Production of a few articles of insignificant value will not amount to commencement of production — *Madras Machine Tools Mfrs. Ltd.* v. *CIT* [1975] 98 ITR 119 (Mad.).

2. Mere manufacture of prototype does not amount to commencement of production — *Addl. CIT* v. *Southern Structurals Ltd.* [1977] 110 ITR 164 (Mad.).

3. Trial production (not for sale) for testing or sampling purposes will not amount to commencement of production — *Metropolitan Springs (P.) Ltd.* v. *CIT* [1981] 132 ITR 893 (Bom.).

4. If a company owns more than one undertaking, the application of section 80-IB has to be with respect to the particular undertaking and not to company in general — *Madras Machine Tools Mfg. Ltd.* v. *CIT* [1975] 98 ITR 119 (Mad.).

5. If the new unit had started to manufacture or produce articles, any subsequent addition to the unit so as to expand it would not in any manner postpone the date of commencement of manufacture or production of articles — *Mettur Chemical & Industrial Corpn.* v. *CIT* [1977] 107 ITR 352 (Mad.).

6. The eligibility of the deduction for any assessment year is not dependent on whether (or not) the deduction has been allowed in the preceding assessment year or years. If the specified conditions are satisfied in any of the assessment years, the deduction is allowable under section 80-IB.

7. Profit from sale of scrap generated during 'manufacture' would be eligible for deduction—*Fenner (India) Ltd.* v. *CIT (No. 2)* [2000] 241 ITR 803 (Mad.).

254.1-3 *OTHER POINTS* - One should keep in view the following points —

1. Audit report [*see* para 253.1-3a].

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.2 ***Operation of ship*** - Profits and gains derived from the business of operation of ship is eligible for deduction under section 80-IB. The direct source of income should be the business of operation. Deduction is not available if ship is used only as an instrument for carrying on business activity — *New India Fisheries Ltd.* v. *P.M. Mehra, ITO* [1971] 82 ITR 765 (Bom.). For an assessee who uses ship for catching fish in deep sea and selling the fish is not entitled to tax incentive under section 80-IB. In order to qualify for deduction a ship must satisfy to the following conditions :

Condition 1	It should be owned by an Indian company and be wholly used for the purpose of the business carried on by the assessee.
Condition 2	It should not have, prior to its acquisition by the Indian company, been owned and used in Indian territorial waters by a person resident in India*.
Condition 3	It should be brought into use after March 31, 1991 but before April 1, 1995.
Condition 4	Return of income should be submitted on or before due date of submission of return of income

254.2-1 *AMOUNT OF DEDUCTION* - 30 per cent of the profit is deductible for the first 10 years. The period of deduction commences from the initial assessment year [*i.e.*, the year in which the ship is first brought into use].

254.2-2 *OTHER POINTS* - One should also keep in view the following points —

1. Audit report [*see* para 253.1-3a]

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.3 ***Hotel industry*** - Provisions of section 80-IB as applicable to hotel industry are given below —

254.3-1 *CONDITIONS TO BE FULFILLED IN THE CASE OF SPECIFIED HOTELS IN SPECIFIED AREA* - The following conditions one has to satisfy —

1. The business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose.

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*The Government of India is not a "person resident of India" for this purpose—*CIT* v. *Dredging Corpn. of India* [1988] 174 ITR 682 (AP) and, consequently a ship acquired firm Government of India fulfils this condition.

2. The business of the hotel is owned and carried on by an Indian company with a paid-up capital of Rs. 5,00,000 or more.

3. The business of the hotel is located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may (having regard to the need for development of infrastructure for tourism in any place and other relevant considerations) specify for the purpose.

4. It starts functioning at any time during the period April 1, 1990 and March 31, 1994. Alternatively, it starts functioning (at a place other than Calcutta, Chennai, Delhi and Mumbai) at any time during April 1, 1997 and March 31, 2001.

5. The hotel is for the time being approved by the prescribed authority.[1]

6. From the assessment year 2006-07, return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under this section is not available.

■ *Approval by the prescribed authority* - For the aforesaid purpose a hotel shall be approved by the prescribed authority if the following conditions are fulfilled, namely :

a. such hotel is located in an area or place specified above ;

b. there are not more than 300 hotel rooms of 3-star category and above in the aggregate, in areas or places specified above within the jurisdiction of the revenue sub-division in which the hotel is located ;

c. in case the hotel is located in a place where there is need for development of infrastructure for tourism such place has been specified by the Central Government under section 80-IB on the recommendations of the Department of Tourism.

■ *Hilly area* - The term "hilly area" means any area located at a height of 1000 metres or more above the sea level.

■ *Place of pilgrimage* - A "place of pilgrimage" means a place where any temple, mosque, gurudwara, church or other place of public worship of renown throughout any State or States is situated.

A "place of pilgrimage" is not required to be specified by the Central Government. Consequently any place satisfying the aforesaid test, comes within the term "place of pilgrimage".

■ *Rural area* - It means :

a. an area outside the limits of a municipality, cantonment board, etc., and which has a population of less than 10,000 ; or

b. an area which is not within such distance* from the local limits of such municipality, etc., as the Central Government may notify.

*The distance notified by the Government is given below —

Name of the municipality or cantonment board	*Details of the area*
(1)	*(2)*
Mumbai, Calcutta, Delhi, Hyderabad, Chennai and New Delhi	Areas up to a distance of 15 kilometres in all directions from the municipal limits, or, as the case may be, cantonment limits.
Ahmedabad, Bangalore, Kanpur, Lucknow, Nagpur and Pune	Areas up to a distance of 12 kilometres in all directions from the municipal limits, or, as the case may be, cantonment limits.
Agra, Allahabad, Amritsar, Bhopal, Cochin, Coimbatore, Dhanbad, Gwalior, Indore, Jabalpur, Jaipur, Jamshedpur, Ludhiana, Madurai, Patna, Salem, Sholapur, Srinagar, Surat, Tiruchirapally, Trivandrum, Varanasi (Benaras) and Vadodara (Baroda)	Areas up to a distance of 10 kilometres in all directions from the municipal limits, or, as the case may be, cantonment limits.
Any other municipality or cantonment board	Areas up to a distance of 8 kilometres in all directions from the municipal limits, or, as the case may be, cantonment limits.

1. Director-General (Income-tax Exemptions) in concurrence with the Director-General in the Directorate General of Tourism, Government of India.

254.3-2 *CONDITIONS TO BE FULFILLED IN THE CASE OF NON-SPECIFIED HOTELS* - One has to satisfy the following conditions :

1. The business of the hotel is not formed by the splitting up or the reconstruction of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose.

2. The business of the hotel is owned and carried on by a company registered in India with the paid-up capital of not less than Rs. 5,00,000.

3. The hotel is located in any place or located in a place other than a place referred to in para 254.3-1.

4. The hotel starts functioning between April 1, 1991 and March 31, 1995. Alternatively, it starts functioning (at a place other than Calcutta, Chennai, Delhi and Mumbai) at any time during April 1, 1997 and March 31, 2001.

5. It is approved by the prescribed authority[1].

6. From the assessment year 2006-07, return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under this section is not available.

254.3-3 *AMOUNT OF DEDUCTION* - Deduction is admissible at the rates given below —

Assessee	*% of profit deductible*	*Period of deduction commencing from the initial assessment year [i.e., relevant to the previous year in which the hotel starts functioning]*
❑ Hotel approved under section 80-IB(7)(*a*) located in hilly area or rural area or a place of pilgrimage or in a notified area [*see* para 254.3-1]	50	First 10 years
❑ Any other hotel [*see* para 254.3-2]	30	First 10 years

254.3-4 *OTHER POINTS* - One should keep in view the following points —

1. Audit report [*see* para 253.1-3a]

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.4 ***Companies engaged in industrial research [Sec. 80-IB(8)/8A]*** - Section 80-IB is applicable if the following conditions are satisfied—

Condition 1	The taxpayer is a company registered in India.
Condition 2	Such company has scientific and industrial research and development as its main object.
Condition 3	It is for the time being approved by the prescribed authority (*i.e.*, Secretary, Department of Scientific and Industrial Research).
Condition 4	Return of income should be submitted on or before due date of submission of return of income.

254.4-1 *AMOUNT OF DEDUCTION* - If all the aforesaid conditions are satisfied, the following is deductible—

	If the company is approved by the prescribed authority at any time before April 1, 1999	*If the company is approved by the prescribed authority after March 31, 2000 but before April 1, 2007*
Amount of deduction	100 per cent of profit from such business	100 per cent of profit from such business

1. Director General (Income-tax Exemptions) in concurrence with the Director General in the Directorate General of Tourism, Government of India.

	If the company is approved by the prescribed authority at any time before April 1, 1999	*If the company is approved by the prescribed authority after March 31, 2000 but before April 1, 2007*
Period of deduction	5 years beginning with the initial[1] assessment year	10 years beginning with the initial[1] assessment year

254.4-2 *OTHER POINTS* - One should also keep in view the following points—

1. Audit report [*see* para 253.1-3a]

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.5 ***Mineral oils*** - One should satisfy the following conditions —

1. It should be a new undertaking [*see* para 254.1-1a].

2. It should not be formed by transfer of machinery or plant previously used for any purpose [*see* para 254.1-1b].

3. It should commence commercial production as follows —

	Commencing production of mineral oil	*Commencing refining of mineral oil*	*Commencing refining of mineral oil by an undertaking which is wholly owned by a notified* public sector company or any other notified* company in which a public sector company holds 49 per cent of voting right*
Undertaking located in North-Eastern Region**	Before April 1, 1997	—	—
Undertaking located anywhere in India	After March 31, 1997	After September 30, 1998 but before April 1, 2009	On or after April 1, 2009 but before April 1, 2012

*Notified by the Central Government before June 1, 2008.

