

## Chapter – Basic Concepts

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### ❖ PERSON U/S 2 (31)

Person includes the following:

1. An individual
2. A Hindu Undivided Family (HUF)
3. A company
4. A firm
5. An Association of Person (AOP) or body of individual (BOI) (whether incorporated or not)
6. A local authority
7. Every artificial juridical person not falling within any of the proceeding sub clauses.

The definition of person in this clause is **inclusive and not exhaustive (complete)**. The brief description of above sub clauses of persons are as follows:

1. **AN INDIVIDUAL**;- It means a **natural person** i.e. a human being. It includes a male, female, minor child and a lunatic or idiot. Generally, the **income of minor child is clubbed** with the income of his parents. The income of **lunatic or idiot** is taxable through his guardian or representative.
2. **A HUF**;- The definition of HUF is **not given** under the income tax act. According to Hindu Law, it means a family, which consist of all persons **lineally descendants from a common ancestor** including their wives and unmarried daughters.
3. **A COMPANY**;- It may be defined as an incorporated association which is an artificial person having an **independent legal entity** with a perpetual succession, a common seal, a common capital and limited liability.
4. **A FIRM**;- Here it means a partnership firm. The definition of partnership has been given in partnership Act, 1932.
5. **ASSOCIATION OF PERSONS**;- The definition of AOP has not given in the Income-Tax Act, 1961. However, generally AOP means two or more persons who join for a common purpose with a view of earn an income. Co-heirs, Co-legatees or co-donees joining for a common purpose or action would be chargeable as an AOP.

**BODY OF INDIVIDUALS**;- It means an **conglomeration** (collection) of individuals who carry on same activity with the objective of earning some income. It would consist **only of individuals**.

6. **A LOCAL AUTHORITY**;- The income tax act has **not defined the meaning** local authority. It includes a municipality, **district board or other authorities legally**

## Chapter – Basic Concepts

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**entitled** to or entrusted by the Govt. with the control and management of a municipal or local fund.

7. **ARTIFICIAL JURIDICAL PERSON:-** These are entities, which are **not natural person but are separate entities** in the eyes of law. Such persons cannot be sued directly but can be sued through persons managing them. Therefore, **God, idol and deities are artificial persons.** Though they may not be sued directly they can be legally sued through the priests or the managing committee of the place of worship etc. They are persons and their income like offerings are taxable. If certain conditions are satisfied then the exemption of income tax has been provided to such persons. Similarly, **all other artificial persons**, with a juristic personality, will also fall under this categories e.g. **university.**

**Example – Determine the status of the following:**

- (i) Calcutta university (ii) Essen Paints Pvt. Ltd. (iii) Punjab national Bank Ltd. (iv) A and B are legal heirs of C. C died in 2015 and A and B carry on his business without entering into a partnership (v) Sh. Krishna Enterprises, a firm consisting of S, K and P. (vi) A joint family consisting of P, Mrs P and their sons S. (vii) Municipal Corporation of Delhi.

**Answer –** (i) Artificial Person (ii) A company (iii) A company (iv) A body of individuals (v) A firm (vi) A Hindu Undivided Family (vii) A local Authority

### PREVIOUS YEAR {SECTION 2 (34) and 3} | 08 A, 10 S

The definition of previous year is **very important** from income tax point of view because income tax is levied on the total income earned by the assessee during the relevant previous year. Therefore, previous year is an **income generating year.**

**“Previous year is a period of twelve months ending immediately before the commencement of relevant assessment year”.**

w.e.f. previous year **1988-89**, it is **also known as financial year** i.e. it always ends on 31st march although the assessee is free to maintain his books of accounts for any period of **12 months** as he likes e.g. he can choose calendar year, Diwali to Diwali etc. However, the assessee is required to make up the account on the basis of financial year for income tax purposes.

Previous year can be **shorter than 12 months** period in case of **newly started business** or profession.