**North-Eastern Region comprises of the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.

4. It should employ 10/20 workers [*see* para 254.1-1e].

5. From the assessment year 2006-07, return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under this section is not available.

254.5-1 *AMOUNT OF DEDUCTION* - 100 per cent of the profit is deductible for the first 7 years commencing with the year in which the undertaking commences commercial production of mineral oil or refining of mineral oil.

254.5-2 *OTHER POINTS* - One should also keep in view the following points —

1. Audit report [*see* para 253.1-3a].

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.6 ***Developing and building housing projects*** - An undertaking engaged in developing and building housing projects shall be eligible to claim deduction under section 80-IB subject to the following —

1. Initial assessment year means the assessment year relevant to the previous year in which the company is approved by the prescribed authority.

Condition 1	The project should be approved by a local authority before March 31, 2007.	
Condition 2	The size of the plot of land is a minimum of one acre.	
Condition 3	The undertaking commences development and construction of the housing project after September 30, 1998 and it should complete construction within 4 years from the end of the financial year in which the housing project is first approved or before April 1, 2008, whichever is later. There is no further condition that such construction and development of the housing project should also be on a land owned by an assessee undertaking—***Radhe Developers*** v. ***ITO*** [2008] 23 SOT 421 (Ahd.).	
Condition 4	The built-up area of the shops and other commercial establishments included in the housing project shall not exceed 5 per cent of the aggregate built-up area of the housing project or 2,000 sq. ft., whichever is less.	
Condition 5	The built-up area of each residential unit should be subject to the following maximum limit—	
	Place where residential unit is situated	***Minimum size of the plot of land should be one acre and the maximum built-up area of each residential unit should be as given below—***
	▪ Within the cities of Delhi and Mumbai	1,000 sq. ft.
	▪ Within 25 kilometres from the local limits of Delhi and Mumbai	1,000 sq. ft.
	▪ At any other place	1,500 sq. ft.
Condition 6	Return of income should be submitted on or before due date of submission of return of income	

Notes :

1. Conditions 2 and *3* are not applicable in the case of a housing project, carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared as slum areas under any law and such scheme is notified by the Board in this behalf.

2. The expression "built-up area" has been defined to mean the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but not including the common areas shared with other residential units.

3. This section does not specifically provide area limit for the garden, the development plan roads, internal means of access, etc., in the housing project. Therefore, the same should conform to the project plan approved by the local authority in accordance with the regulations in force. Also the area limit of the plot has to be construed with reference to the area of the site on which the housing project is constructed and not with reference to the demarcation of land done by the land development authority—**Circular No. 03/2005,** dated July 15, 2005.

254.6-1 *AMOUNT OF DEDUCTION* - If all the aforesaid conditions are satisfied 100 per cent of the profit derived in any previous year relevant to any assessment year from such housing project is deductible.

254.6-2 *OTHER POINTS* - One should also keep in view the following points —

1. Audit report [*see* para 253.1-3a].

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.7 ***Undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables or integrated handling, storage and transportation of food grains*** - Under section 80-IB(11A) deduction is available in the case of an undertaking deriving profit from the integrated business of handling, storage and transportation of food grains, if the undertaking begins to operate such business after March 31, 2001. Deduction is also available in respect of an undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables.

254.7-1 *AMOUNT OF DEDUCTION* - The amount of deduction is given below :

Enterprises	*% of profit deductible*	*Period of deduction commencing from the initial assessment year (i.e., the year in which the undertaking begins the business)*
❑ Owned by a company	100	First 5 years
	30	Next 5 years
❑ Owned by any other person	100	First 5 years
	25	Next 5 years

■ From the assessment year 2006-07, return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under this section is not available.

254.7-2 *OTHER POINTS* - One should also keep in view the following points —

1. Audit report [*see* para 253.1-3a]

2. Double deduction is not available [*see* para 253.1-3b]

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d]

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e]

5. Consequences of merger/amalgamation [*see* para 253.1-3f]

254.8 *Multiplex theatres* - "Multiplex theatre" means a building of a prescribed† area, comprising of two or more cinema theatres and commercial shops of such size and number and having such other facilities and amenities as may be prescribed†. The following conditions should be satisfied in the case of multiplex theatre—

Condition 1	Such multiplex theatre is constructed at any time during April 1, 2002 and March 31, 2005.
Condition 2	The business of the multiplex theatre is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or of plant previously used for any purpose.
Condition 3	Such multiplex theatre is not located at a place within the municipal jurisdiction of Kolkata, Chennai, Delhi or Mumbai.
Condition 4	Return of income should be submitted on or before due date of submission of return of income.

254.8-1 *AMOUNT OF DEDUCTION* - If the aforesaid conditions are satisfied, 50 per cent of the profits and gains derived from the business of building, owning and operating a multiplex theatre is deductible from the assessment year 2003-04 for a period of 5 consecutive years beginning from the initial assessment year.

Initial assessment year, for this purpose, is the assessment year relevant to the previous year in which a cinema hall, being a part of the said multiplex theatre, starts operating on a commercial basis.

254.8-2 *OTHER POINTS* - One should also keep in view the following points —

1. Audit report in Form No. 10CCBA [*see* para 253.1-3a].

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.9 *Convention centre* - "Convention centre" means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed [*see* Rule 18DC].

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†*See* Rule 18DB.

The following conditions should be satisfied in order to avail deduction under section 80-IB—

Condition 1	Such convention centre is constructed at any time during the April 1, 2002 and March 31, 2005.
Condition 2	The business of the convention centre is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or plant previously used for any purpose.
Condition 3	Return of income should be submitted on or before due date of submission of return of income.

254.9-1 AMOUNT OF DEDUCTION - If the aforesaid conditions are satisfied, 50 per cent of the profits and gains derived by the assessee from the business of building, owning and operating a convention centre is deductible from the assessment year 2003-04 for a period of 5 consecutive years beginning from the initial assessment year.

Initial assessment year means the assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis.

254.9-2 OTHER POINTS - One should keep in view the following points —

1. Audit report - A separate report of the audit shall be furnished along with the return of income in respect of each eligible convention centre, in Form No. 10CCBB*. In the first year of the claim of deduction, the assessee shall enclose along with the audit report, a copy of approvals for building of convention centre given by State or local authorities, which shall, where applicable, include the following :—

a. permission for construction of the convention centre from the town planning authority of municipal corporation;

b. completion certificate certifying the completion of the convention centre, during the period given above.

2. Double deduction is not available [*see* para 253.1-3b].

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.10 ***Operating and maintaining a hospital in a rural area*** - In order to claim the deduction the following conditions should be satisfied—

Condition 1	The assessee owns an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area.
Condition 2	Such hospital is constructed at any time during October 1, 2004 and ending on March 31, 2008. For this purpose a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the concerned local authority.
Condition 3	The hospital has at least 100 beds for patients.
Condition 4	The construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority.
Condition 5	The assessee furnishes audit report along with the return of income.
Condition 6	Return of income should be submitted on or before due date of submission of return of income.

254.10-1 AMOUNT OF DEDUCTION - If the above conditions satisfied, 100 per cent of the profits and gains of such business is deductible for a period of 5 consecutive assessment years, beginning with the initial assessment year (*i.e.*, the assessment year relevant to the previous year in which the undertaking begins to provide medical services).

254.10-2 OTHER POINTS - One should keep in view the following points —

1. Audit report in Form No. 10CCBC [*see* para 253.1-3a].

2. Double deduction is not available [*see* para 253.1-3b].

*It is not possible to attach any report with new income-tax return forms. The assessee should himself retain the report in Form No. 10CCBB. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

3. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

4. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

5. Consequences of merger/amalgamation [*see* para 253.1-3f].

254.11 ***Hospitals located in certain areas [Sec. 80-IB(11C)]*** - With a view to encouraging investment in hospitals in non-metro cities, sub-section (11C) has been inserted in section 80-IB with effect from the assessment year 2009-10.

254.11-1 *CONDITIONS* - The benefit of deduction will be available if the following conditions are satisfied —

1. Location	The hospital is located anywhere in India, other than excluded area. The excluded area shall mean (or in other words, the hospital should not be located in) an area comprising the urban agglomerations of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore and Ahmedabad, the districts of Faridabad, Gurgaon, Ghaziabad, Gautam Budh Nagar and Gandhinagar and the city of Secunderabad. The area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census.
2. Construction	The hospital is constructed at any time during April 1, 2008 and March 31, 2013. For this purpose, a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the local authority concerned.
3. Commencement	The hospital should start functioning at any time during April 1, 2008 and March 31, 2013.
4. Number of beds	The hospital has at least 100 beds for patients.
5. Municipal bye-laws	The construction of the hospital is in accordance with the regulation or bye-laws of the local authority.
6. Audit report	The taxpayer should submit an audit report in Form No. 10CCBD certifying that deduction has been correctly claimed†.
7. Return of income	Return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under this section is not available.

254.11-2 *DEDUCTION* - If the above conditions are satisfied, 100 per cent of the profits and gains derived from the business of hospital shall be deductible for a period of 5 assessment years, beginning with the initial assessment year (*i.e.*, the assessment year relevant to the previous year in which the business of hospital starts functioning).