- ❖ **EXCEPTIONS TO THE GENERAL RULE OF PREVIOUS YEAR:-** Generally income earned during the previous year is assessed in the following assessment year. However, there are following **certain exceptions to this rule**, when income of previous year is assessable in the same previous year in which he earns the income.

## Chapter – Basic Concepts

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### 1. INCOME OF NON RESIDENT FROM SHIPPING BUSINESS U/S 172--

- **Assesse:** Assessee should be a non-resident.
- **Owner/Chartered:** He should either be the owner of the ship or has chartered the ship.
- **Business:** The ship carries passengers, goods, livestock, mail or goods shipped at a port in India.
- **Agency in India:** The non resident assessee may or may not have an agent in India.
- **PRESUMPTIVE INCOME:-** 7.5% of the amount of such carriage including demurrage and handling charges shall be **deemed as income of the** assessee u/s 44B.
- **Payment of tax:** The master of ship should file the return and pay tax on such income before departure or must make necessary arrangement for payment of such tax **within 30 days of departure of the ship.**
- **Clearance:** If the above conditions are fulfilled, the collector of customs shall **grant the port clearance.**
- **Mandatory:** This assessment is mandatory. The assessing officer may call for such accounts as to determine the tax liability.

### 2. INCOME OF PERSON LEAVING INDIA PERMANENTLY U/S 174

- **Assessee:** The assessee leaves India either during the current previous year or immediately thereafter.
- **Intention:** He does **not have any intention** to return to India immediately.
- **Period of income:** His total income from the date of commencement of previous year upto the date of departure shall be assessed as income of the same previous year.
- **Mandatory:** This assessment is mandatory.

**Example 1.** Rohit wishes to migrate to USA permanently and plans to leave India on 15-11-16. He submits his return for assessment year 2016-17 on 31-7-16 the assessment of which is still pending. In this case the A.O. will make two assessments.

- a. Regular assessment for the previous year income of 2015-16 at the rates applicable for AY 16-17.
- b. Assessment of income of the period 1-4-2016 to 15-11-2016 (either actual or estimated basis) and tax should be levied on such income in the assessment year 2016-17 itself but at the rate given part III of first schedule of finance act, 2016 i.e. at the same rates which are given for the advance tax for assessment year 2017-18.

### 3. ASSESSMENT OF ASSOCIATION OF PERSONS OR BODY OF INDIVIDUALS OR ARTIFICIAL JURIDICAL PERSON FORMED FOR A PARTICULAR EVENT OR PURPOSES U/S 174A

- **Assesse:** AOP or BOI or AJP established or incorporated for a particular event or purpose.
- **Situation:** It is likely to be dissolved in the assessment year in which it was established or incorporated or immediately after such assessment year.

## Chapter – Basic Concepts

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- **Period of income:** The total income of period from the expiry of the previous year for that assessment year upto the date of dissolution shall be chargeable to tax in that assessment year.
4. **TRANSFER OF PROPERTY TO AVOID INCOME TAX U/S 175**
- **Assesse:** The assessee is likely to charge, sell or transfer or dispose of his asset.
  - **Asset transferred:** The asset may be movable or immovable property.
  - **Intention:** The intention of transfer is to avoid payment of any tax liability under income tax act.
  - **Period of income:** The total income from the commencement of previous year upto the date of proceedings u/s 175 taxable in that year itself.
  - **Mandatory:** This assessment is mandatory.
5. **ON DISCONTINUED OR CLOSURE OF BUSINESS OR PROFESSION U/S 176**
- **Source:** Business or profession carried on by the assessee is discontinued during the previous year.
  - **Period:** The income from the first day of the previous year upto the date of discontinuation may be assessed in the previous year itself.
  - **Notice to the assessing officer:** The assessee discontinuing the business/profession shall give **within 15 days of such discontinuance** a notice about the discontinuance to the assessing officer.
  - **Discretionary:** This assessment is discretionary (**as per desire of the A.O.**)

**It is mandatory** for assessing authority to charge the tax in the same previous year in the first **four exceptions** and has **discretionary** power in the case of fifth **exception** and as such he may charge in the same previous year or wait till the assessment year.