254.11-3 *OTHER POINTS* - One should keep in view the following points —

1. Double deduction is not available [*see* para 253.1-3b].

2. Computation of profit [*see* paras 253.1-3c and 253.1-3d].

3. Recomputation of profit by the Assessing Officer [*see* para 253.1-3e].

4. Consequences of merger/amalgamation [*see* para 253.1-3f].

254-P1 *Find out of the quantum and period of deduction under section 80-IB in the following cases of industrial undertakings engaged in the manufacture of goods not specified in the Eleventh Schedule (the date of commencement being : December 20, 2001).*

Name of assessee	Value of plant and machinery (Rs. in lakh)	Number of full time workers	Location of undertaking
X Ltd.	90 (new)	50	Bombay

†It is not possible to attach any report with new income-tax return forms. The assessee should himself retain the report in Form No. 10CCBD. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

Name of assessee	Value of plant and machinery (Rs. in lakh)	Number of full time workers	Location of undertaking
Y Ltd.	*30 (new)* *50 (old)*	*50*	*Bombay*
Z Ltd.	*450 (new)*	*80*	*Simla (i.e., an industrially backward State)*
A Ltd.	*980 (new)* *120 (old)*	*16*	*Churu, Rajasthan (i.e., "A" category industrially backward district)*
B Ltd.	*980 (new)* *400 (old)*	*20*	*Bankura, West Bengal (i.e., "A" Category industrially backward district)*
C Ltd. (power generation)	*20,50 (new)*	*160*	*Noida*
D Ltd.	*15,60 (new)*	*200*	*Calcutta*
E Ltd.	*780*	*6*	*Beed, Maharashtra (i.e., "B" category industrially backward district)*
F Ltd.	*992*	*41*	*Midnapore, West Bengal (i.e.,"B" category industrially backward district)*

Does it make any difference if these undertakings are owned by a co-operative society or an individual.

SOLUTION :

Assessee	Whether deduction is available	Assessment years for which 100% deduction is available	Assessment years for which partial tax holiday is available
X Ltd.	Yes (it is a small scale industrial undertaking)	—	30% for the assessment years 2002-03 to 2011-12
Y Ltd.	No (as the old machinery is more than 20% of total value of plant and machinery)	—	—
Z Ltd.	Yes (as it is set up in an industrially backward State)	100% for the assessment years 2002-03 to 2006-07	30% for the assessment years 2007-08 to 2011-12
A Ltd.	Yes (it is set up in "A" category industrially backward district)	100% for the assessment years 2002-03 to 2006-07	30% for the assessment years 2007-08 to 2011-12
B Ltd.	No (as old machinery is more than 20%)	—	—
C Ltd.	Yes (it is power generating unit)	100% for the assessment years 2002-03 to 2011-12	—
D Ltd.	No (it is neither/small scale unit, nor a power generating unit nor is it set up in a backward State/district; production is commenced after March 31, 1995)	—	—
E Ltd.	No (as number of workers is less than 10)	—	—
F Ltd.	Yes (as it is set up in a "B" category industrially backward district)	100% for the assessment years 2002-03 to 2004-05	30% for the assessment years 2005-06 to 2009-10

Notes :—

1. If these undertakings are owned by an individual, then the partial tax holiday (given in the last column) will be available at the rate of 25% (and not at the rate of 30%).

2. If these undertakings are owned by a co-operative society, then the partial tax holiday will be available at the rate of 25% up to the assessment year 2013-14.

254-P2 *X Ltd., a company providing telecommunication services, obtains a telecom licence on April 1, 2003 for a period of 10 years which ends on March 31, 2013. The telecom licence is not renewable. The following two options are given to X Ltd. to pay the licence fees —*

a. to pay Rs. 10 lakh on April 1, 2003 ; or

b. to pay Rs. 12 lakh on April 1, 2007.

Assume that each year's total receipts and expenses (excluding payment of licence fees) will be Rs. 50 lakh and Rs. 30 lakh, respectively, find out the better option. The telecom licence is not renewable.

SOLUTION :

Option 1

(Rs. in lakh)

	Assessment years	
	2004-05 to 2008-09	2009-10 to 2013-14
Gross receipts	50	50
Less :		
Amount of deduction under section 35ABB on account of payment of licence fees [*i.e.*, Rs. 10 lakh/10]	1	1
Other expenses	30	30
Business income	19	19
Any other income	-	-
Gross total income	19	19
Less : Deduction under section 80-IA [100% for first 5 years and 30% for next 5 years]	19	5.7
Net income	*Nil*	13.3

Option 2

	Assessment years		
	2004-05 to 2007-08	2008-09	2009-10 to 2013-14
Gross receipt	50	50	50
Less :			
Amount deductible under section 35ABB [*i.e.*, Rs. 12 lakh/6]	-	2	2
Other expenses	30	30	30
Business income	20	18	18
Any other income	-	-	-
Gross total income	20	18	18
Less : Deduction under section 80-IA [100% for the first 5 years and 30% for the next 5 years]	20	18	5.40
Net income	*Nil*	*Nil*	12.6

It is, therefore, better to opt for the option 2.

Deduction in respect of profits and gains of certain undertakings in certain special category of States - How to find out [Sec. 80-IC]

255. Section 80-IC has been inserted from the assessment year 2004-05.

255.1 ***Conditions*** - One has to satisfy the following conditions to claim deduction under section 80-IC—

255.1-1 *NOT FORMED BY SPLITTING UP OR RECONSTRUCTION OF EXISTING BUSINESS* - The industrial undertaking is not formed by splitting up, or the reconstruction, of a business already in existence.

- *Exception* - The aforesaid condition of "new undertaking" is not applicable where the business is re-established, reconstructed , etc. according to rules given in para 254.1-1a.

255.1-2 *NOT FORMED BY TRANSFER OF OLD PLANT AND MACHINES* - *See* para 254.1-1b.

255.1-3 *INDUSTRIAL UNDERTAKING SHOULD BE SET UP IN CERTAIN SPECIAL CATEGORY OF STATES* - The industrial undertaking should be set up in states given in column 1 of the table given in para 255.2. Moreover, it should be in a specified area [*see* column 3 of the table].

255.1-4 *MANUFACTURE/PRODUCTION OF SPECIFIED GOODS* - The industrial undertaking should manufacture/produce specified goods/articles [*see* columns (3) and (4) of the table given in para 255.2]

255.1-5 *COMMENCEMENT* - The industrial undertaking must begin to manufacture or produce article or thing within the time-limit given in column (2) of the table in para 255.2. In the case of an existing unit, substantial expansion should take place during the time-limit given in column (2) of the table.

255.1-6 *AUDIT* - The books of account the taxpayer should be audited and the audit report in Form 10CCB should be submitted† along with the return of income.

255.1-7 *RETURN OF INCOME* - Return of income should be submitted on or before the due date of submission of return of income given by section 139(1). If return is not submitted or return is submitted belatedly, deduction under section 80-IC is not available.

255.2 ***Amount of deduction*** - If the aforesaid conditions are satisfied, then deduction is available under section 80-IC as follows—

State in which the industrial undertaking is set up	*Time limit for commencement of production or substantial expansion [see para 255.2-1]*	*Nature of articles to be produced if industrial undertaking is set up (or completes substantial expansion) in the industrial zone of the relevant State given in section 80-IC(2)(a) [see para 255.2-2]*	*Nature of article to be produced if industrial undertaking is set up (or completes substantial expansion) in any area of the relevant State*	*Amount deductible [see also paras 255.2-3 and 255.2-4]*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
Sikkim	December 23, 2002 to March 31, 2007	Any article but other than those given in the Thirteenth Schedule [Part A]	Any article given in Fourteenth Schedule [Part B]	100% of profit and gains of the industrial undertaking for 10 years commencing from the initial assessment year
Himachal Pradesh or Uttaranchal	January 7, 2003 to March 31, 2012	Any article but other than those given in the Thirteenth Schedule [Part B]	Any article given in Fourteenth Schedule [Part C]	100% of the profit and gains of the industrial undertaking for the first 5 years commencing with the initial assessment year and 25% (30% in the case of a company) for the next 5 years
North-Eastern State [*i.e.*, Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura]	December 24, 1997 to March 31, 2007	Any article	Any article given in Fourteenth Schedule [Part A]	100% of profit and gain of industrial undertaking for 10 years commencing from the initial assessment year

255.2-1 *WHAT IS SUBSTANTIAL EXPANSION* - For the aforesaid purpose substantial expansion is calculated as under—

1. Find out the book value of plant and machinery (before depreciation) as on the first day of the previous year in which substantial expansion is taken.

2. Find out the amount of investment in plant and machinery during the previous year.

3. Find out (2) ÷ (*1*)

If the proportion computed under (*3*)(*supra*) is 50 per cent or more, then it is taken as substantial expansion.

†It is not possible to attach any report with new income-tax return forms. The assessee should himself retain the report in Form No. 10CCB. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

255.2-2 *INDUSTRIAL ZONES GIVEN UNDER SECTION 80-IC(2)* - If an industrial undertaking has begun or begins to manufacture or produce any article or thing (not being any article or thing specified in the Thirteenth Schedule), or manufactures or produces any article or thing (not being any article or thing specified in the Thirteenth Schedule) and undertakes substantial expansion during the period given in column 2 of the table (*supra*), then such industrial undertaking should be in the following industrial zones notified by the Board for the relevant State—

a. Export Processing Zone; or

b. Integrated Infrastructure Development Centre; or

c. Industrial Growth Centre; or

d. Industrial Estate; or

e. Industrial Park; or

f. Software Technology Park; or

g. Industrial Area; or

h. Theme Park

These areas shall be notified by the Board in accordance with the notified scheme of the Central Government.

255.2-3 *PERIOD OF DEDUCTION NOT TO EXCEED 10 YEARS* - No deduction shall be allowed to any undertaking or enterprise under section 80-IC, where the total period of deduction inclusive of the period of deduction under this section or under section 80-IB(4) or under section 10C, as the case may be, exceeds 10 assessment years.

255.2-4 *INITIAL ASSESSMENT YEAR* - "Initial assessment year" means the assessment year relevant to the previous year, in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion.

255.3 ***Other points*** - One should also keep in view the following points—

1. Double deduction not allowed - In computing the total income of the assessee, no deduction shall be allowed under sections 80C to 80U or section 10A or 10B, in relation to the profits and gains of the undertaking or enterprise.

2. Adjustment of loss - *See* para 253.1-3d.

3. Computation of profit - *See* para 253.1-3e.

4. Consequences of merger/demerger - *See* para 253.1-3f.

255-P1 *The following data is given in respect of X Ltd. (owning industrial Unit A), Y Ltd. (owning industrial unit B) and Z Ltd. (owning industrial unit C). These units are in operation since 1986 and are engaged in production of articles given in the Fourteenth Schedule. To increase the installed capacity, the three units are expanded as follows—*

	Unit A	Unit B	Unit C
Expansion 1			
Date of commencement	April 10, 2008	April 10, 2007	June 10, 2007
Date of completion	January 7, 2009	March 12, 2008	March 24, 2009
Expansion 2			
Date of commencement	—	May 5, 2008	—
Date of completion	—	January 31, 2009	—

The amount of investment is given below :

	X Ltd. (Unit A) Rs. in lakh	Y Ltd. (Unit B) Rs. in lakh	Z Ltd. (Unit C) Rs. in lakh
Book value of plant and machinery (before depreciation) on April 1, 2007 (a)	*84*	*84*	*84*
Investment in plant and machinery during February 2008 (b)	*Nil*	*20*	*20*
[(b) as % of (a)]	*[0%]*	*[23.81%]*	*[23.81%]*
Book value of plant and machinery on April 1, 2008 (c)	*84*	*1,04*	*1,04*
Investment in plant and machinery during June 2008 (d)	*42*	*22*	*22*
[(d) as % of (c)]	*[50%]*	*[21.15%]*	*[21.15%]*
Book value on April 1, 2009 (e)	*1,26*	*1,26*	*1,26*

SOLUTION :

In the three cases given above, book value of plant and machinery on April 1, 2007 is Rs. 84 lakh. During April 1, 2007 and March 31, 2009, additional investment of Rs. 42 lakh (which is 50% of Rs. 84 lakh) is made in plant and machinery. In the case of X Ltd. the entire expansion is completed in the previous year 2008-09. However, in the case of Y Ltd. the same investment is made for the purpose of 2 different expansions during 2 different years. In the case of Z Ltd. one expansion is completed in 2 years.

Consequently, investment made by X Ltd. during 2008-09 will be termed as substantial expansion and profit of Unit A will be qualified for deduction. Y Ltd. cannot claim any deduction under section 80-IC, as investments made by it during one year for one expansion is less than 50% of the book value of plant and machinery.

Z. Ltd. can claim the benefit of deduction, as one expansion is completed in 2 different years and total investment of Rs. 42 lakh in plant and machinery is not less than 50 per cent of the investment in plant and machinery (before depreciation) on the first day of the previous year in which expansion work is started.

Amount of deduction in the case of X Ltd. or Z Ltd. is as follows —

[illegible]	Percentage of profits of the Unit A or Unit C deductible if Unit A or Unit C is situated in			
	Sikkim [deduction under section 80-IE]	Himachal Pradesh or Uttaranchal [deduction under section 80-IC]	North Eastern State [deduction under section 80-IE]	Rest of India
If no deduction is claimed in respect of Unit A or Unit C under section 80-IB (2nd proviso) or 10C				
For the assessment years 2009-10 to 2013-14	100%	100%	100%	*Nil*
For the assessment years 2014-15 to 2018-19	100%	30%[1]	100%	*Nil*
From the assessment year 2019-20 onwards	*Nil*	*Nil*	*Nil*	*Nil*

Notes—

1. It is 25% if Unit A is owned by a non-corporate entity.

2. No other deduction will be allowed to X Ltd. and Z Ltd. under sections 10A, 10B and 80CCC to 80U if deduction is claimed under section 80-IC.

Deduction in the case of hotels and convention centre in NCR [Sec. 80-ID]

255A. Section 80-ID has been inserted with effect from the assessment year 2008-09.

255A.1 ***Conditions*** - Section 80-ID is applicable if the following conditions are satisfied—

1. The taxpayer engaged in the business of hotel located in a specified area given below. Alternatively, the taxpayer is engaged in the business of building, owning and operating a convention centre located in specified area given below —

Source of income	Construction	Specified area	Applicable from assessment year
2/3/4 star hotel	Constructed and started functioning during April 1, 2007 and March 31, 2010	National capital territory of Delhi and Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad	Assessment year 2008-09 onwards
2/3/4 star hotel at a World heritage site	Constructed and started functioning during April 1, 2008 and March 31, 2013	Districts of Agra, Jalgaon, Aurangabad, Kancheepuram, Puri, Bharatpur, Chhatarpur, Thanjavur, Bellary, South 24 Parganas (excluding areas falling within the Kolkata Urban Agglomeration), Chamoli, Raisen, Gaya, Bhopal, Panchmahal, Kamrup, Goalpara, Nagaon, North Goa, South Goa, Darjeeling and Nilgiri	Assessment year 2009-10 onwards
Convention centre*	Constructed during April 1, 2007 and March 31, 2010	National capital territory of Delhi and Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad	Assessment year 2008-09 onwards

*Convention centre means a completely centrally air-conditioned building of a minimum 25,000 square metre covered plinth area (minimum seating capacity 3000), comprising at least 10 convention halls (each hall should be equipped with modern public address system and LCD projector or video screening facility) to be used for the purpose of holding conferences and seminars. For detailed discussion, please refer to rule 18DE.

2. The aforesaid business is not formed by the splitting up, or the reconstruction, of a business already in existence [subject to a few exceptions - *see* para 254.1-1a].

3. The aforesaid business is not formed by the transfer to a new business of machinery or plant previously used for any purpose [subject to a few exceptions - *see* para 254.1-1b].

4. Audit report in Form No. 10CCBBA should be submitted† along with the return of income.

5. Return of income is submitted on or before the due date of submission of return of income given under section 139(1).

255A.2 ***Amount of deduction*** - If the above conditions are satisfied, 100 per cent of the profits and gains derived from the aforesaid business is deductible for five consecutive assessment years beginning from the initial assessment year. Initial assessment year for this purpose means the assessment year relevant to the previous year in which the business of the hotel starts functioning or the previous year in which the convention centre starts operating on a commercial basis.

Deduction in respect of certain undertakings in North-Eastern States [Sec. 80-IE]

255B. Section 80-IE is applicable from the assessment year 2008-09.

255B.1 ***Conditions*** - The following conditions should be satisfied—

1. The taxpayer begins manufacture or production of goods or undertakes substantial expansion during April 1, 2007 and March 31, 2017. Alternatively, the taxpayer has begun to provide eligible services during April 1, 2007 and March 31, 2017. However, deduction under this section is not available in respect of manufacture or production of tambacco, pan masala, plastic carry bags or less than 20 microns or goods produced by petroleum oil and gas refineries. Eligible business for this purpose are hotel (2 star or above), adventure and leisure sports (including ropeways), nursing home (25 beds or more), old age homes, vocational training institutes (such as hotel management, catering, entrepreneurship development, nursing and paramedical, civil aviation related training, fashion designing and industrial training), IT related training centres, IT hardware units and bio-technology.

†It is not possible to attach any report with new income-tax return forms. The assessee should himself retain the report. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

2. The aforesaid activity takes place in any North-Eastern States (*i.e.*, Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura).

3. The aforesaid business is not formed by the splitting up, or the reconstruction, of a business already in existence [subject to a few exceptions - *see* para 254.1-1a].

4. The aforesaid business is not formed by the transfer to a new business of machinery or plant previously used for any purpose [subject to a few exceptions - *see* para 254.1-1b].

5. Audit report should be submitted along with the return of income.

6. Return of income is submitted on or before the due date of submission of return of income given under section 139(1).

255B.2 ***Amount of deduction*** - If the aforesaid conditions are satisfied 100 per cent of profit from the aforesaid business/services shall be deductible for 10 years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture/produce article or things or complete substantial expansion. Substantial expansion for this purpose means increase in the investment in the plant and machinery by at least 25 per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken.

255B.3 ***Other points*** - If deduction is claimed and allowed under the aforesaid provisions, the taxpayer will not be able to avail any deduction under sections 10A, 10AA, 10B, 10BA, 80C to 80U. Moreover, no deduction shall be allowed to an undertaking under section 80-IE where the total period of deduction under sections 10C, second proviso to 80-IB(4), 80-IC and 80-IE exceeds 10 assessment years.

Deduction in respect of profits and gains from the business of collecting and processing of bio-degradable waste [Sec. 80JJA]

256. Section 80JJA is applicable where the gross total income of an assessee includes any profits and gains derived from the business of collecting, processing or treating of biodegradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure.

▪ *Amount of deduction* - The whole of the profits and gains of the above activities shall be deductible for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences.