- ❖ **ASSESSMENT YEAR U/S 2(9);**- “Assessment year is always a fixed period of **12 months** starting immediately after the end of R.P.Y”. it is always **starts from 1<sup>st</sup> April** of every year **and ends on 31<sup>st</sup> March** of next year. It is the period during which the assessee is required to file his income tax return of income earned during R.P.Y. In other words, it is a income assessing year. In the assessment year, income of the previous year has been assessed by the assessing authority. E.g. previous year is 2016-17, then the assessment year is 2017-18 for this previous year. It starts from 1.4.2017 and ends on 31.3.2018.
- ❖ **DEFINITION OF ASSESSEE U/S 2(7) (2009 Apr);**- Assessee means a person **who is liable to pay any or nay other sum of money under this act.** The word “any other sum of money” means **finances, penalties, interest etc.** paid by assessee on a/c of late filing of his income tax return, late deposit of tax in govt. treasury, evasion of tax by concealing his total income etc. during the relevant previous year.

## Chapter – Basic Concepts

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### ❖ ASSEESSEE INCLUDES:-

- a. Every person in respect of whom **any proceedings under the act has been taken** for the assessment of –
  - His income or
  - The income of any other person in respect of which he is assessable; or
  - Loss sustained by him or other person; or
  - The amount of refund due to him or to such other person.
- b. Every person who **is deemed to be an assessee** under any provision of this act.
- c. Every person who **is deemed to be an assessee in default** under any provision of this act.
- d. **Deemed assessee:** Deemed assess means a person who is treated as an assessee under the income tax act. The person who files the return on the behalf of another person, is known as deemed assessee. This would include –
  - **Trustee** of a trust.
  - Legal **representative** of a deceased person
  - Representative assessee of a non resident
  - **Legal guardian** or manager entitled to receive the income on behalf of a **minor, lunatic or idiot.**
  - **Court of wards/** officials trustee/receiver entitled to receive income or behalf of any other person.
- e. **Assessee in default:** Assessee in default includes persons who –
  - **Fails to deduct** and remits TDS u/2 191
  - **Fails to pay tax and** any other sum demanded u/s 220

**e.g.** If a person is liable to deduct the income on source of income before making payment to another person and if he does not deduct income tax or fails to deposit the deducting amount in the govt. treasury then he will treated as in assessee in default.

### INCOME U/S 2(24) (02 S, 05 A, 07A)

The definition of income is very important from income tax point of view because **income tax is charged on the income of the assessee earned by him** during the relevant year. The definition of income has not been defined in the income tax act, except that it states as to what is included in the income. The term **income includes** the following: -

- 1) Profit and gains
- 2) Dividend
- 3) Any allowance, perquisites or profit in lieu of salary etc. received by employee from the employer.
- 4) Any interest, salary, bonus, commission or remuneration etc. received by a partner from the firm.
- 5) Any capital gains.

## Chapter – Basic Concepts

- 6) Any winning from lotteries, cross word puzzles, race including horse race, card games etc.
- 7) Any sum received under a **key man insurance policy** including the sum received by way of bonus on such policy.
- 8) **Gift as defined u/s 56 (2) (vi).**
- 9) Deemed income u/s 41 or 59
- 10) **W.e.f. 1.10.2009**, any sum of money or value of property as defined u/s **56(2) (vii).**

**The following are the some important rules regarding income, which must be kept in mind while studying the definition of income:**