Deduction in respect of employment of new workmen [Sec. 80JJAA]

257. Section 80JJAA has been inserted to encourage employment.

257.1 ***Conditions*** - The following conditions should be satisfied to avail deduction under section 80JJAA—

Condition 1	The taxpayer is an Indian company.
Condition 2	Income of the taxpayer includes any profits and gains derived from any industrial undertaking engaged in the manufacture or production of article or thing.
Condition 3	The industrial undertaking is not formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking.
Condition 4	The assessee furnishes along with the return of income the report of a chartered accountant in Form No. 10DA.

257.2 ***Amount of deduction*** - The amount of deduction is equal to 30 per cent of "additional wages" paid to the new "regular workmen" employed by the assessee in the previous year. The deduction is available for three assessment years including the assessment year relevant for the previous year in which such employment is provided.

▪ *Meaning of workman* - For the aforesaid purpose, "workman" means any person employed in any industry to do any manual, unskilled, skilled, technical, clerical or supervisory work but does not include the following:—

a. a person who is in Air-force, Military or Navy, or who is in Police service; or

b. a person who is employed in managerial or administrative capacity; or

c. a person who is employed in a supervisory capacity and draws wages exceeding Rs. 1,600 per month.

▪ *Meaning of regular workman* - For the aforesaid purpose, "regular workman" does not include the following:—

a. a casual workman; or

b. a workman employed for contract labour; or

c. any other workman employed for a period of less than 300 days during the previous year.

▪ *Meaning of additional wages* - For the aforesaid purpose, "additional wages" has been defined as follows:

In the case of a new undertaking	*In the case of an existing undertaking*
It means the wages paid to new "regular workmen" in excess of 100 "workmen" employed during the year	It means the wages paid to new "regular workmen" in excess of 100 "workmen" employed during the year
-	Additional wages shall be *nil* if the increase in number of "regular workmen" employed during the year is less than 10 per cent of the existing number of "workmen" employed in the undertaking as on the last day of the preceding year.

257.3 ***Points to be noted*** - The following points should be noted—

▪ For the above purpose, every employee is not a "workman" and every workman is not a "regular workman".

▪ Deduction under section 80JJAA is available for three assessment years only. For the first time it is available in the year in which new "regular workmen" are employed and then it is available in the next two assessment years. Deduction is, however, available only if the relevant conditions are satisfied.

▪ Deduction is available under section 80JJAA on the basis of number of "workmen" and "regular workmen". Hereinafter all employees in an undertaking are grouped in the following categories (the categorization has been done only for the purpose of discussing the impact of section 80JJAA in this book)—

Category	*Nature of employment*
A	Employees employed in managerial or administrative capacity. It also includes employees employed in supervisory capacity and drawing salary exceeding Rs. 1,600 per month
B	It includes casual workmen and workmen employed through contract labour (but not coming under category A)
C	Other workmen (not coming under categories A and B) if employed for less than 300 days during the previous year
D	Other workmen (not coming under categories A and B) if employed for 300 days or more than 300 days during the previous year

"Regular workmen" are those employees who come under Category D. Employees under Categories B, C and D are "workmen". In other words, categories B and C employees are "workmen" but they are not "regular workmen".

▪ Deduction under section 80JJAA in the case of a new undertaking is available as follows—

1. First find out whether number of "workmen" (*i.e.*, category B + C + D) employed during the previous year is more than 100.

2. If yes, then find out wages paid to new "regular workmen" (*i.e.*, category D) in excess of 100 workmen employed during the year.

3. 30 per cent of the wages determined in (2) (*supra*) is the amount of deduction under section 80JJAA.

- Deduction under section 80JJAA in the case of an existing undertaking is available as follows—

1. First find out whether number of "workmen" (*i.e.*, category B + C + D) employed during the previous year is more than 100.

2. If yes, then find out number of regular workmen (*i.e.*, category D) newly employed during the year and whether it is equal to or more than 10 per cent of the existing number of workmen (*i.e.*, category B + C + D) employed in the undertaking on the last day of the preceding year.

3. If yes, then find out wages paid to new "regular workmen" (*i.e.*, category D) in excess of 100 workmen employed during the year.

4. Thirty per cent of the wages determined in (*3*)(*supra*) is the amount of deduction under section 80JJAA.

257-P1 *X Ltd. is an Indian company. It owns an industrial undertaking which starts production on April 1, 2008. On the same day, it appoints 94 casual workmen. On May 1, 2008, it appoints 10 regular workmen (salary being Rs. 3,000 per month). Find out the amount of deduction under section 80JJAA for the assessment year 2009-10.*

SOLUTION : The industrial undertaking is a new industrial undertaking. No deduction is admissible under section 80JJAA in respect of employment of initial 100 workmen (casual and/or regular coming under category B, C or D). 30 per cent of wages payable to new "regular workmen" (*i.e.*, Category D) in excess of initial 100 workmen would be the amount of deduction under section 80JJAA.

94 casual workmen appointed on April 1, 2008	No deduction under section 80JJAA
6 regular workmen appointed on May 1, 2008	No deduction under section 80JJAA
4 regular workmen appointed on May 1, 2008	Deduction would be available under section 80JJAA

Therefore, the amount deductible is Rs. 39,600 (30% of Rs. 3,000 × 11 months × 4 regular workmen). Besides, wages payable to all 104 workmen would be deductible under section 37(1).

257-P2 *X Ltd. is an Indian company. It owns an industrial undertaking which started production during 2007-08. On March 31, 2008, it has 89 workmen out of which 20 are casual workmen. On June 1, 2008, the company appoints 30 regular workmen (i.e., Category D) (wages being Rs. 2,700 per month). Find out the amount of deduction under section 80JJAA for the assessment year 2009-10.*

SOLUTION : X Ltd. owns an existing industrial undertaking. 30% of wages payable to newly appointed "regular workmen" (*i.e.*, Category D) in excess of initial 100 workmen would be the amount of deduction under section 80JJAA. No deduction is, however, available if number of newly appointed regular workmen is lower than 10% of the strength of workmen as on the last day of the preceding year. In this case, the company has 89 workmen on March 31, 2008. 10% of it comes to 8.9. In other words, deduction under section 80JJAA is not available if number of newly appointed "regular workmen" (*i.e.*, Category D) is 8 or less than 8 (such number should be 9 or more than 9). In this case, the company has appointed 30 regular workmen during the previous year 2008-09. Therefore, deduction is available under section 80JJAA. However, no deduction is available in respect of wages payable to initial 100 workmen.

89 workmen as on April 1, 2008	No deduction under section 80JJAA
11 regular workmen appointed on June 1, 2008	No deduction under section 80JJAA
19 regular workmen appointed on June 1, 2008	Deduction would be available under section 80JJAA

Therefore, the amount of deduction under section 80JJAA is Rs. 1,53,900 (30% of Rs. 2,700 × 10 months × 19 regular workmen). Besides, wages payable to all 119 workmen would be deductible under section 37(1).

257-P3 *X Ltd. is an Indian company. It starts a new industrial undertaking on May 1, 2008. On the same date, it appoints 6 managerial personnel (Category A). Besides on the same date, it appoints the following workers (salary being Rs. 2,100 per month per person)—*

Situation one - 95 workmen coming under Category D.

Situation two - 110 workmen coming under Category D.

Situation three - 400 workmen coming under Category D.

Situation four - 97 workmen coming under Category B.

Situation five - 125 workmen coming under Category B.

Situation six - 370 workmen coming under Category B.

Situation seven - 225 workmen coming under Category D, 30 workmen coming under Category D (with effect from June 1, 2008) and 40 workmen coming under Category C (with effect from August 1, 2008).

Situation eight - 230 workmen coming under Category B, 35 workmen coming under Category B (with effect from June 1, 2008) and 42 workmen coming under Category B (with effect from August 1, 2008).

Situation nine - 235 workmen coming under Category B, 36 workmen coming under Category D (with effect from June 1, 2008) and 47 workmen coming under Category C (with effect from August 1, 2008).

SOLUTION :

	Different situations								
	One	*Two*	*Three*	*Four*	*Five*	*Six*	*Seven*	*Eight*	*Nine*
No. of employees	101	116	406	103	131	376	301	313	324
No. of "workmen" (Category B+C+D)	95	110	400	97	125	370	295	307	318
No. of "workmen" *minus* initial 100 workmen (p)	*Nil*	10	300	*Nil*	25	270	195	207	208
Out of (p) above how many of them are "regular workmen" (Category D)	*Nil*	10	300	*Nil*	*Nil*	*Nil*	155	*Nil*	36

Situation one - No deduction is available under section 80JJAA, as the number of "workmen" (Categories B + C +D) does not exceed 100 during the year. This rule is applicable even if total number of employees (Categories A + B + C + D) exceeds 100.

Situations two and three - As the number of workmen exceeds 100, deduction is available under section 80JJAA as follows—

	Situation two	*Situation three*
Salary payable to new regular workmen in excess of 100 workmen (Rs. 2,100 × 10 × 11 months, Rs. 2,100 × 300 × 11 months) (a)	Rs. 2,31,000	Rs. 69,30,000
Amount of deduction under section 80JJAA [30% of (a)]	Rs. 69,300	Rs. 20,79,000

Situation four - As the number of workmen does not exceed 100, deduction is not available under section 80JJAA.

Situations five and six - The number of workmen exceeds 100. However, no deduction is available under section 80JJAA, as number of "regular workmen" in excess of 100 "workmen" is zero.

Situations seven, eight and nine - Deduction is available under section 80JJAA as follows—

	Situation seven	*Situation eight*	*Situation nine*
After excluding initial 100 "workmen" how many of them are regular workmen (Category D)	155	*Nil*	36
Salary payable to the above workmen (Rs. 2,100 × 125 × 11 months + Rs. 2,100 × 30 × 10 months; Rs. 2,100 × 36 × 10 months) (a)	Rs. 35,17,500	*Nil*	Rs. 7,56,000
Amount of deduction under section 80JJAA [30% of (a)]	Rs. 10,55,250	*Nil*	Rs. 2,26,800

Note : In all the aforesaid situations, salary payable to all employees (Categories A, B, C and D) is deductible under section 37. Deduction under section 80JJAA, as computed above, is in addition to deduction available under section 37.

257-P4 *X Ltd. is an Indian company. It owns an industrial undertaking (date of commencement being July 1, 2007). On March 31, 2008, it has 414 employees (Category A: 25; Category B: 36; Category D: 353). During the previous year 2008-09, it gives employment to the following persons (salary being Rs. 2,200 per month per person except in case of Category A)—*

	Situation one (No. of employees)	Situation two (No. of employees)
Managerial personnel (Category A)	2	4
Casual workmen (Category B)	10	18
Other workmen (Category D) (employed with effect from May 1, 2008)	37	40
Other workmen (Category C) (employed with effect from December 1, 2008)	19	25
Number of new employees employed during the financial year 2008-09	68	87

Find out the amount of deduction under section 80JJAA for the assessment year 2009-10.

SOLUTION :

	Situation one	Situation two
Number of "workmen" as on March 31, 2008 (Category B + D; Category A employees are not "workmen")	389	389
10% of above	38.9	38.9
Minimum number of "regular workmen" which should be newly employed during the previous year 2008-09 to get the benefit of deduction under section 80JJAA	39	39
Number of "regular workmen" actually employed during the financial year 2008-09 (Category D)	37	40
Whether deduction is available under section 80JJAA	No	Yes

In situation two the amount of deduction will be as follows:

Salary payable to newly employed "regular workmen" during the financial year 2008-09 : Rs. 9,68,000

Amount deductible under section 80JJAA (30% of Rs. 9,68,000) : Rs. 2,90,400

Note : Salary payable to all employees (Categories A, B, C and D) is deductible under section 37. Deduction under section 80JJAA, as computed above, is in addition to the deduction available under section 37.

257-P5 *X Ltd. is an Indian company. It owns an industrial undertaking (date of commencement being November 2, 2007). On March 31, 2008, it has 94 employees (Category A: 1; Category B: 39; Category D: 54). Net profit as per profit and loss account for the year ending March 31, 2009 is Rs. 7,86,000. It has been calculated after debiting salary payable to all employees including the following employees which have been newly employed during the previous year 2008-09 (salary being Rs. 3,000 per month per person)—*

	Situation one (No. of employees)	Situation two (No. of employees)
Managerial personnel (Category A)	Nil	Nil
Casual workmen (Category B) (employed with effect from May 1, 2008)	3	4
Other workmen (Category D) (employed with effect from June 1, 2008)	7	15
Other workmen (Category C) (employed with effect from December 1, 2008)	25	26
Number of new employees employed during the financial year 2008-09	122	131

Find out the income chargeable to tax for the assessment year 2009-10.

SOLUTION :

[illegible]	Situation one	Situation two
Number of "workmen" as on March 31, 2008 (Category B + D, Category A employees are not "workmen")	93	93
10% of above	9.3	9.3
Minimum number of "regular workmen" which should be newly employed during the previous year 2008-09 to get the benefit of deduction under section 80JJAA	10	10
Number of "regular workmen" actually employed during the financial year 2008-09 (Category D)	7	15
Whether deduction is available under section 80JJAA	No	Yes
Number of "regular workmen" actually employed during the financial year 2008-09 (Category D) after excluding initial 100 "workmen" (old "workmen" 39 + 54 = 93, casual workmen employed from May 1, 2008: 4, total workmen as on May 1, 2008: 97, 3 out of 15 Category D workmen employed on June 1, 2008 to make the total 100 initial workmen)	—	12
Computation of income	*Rs.*	*Rs.*
Net profit as per profit and loss account	7,86,000	7,86,000
Any other income	*Nil*	*Nil*
Gross total income	7,86,000	7,86,000
Less: Deduction under section 80JJAA (30% of Rs. 3,000 × 12 × 10)	*Nil*	1,08,000
Net income	7,86,000	6,78,000

Deduction in respect of interest on certain securities, investments, etc. [Sec. 80L]

258. Deduction under section 80L is not available from the assessment year 2006-07.

Deduction in respect of certain income of Offshore Banking Units and International Financial Services Centre [Section 80LA]

259 The following conditions should be satisfied—

1. The assessee is—

a. a scheduled bank and having an offshore banking unit in a special economic zone; or

b. a foreign bank and having an offshore banking unit in a special economic zone; or

c. a unit of International Financial Services Centre.

2. The gross total income of the assessee includes (*a*) any income from the offshore banking unit in a Special Economic Zone; (*b*) from the business referred to in section 6(1) of the Banking Regulation Act, with an undertaking located in Special Economic Zone or any other undertaking which develops, develops and operates or operates and maintains a Special Economic Zone; (*c*) from any unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a centre in a Special Economic Zone.

3. The report from a Chartered Accountant in Form No. 10CCF certifying that the deduction has been correctly claimed in accordance with the provisions of this section should be submitted† along with the return of income.

†It is not possible to attach any report with new income-tax return forms. The assessee should himself retain the report in Form No. 10CCF. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

4. A copy of permission obtained under section 23(1)(*a*) of Banking Regulation Act should be submitted along with the return of income.

259.1 ***Amount of deduction*** - If the above conditions are satisfied, then 100 per cent of the aforesaid income is deductible for 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission as stated in point No. 4 (*supra*) or permission of SEBI or under any other law, is obtained. For the next 5 years, 50 per cent of such income would be deductible.

Deduction in respect of royalties from certain foreign enterprises [Sec. 80-O]

260. No deduction under section 80-O is available from the assessment year 2005-06 onwards.

Deduction in respect of income of a co-operative society [Sec. 80P]

261. *See* para 341.

Deduction in respect of income from business of publication of books [Sec. 80Q]

262. Deduction under section 80Q is not available from the assessment year 1997-98.

Deduction in respect of royalty income of authors [Sec. 80QQB]

263. The provisions of section 80QQB, inserted from the assessment year 2004-05, are given below—

263.1 ***Conditions*** - The following conditions should be satisfied—

- *Resident individual* - The taxpayer is an individual resident in India . He may be an Indian citizen or foreign citizen or he may be resident and ordinarily resident or resident but not ordinarily resident in India. But he should not be a non-resident in India.
- *Author or joint-author* - He is an author or joint author.
- *Literary work* - The book authored by him is work of literary, artistic or scientific nature. However, the "book" shall not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, text-books for schools, tracts and other publications of similar nature, by whatever name called.
- *Income includes royalty* - The gross total income of the taxpayer includes the following—

a. royalty or copyright fees (payable in lump sum or otherwise) in respect of aforesaid book (it also includes advance payment which is not returnable);

b. lump sum consideration for transfer (or grant) of any interest in the copyright of the book.

- *Furnishing of Form No. 10CCD* - The taxpayer shall have to obtain a certificate in Form No. 10CCD, from the person responsible for paying the income, and furnish it along with the return†.

263.2 ***Amount of deduction*** - If the aforesaid conditions are satisfied, then the amount of deduction is—

a. Rs. 3,00,000; or

b. income from royalty as stated above,

whichever is lower.

†It is not possible to attach any certificate with new income-tax return forms. The assessee should himself retain the certificate in Form No. 10CCD. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

263.3 ***Other points*** - One should also keep in view the following points—

- *Remittance from abroad* - Where the eligible income is earned outside India, the deduction shall be allowed on so much of the income earned in foreign exchange, which is brought in India within six months from the end of previous year (or within extended period as permitted by RBI or a competent authority may allow in this behalf). Moreover, deduction will not be allowed unless the taxpayer furnishes† a certificate in Form No. 10H from the competent authority (*i.e.*, RBI or any other authority as is authorised under any law for regulating foreign exchange dealings).
- *Rate of royalty not to exceed 15 per cent* - Where the income by way of royalty (or the copyright fee), is not a lump sum consideration (in lieu of all rights of the assessee in the book) so much of the income (before allowing expenses attributable to such income) as is in excess of 15 per cent of the value of such books sold during the previous year, shall be ignored.
- *Double deduction not available* - Where a deduction under section 80QQB for any previous year has been claimed and allowed, no deduction in respect of such income shall be allowed under any other provision of the Act in any assessment year.