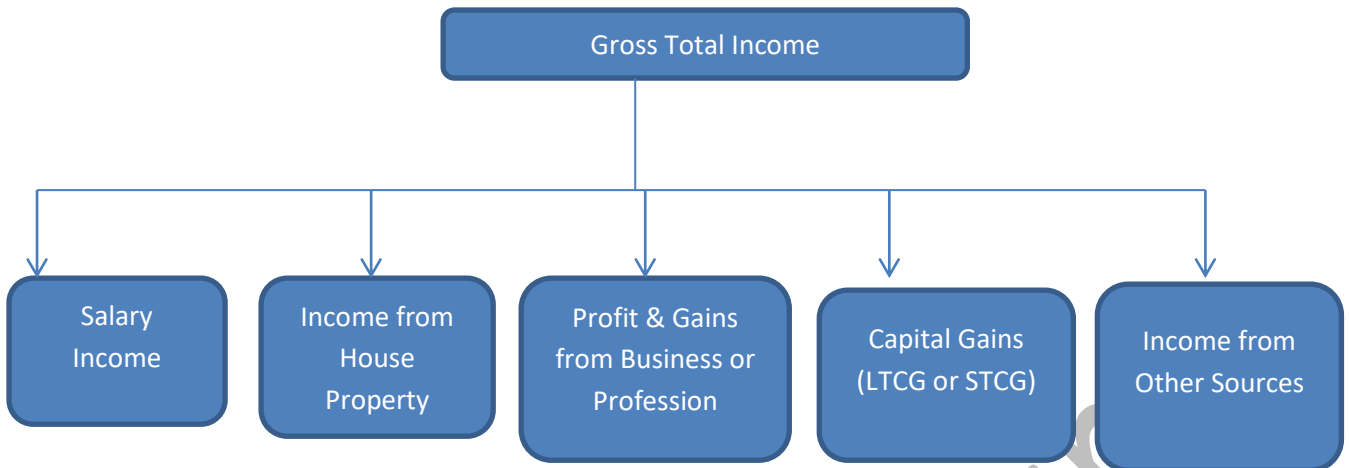
1	There should be a <b>definite source of income.</b>
2	Incomes earned, <b>legally or illegally, both are taxable</b> under this act.
3	It is not necessary that the income should be received regularly and periodically.
4	Income should be received from <b>outside.</b>
5	Income received <b>in kind</b> can also be treated as income under this act.
6	Income earned by assessee but <b>not actually received</b> by him will be treated as taxable income of the assessee because he is entitled to receive it.
7	<b>Relief from expenses</b> or reimbursement expenses is not treated as income.
8	<b>Pin money</b> received by wife or pocket money received by children etc. is not treated as income.
9	<b>Disputed income</b> will be taxable in the hands of the recipient of such income.
10	<b>A contingent income</b> is not income.
11	Personal gifts received by a person on occasions like birthdays, marriage, festivals, etc. is not the income of assessee and therefore cannot be taxed.

**Pin money** here means amount received by a woman for her dress or private expenditure as also small saving effected by a housewife out of money given to her by her husband for running the expenses of kitchen would not be the income in the eyes of the law. **If the capital asset has been purchased by her out of this saving then such capital asset belongs to her.**

**Tainted income** is an illegal income. There is **no difference between legal and tainted income** according to income tax act. Such tainted income is taxable just like as any legal income.

**TOTAL INCOME U/S 2(45):-** The definition of total income is very important from income tax point of view because income tax is levied on the total income earned by the assessee during the relevant previous year. The total income of an assessee is to be calculated according to his residential status. **Total income = gross total income – all applicable deductions from 80C to 80U.** It is also known as taxable income.

## Chapter – Basic Concepts



### COMPUTATION OF TOTAL INCOME OF Mr. \_\_\_\_\_

**For the Assessment Year 2017-18**

1. Salary income	Xx
2. Income from house property	Xx
3. Business income	Xx
4. Capital gains	Xx
5. Income from other sources	Xx
Gross total income	Xxx
<b>Less: Deduction U/s 80C to 80U</b>	Xx
Total income	Xxx