263-P1 *Determine the amount deductible under section 80QQB in the following cases pertaining to the assessment year 2009-10—*

	X Rs.	Y Rs.	Z Rs.	A Rs.
Royalty on books covered by section 80QQB	*90,000*	*3,00,000*	*6,00,000*	*8,00,000*
Is it lump sum payment for assignment of interest in copyright	*No*	*No*	*No*	*Yes*
Rate of royalty as % of value of books	*18%*	*17.5%*	*12.5%*	*NA*
Expenditure for earning royalty	*10,000*	*1,10,000*	*1,80,000*	*2,40,000*
Is royalty received from abroad	*Yes*	*Yes*	*No*	*Yes*
Amount remitted to India till September 30, 2009	*70,000*	*2,80,000*	*NA*	*7,00,000*
SOLUTION : Amount of deduction				
a. Amount remitted to India in convertible foreign exchange within 6 months from the end of the previous year or within the extended time	70,000	2,80,000	—	7,00,000
b. Lump sum consideration	—	—	—	8,00,000
c. Royalty not exceeding 15%	75,000	2,57,143	6,00,000	—
d. The lowest of (a), (b) or (c)	70,000	2,57,143	6,00,000	7,00,000
e. Expenditure incurred	10,000	1,10,000	1,80,000	2,40,000
f. Amount deductible under section 80QQB [i.e., (d) – (e) but subject to maximum of Rs. 3,00,000]	60,000	1,47,143	3,00,000	3,00,000

Deduction in respect of remuneration from certain foreign sources in the case of professors, teachers, etc. [Sec. 80R]

264. No deduction under section 80R is available from the assessment year 2005-06 onwards.

Deduction in respect of professional income from foreign sources [Sec. 80RR]

265. No deduction under section 80RR is available from the assessment year 2005-06 onwards.

Deduction in respect of remuneration received for services rendered outside India [Sec. 80RRA]

266. No deduction under section 80RRA is available from the assessment year 2005-06 onwards.

†It is not possible to attach any certificate with new income-tax return forms. The assessee should himself retain the certificate. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

Deduction in respect of royalty on patents [Sec. 80RRB]

266A. The provisions of section 80RRB are given below—

266A.1 *Conditions* - The following conditions should be satisfied in order to claim deduction under section 80RRB —

■ *Individual* - The taxpayer is an individual (maybe an Indian citizen or foreign citizen).

■ *Resident in India* - He is resident in India (he may be ordinarily resident or not ordinarily resident but deduction under section 80RRB is not available if he is non-resident).

■ *Owner/co-owner of patent* - He is a patentee (he may be a co-owner of patent). Patentee means the person (being the true and first inventor of the invention), whose name is entered on the patent register as the patentee, in accordance with the Patents Act, 1970.

■ *Royalty from patent* - He is in receipt of any income by way of royalty in respect of patent, which is registered under the Patent Act after March 31, 2003. It includes any royalty income from working of or use of the patent. Further, it includes lump sum consideration for the transfer of all or any rights (including the granting of a license) in a patent, or for imparting of any information concerning the working or use thereof in India, or for rendering of any services in connection with the above. Lump sum consideration includes advance royalty which is not returnable. However, it does not include any consideration for sale of product manufactured with the use of patented process or of the patented article *per se* for commercial use. Further, any consideration, which is chargeable under the head "Capital gains" is not royalty. Where a compulsory licence is granted in respect of any patent under the Patents Act, 1970, the income eligible for the purposes of this section shall not exceed the amount of royalty under the terms and conditions of a licence settled by the Controller under that Act.

■ *Furnish Form No. 10CCE* - The assessee shall have to furnish a certificate in Form No. 10CCE, duly signed by the prescribed authority [*i.e.*, the Controller under section 1(*b*) of the Patents Act] along with the return of income*.

266A.2 *Amount of deduction* - If the aforesaid conditions are satisfied, then the amount of deduction is —

a. Rs. 3,00,000; or

b. income from "royalty" as stated above,

whichever is lower.

266A.3 *Other points* - One should also keep in view the following points—

■ *Royalty from outside India* - Where any income is earned from sources outside India on which the deduction under section 80RRB is claimed, only so much of the income shall be considered, as is brought into India by, (or on behalf of), the assessee in convertible foreign exchange within a period of 6 months from the end of the previous year (or within such further period as the competent authority may allow in this behalf). For this purpose, competent authority shall mean the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Where any income is earned from sources outside India, a certificate certifying that the deduction has been correctly claimed in accordance with the provision of this section [Form No. 10H], is required*.

■ *Revocation of patent* - In case the patent is subsequently revoked by the Controller or the High Court or the name of the assessee is subsequently excluded from the patents register as patentee in respect of that patent, the deduction relatable to royalty income in respect of the period for which

*It is not possible to attach any certificate with new income-tax return forms. The assessee should himself retain the certificate. It may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise.

the patentee's claim was not valid, shall be withdrawn. For this purpose the assessment may be rectified within a period of 4 years from the end of the previous year in which such order is passed by High Court or Controller.

■ *Double deduction not permitted* - Where a deduction for any previous year has been claimed and allowed under section 80RRB in respect of any income referred to above, no deduction in respect of such income shall be allowed, under any other provision of the Act in any assessment year.

Deduction in case of a person with disability [Sec. 80U]

267. The provisions of section 80U are given below—

267.1 ***Conditions*** - Deduction is available if the following conditions are satisfied—

267.1-1 *INDIVIDUAL* - The taxpayer is an individual (maybe a citizen of India or foreign country).

267.1-2 *RESIDENT IN INDIA* - He is resident in India (maybe ordinarily resident or not ordinarily resident). Deduction under this section is not available if he is non-resident in India for the relevant assessment year.

267.1-3 *PERSON WITH DISABILITY* - The taxpayers suffers 40 per cent or more than 40 per cent of any disability given below—

i. blindness;

ii. low vision;

iii. leprosy-cured;

iv. hearing impairment;

v. locomotor disability;

vi. mental retardation;

vii. mental illness.

■ *Blindness* - "Blindness" refers to a condition where a person suffers from any of the following conditions, namely :—

i. total absence of sight; or

ii. visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or

iii. limitation of the field of vision subtending an angle of 20 degree or worse.

■ *Low vision* - "Person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.

■ *Leprosy cured person* - "Leprosy cured person" means any person who has been cured of leprosy but is suffering from—

i. loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

ii. manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

iii. extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation.

■ *Hearing impairment* - "Hearing impairment" means loss of sixty decibels or more in the better ear in the conversational range of frequencies.

■ *Locomotor disability* - "Locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.

■ *Mental retardation* - "Mental retardation" means a condition of arrested or incomplete development of mind of a person, which is specially characterised by subnormality of intelligence.

■ *Mental illness* - "Mental illness" means any mental disorder other than mental retardation.

■ *Autism, cerebral palsy and multiple disability* - From the assessment year 2005-06, autism, cerebral palsy and multiple disability have been included in the expression "person with disability".

267.1-4 CERTIFIED BY MEDICAL AUTHORITY - The taxpayer shall have to furnish a copy of the certificate [in Form No. 10-IA where the person is suffering from autism, cerebral palsy or in the notified form under Persons with Disabilities Act, 1995 in any other case] issued by the medical authority along with the return of income. Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned on the original certificate in order to continue to claim the deduction.

"Medical authority" for this purpose means any hospital or institution specified by notification by the appropriate Government for the purpose of the Persons with Disabilities (Equal Opportunities, Protections of Rights and Full Participation) Act, 1995.

267.2 ***Amount of deduction*** - If the aforesaid conditions are satisfied, then a fixed deduction of Rs. 50,000 is available. A higher deduction of Rs. 75,000 is allowed in respect of a person with severe disability (*i.e.*, having any disability of 80 per cent or above).

267-P1 *X is a resident individual. He suffers from a severe disability as certified by medical authority. He is mainly dependent upon his brother Y for support and maintenance. Y annually incurs a sum of Rs. 5,000 on medical treatment of X. Income of X and Y is Rs. 10,000 and Rs. 6,00,000. Find out the net income of X and Y for the assessment year 2009-10.*

SOLUTION :

	X Rs.	Y Rs.
Gross total income	10,000	6,00,000
Less : Deductions under sections 80C to 80U		
Under section 80DD	—	75,000
Under section 80U	—	—
Net income	10,000	5,25,000

Note - If deduction is claimed by X under section 80U then no deduction will be available to Y under section 80DD. Income of X is below Rs. 50,000 and is not chargeable to tax. X should not claim any deduction under section 80U.

Deduction from gross total income of the parent in certain cases [Sec. 80V]

268. Section 80V is applicable only for the assessment year 1994-95. It is not applicable from the assessment year 1995-96 onwards.

Deductions from tax liability

269. First determine net income and tax payable thereon at the rates mentioned in Annex 1. From the sum of tax so determined, deduct the following tax reliefs/tax rebates :

■ Rebate under section 86 in respect of share of profit from an association of persons [*see* para 326.4-1].

■ Rebate under section 88E [*see* para 274] in the case of a taxpayer (individual, HUF, firm or any other person) whose income includes any income chargeable under the head "Profits and gains of business or profession" arising from taxable securities transactions. The taxpayer should furnish evidence of payment of securities transaction tax in the prescribed form along with return of income.

■ Relief under section 89 in respect of salary paid in advance or in arrears [*see* para 60].

■ Relief for doubly taxed income under sections 90, 90A and 91 [*see* para 530.1].

The mode of computation of the tax payable is as follows—

1. Tax on net income

2. Add : Surcharge

3. (*1*) + (*2*)

4. Add: Education cess [2% of (*3*)]

5. Add : Secondary and higher education cess [1% of (*3*)]

6. (*3*) + (*4*) + (*5*)

7. Less : Rebate under section 86, 89, 90, 90A or 91.

8. (*6*) — (*7*) is tax payable. (*7*) cannot exceed (*6*).

Rebate under section 88 in respect of life insurance premia, contribution to provident fund, etc.

270. Rebate under section 88 is not available from the assessment year 2006-07.

Rebate under section 88B

271. It is not available from the assessment year 2006-07.

Rebate under section 88C

272. It is not available from the assessment year 2006-07.

Rebate under section 88D

273. It is available only for the assessment year 2005-06.

Rebate in respect of securities transaction tax [Sec. 88E]

274. Rebate under section 88E is not available from the assessment year 2009-10.

CHAPTER TWELVE

Agricultural income

Definition [Sec. 2(1A)]

278. By virtue of section 2(*1A*), the expression "agricultural income" means :

a. any rent or revenue derived from land which is situated in India and is used for agricultural purposes [sec. 2(*1A*)(*a*)—*see* para 278.1] ;

b. any income derived from such land by agricultural operations including processing of the agricultural produce, raised or received as rent-in-kind so as to render it fit for the market, or sale of such produce [sec. 2(*1A*)(*b*)—*see* para 278.2] ; and

c. income attributable to a farm house subject to the conditions that the building is situated on or in the immediate vicinity of the land and is used as a dwelling house, store house or other out-building and the land is assessed to land revenue or a local rate or, alternatively, the building is situated on or in the immediate vicinity of land which (though not assessed to land revenue or local rate) is situated outside the urban areas, *i.e.*, any area which comprised within the jurisdiction of a municipality or cantonment board having a population of ten thousand or more or in any area within such notified distance [up to eight kilometres—*see* Notification No. 9477, dated January 6, 1994] from the local limits of such municipality or cantonment board [sec. 2(*1A*)(*c*)—*see* para 278.3].

■ Section 10(*1*) exempts agricultural income from tax. The reason of exemption of agricultural income from Central taxation is that the Constitution gives exclusive power to make laws with respect to taxes on agricultural income to the State Legislature. However in some cases agricultural income is taken into consideration to determine tax on non-agricultural income.

■ With effect from the assessment year 2009-10, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

278.1 ***Rent or revenue derived from land [Sec. 2(1A)(a)]*** - According to section 2(*1A*)(*a*), if the following three conditions are satisfied, income derived from land can be termed as "agricultural income" :

a. rent or revenue should be derived from land [*see* para 278.1-1] ;

b. the land is one which is situated in India [*see* para 278.1-2] ; and

c. the land is used for agricultural purposes [*see* para 278.1-3].

278.1-1 ***RENT OR REVENUE DERIVED FROM LAND*** - Rent is payment, in money or in kind, by one person to another in respect of grant of right to use land. Rent, whether received in cash or kind, constitutes agricultural income if the other conditions regarding location and user of land are satisfied. For this purpose, it is not necessary that the recipient of rent or revenue should be the owner of the agricultural land. If rent is received by an original tenant from sub-tenant under sub-lease or rent is received by a mortgagee in possession of agricultural land, the receipt may be "agricultural income", if the other two conditions are satisfied.

The word "revenue" is used in the broader sense of return, yield or income, and not in the sense of land revenue—*Durga Narain Singh* v. *CIT* [1947] 15 ITR 235 (All.). "Revenue" covers income other than rent. Mutation fees exacted from tenants upon their succeeding to occupancy holdings are revenue derived from land. Similarly, fees extracted for the grant of a renewal of a lease are also revenue derived from land.

Revenue can be said to be derived from land only if land is effective and immediate source of income and not the indirect and secondary source of income. Where income is derived indirectly from land,

it cannot be said to be rent or revenue derived from land. For instance, dividend paid by a company out of its agricultural income is not revenue derived from land, as effective and immediate source of income is shareholding and not the land—*Bacha F. Guzdar* v. *CIT* [1955] 27 ITR 1 (SC). Likewise, *Malikana* allowance paid by the Government under legal obligation to a owner, dispossessed of his land, is not revenue derived from land, as the immediate source of income is the Government's legal obligation to pay compensation and not the land—*Pratap Singh* v. *Province of Bihar* [1949] 17 ITR 202 (Pat.).

A surplus arising on transfer of agricultural land is not revenue derived from land [*Expln.* to sec. 2(*1A*)].

278.1-2 *LAND SITUATED IN INDIA* - Rent or revenue would be "agricultural income" if land is situated in India. This condition is to be fulfilled not only in sub-clause (*a*) but also in sub-clauses (*b*) and (*c*) of section 2(*1A*). Income from foreign agricultural land is outside the scope of exemption given by section 10(*1*) and consequently it may be taxable in India depending upon residential status of the recipient.

278.1-3 *LAND USED FOR AGRICULTURAL PURPOSES* - The primary condition to claim exemption as "agricultural income" is that the land in question should be used for *agricultural purposes*, whether exemption is sought under sub-clause (*a*) or (*b*) or (*c*) of section 2(*1A*).

278.1-3a *MEANING OF WORD "AGRICULTURE"* - The terms "agriculture" and "agricultural purposes" not having been defined in the Act, one must necessarily fall back upon the sense in which they are understood in common parlance. "Agriculture" in its root sense means agar a field, and culture, cultivation of a field which of course implies expenditure on human skill and labour upon land. The term has, however, acquired a wider significance and that is to be found in various dictionary meanings ascribed to it.

These are the various meanings ascribed to the term "agriculture" in various dictionaries and it is significant to note that the term has been used both in the narrow sense of the cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding, rearing of livestock, dairying, butter and cheese-making, husbandry, etc.

278.1-3b *JUDICIAL INTERPRETATION OF THE TERM "AGRICULTURE"* - In *CIT* v. *Raja Benoy Kumar Sahas Roy* [1957] 32 ITR 466, after exhaustively discussing the various cases dealing with the aforesaid different aspects, Bhagwati, J. laid down the following principles to serve as a guide in the determination of the scope of the terms "agriculture" and "agricultural purposes".

- *Basic operations* - Prior to germination, some basic operation is essential to constitute agriculture. The basic operations would involve expenditure of human skill and labour upon the land itself and not merely on the growths from the land. Some illustrative instances of such operations are tilling of land, sowing of the seeds, planting and similar operations on the land.
- *Subsequent operations* - Besides the basic operations, there are certain subsequent operations, which are performed after the produce sprouts from the land. Illustrative instances of subsequent operations are weeding, digging the soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from depreciation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market. Mere performance of these subsequent operations on the products of the land (where such products have not been raised on the land by the performance of the basic operations described above) would not be enough to characterise them as agricultural operations. Where, however, the subsequent operations are performed in conjunction with and in a continuation of the basic operations, the subsequent operations would also constitute part of the integrated activity of agriculture.

The cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar works done on the land but also includes the subsequent operations set out above, all of which operations, basic as well as subsequent from one integrated activity of the agriculturist and the term "agriculture", has got to be understood as connoting this integrated activity of agriculturist. One

cannot dissociate the basic operations from the subsequent operations and argue that the subsequent operations, even if they are divorced from the basic operations, can constitute agricultural operation by themselves. If this integrated activity, which constitutes agriculture is undertaken and performed in regard to any land, that land can be said to have been used for "agricultural purposes" and the income derived therefrom can be said to be "agricultural income" derived from the land by agriculture.

■ *Agriculture not merely includes food and grains* - Agriculture does not merely imply raising of food and grains for the consumption of men and animals; it includes all products from the performance of basic as well as subsequent operations on land. These products, for instance, may be grain or vegetable or fruits including plantation and groves, grass or pasture for consumption of beasts or articles of luxury such as betel, coffee, tea, spices, tobacco, etc., or commercial crops like cotton, flax, jute, hemp, indigo, etc. All these are products raised from the land. The term "agriculture" cannot be confined merely to the production of food and grains products for human beings but must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commercial asset would also include forest products such as timber, sal and piyasal trees, casuarina plantation, tendu leaves, horra nuts, etc.

■ *Mere connection with land not sufficient* - The mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the term "agriculture". For instance, breeding and rearing a livestock, dairy farming, cheese and butter-making and poultry farming would not by themselves be agricultural purposes.

278.2 *Income derived from agricultural land by agricultural operations [Sec. 2(1A)(b)]* - Section 2(*1A*)(*b*) gives the following three instances of agricultural income :

a. any income derived by agriculture from land situated in India and used for agricultural purposes [*see* para 278.2-1];

b. any income derived by a cultivator or receiver of rent-in-kind of any process ordinarily employed to render the produce raised or received by him fit to be taken to market [*see* para 278.2-2]; or

c. any income derived from such land by the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him in respect of which no process has been performed other than a process of the nature described in (*b*) [*see* para 278.2-3].

The aforesaid income is agricultural income if such income is derived from land which is *situated in India and is used for agricultural purposes.* Section 2(*1A*)(*b*) does not contemplate sale of commodity different from what is cultivated and processed and where the assessee is growing mulberry leaves, feeding them to silk worms and obtaining silk cocoons, income from sale of silk cocoons is not an agricultural income — *K. Lakshmanan Co.* v. *CIT* [1999] 239 ITR 597 (SC).

278.2-1 INCOME DERIVED BY AGRICULTURE - Any income derived by "agriculture" from land situated in India and used for "agricultural purposes", is agricultural income. For determining whether income derived from land is agricultural income or not, one has to apply the four principles discussed in para 278.1-3.

278.2-2 INCOME DERIVED FROM MARKETING PROCESS - Sometimes it becomes difficult to find ready market of the crop as harvested. In order to make the produce a commodity which is saleable, it becomes necessary to perform some kind of process on the produce. The income, arising by way of enhancement of value of such produce, by performing such process to make the raw produce fit for market, is also agricultural income. However, the following conditions must be satisfied :

a. the process must be one which is ordinarily employed by a cultivator or receiver of rent-in-kind; and

b. the process must be applied to render the produce fit to be taken to market.

For instance, tobacco leaves are ordinarily dried to make them suitable for sale. Therefore, the income from the ordinary process employed to dry the tobacco leaves to make them fit to be taken to market, is agricultural income. The ordinary process employed to render the produce fit to be taken to market includes thrashing, winnowing, cleaning, drying, crushing, boiling and decanting,