

# LAW SCHOOL NOTES

SUBJECT TITLE:

## **TAX LAWS**

PRINCIPLES AND PRACTICE



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# History of Taxation Law

Tax (Latin) :- Taxo or Taxare

'to assess the worth of something'

> 1st formal system :- Mauryan dynasty  
1/6th income contributed as tax.

> Manusmriti -

> Mughal brought their tax system Jizya (on non-islamic subject)

↓  
Abolished by Akbar

> Old tax system based on maximum welfare

Maximum social welfare

> Kalidas "It was only for the good of his subjects that (he) collected taxes from them, just as Sun draws moisture from Earth to give it back a thousandfold."

> As per Manusmriti.

① Artisan & Traders 1/5th of their profit in gold & silver

② Agriculturalist 1/6th, 1/8th & 1/10th depending on circumstances

> Kautilya → detail system of tax administration  
→ present day tax system is very similar

> Arthashastra → tax was charged specific, no arbitrariness  
→ land revenue was fixed at 1/6th share of produce

↳ During war & emergency it used to get stringent

→ Based on equity & justice

# Direct Tax Adm<sup>n</sup> Enquiry.

Alter ego :-

Submitted Report in 1959 → Income Tax Act, 1961

Page No.	
Date	

## Scope of Taxation

### Pre-Independence Era

- > Sir James Wilson introduced tax in India in 1850
- > He introduced it during first union budget session
- > Indian Income Tax, 1860 ITC
  - ↳ to recover losses suffered from 1857 military mutiny
- > Taxation ↳ Taxation was divided in 4 groups.
  - ↳ Revised in 1886 (to include net salaries & profits from business)
  - ↳ Next amendment in 1918 & 1922
  - ↳ Repealed & brought 1918 Act
  - ↳ 1922 act remained in force till 1961
  - ↳ Currently 5 categories of income for taxes

### \* Scope of Taxation (in sri's notes)

- \* Difference b/w
  - a) Tax & fee
  - b) Capital Receipt & Revenue Receipt

	Tax	Fee
1)	Compulsory payment to the govt w/o getting direct benefits	Voluntary payment in exchange of service
2)	Payer do not get direct benefit	Payer gets direct benefit
3)	On default penalty is imposed	No penalty / No service

## Capital Receipts

## Revenue Receipts

- |  |  |
|--|--|
| <p>① arise from sale of a capital asset or the receipt of capital contribution</p> <p>② One time or infrequent in nature</p> <p>③ shown on liabilities side of the balance sheet as source of funds.</p> <p>④ Generally not taxable except :- gain from sale of share of prop.</p> | <p>arise from the ordinary activity of business such as sale of rendering service</p> <p>Regular and recurring in nature</p> <p>shown in income sheet as income. (P&amp;L Account)</p> <p>Taxable in nature.</p> |
|--|--|

⑤ Redeemable

Non-redeemable

⑥ Non-recurring

Recurring in nature

## Unit II - Basic Defn

Page No.

Date

07

11

23

### \* Concept of Income

#### \* Concept & Mechanism of IT

- C.O.I. empower central govt. to levy tax on income
- thus IT Act, 1961
- IT Rules, 1961 + subordinate legislations
- Circulars & notifications are issued by CBDT & sometimes by ministry of finance, C.O.I.

→ Income tax is a tax on the total income of a person called the assessee of the previous year relevant to the assessment year @ prescribed in relevant finance act.

#### \* Definitions

① Assessment year — S. 2(9)

"the period of twelve months starting from the first day of April every year."

Duration 1<sup>st</sup> April of every year to 31<sup>st</sup> March of next year.

Eg - Assessment year 2012 - 13

Duration 1<sup>st</sup> April 2011 - 31<sup>st</sup> March 2012

② Previous year — S. 2(34) & S. 3

"the financial year imm. preceding the assessment year"

→ Income earned in one F.Y. is taxed in next F.Y.

→ Income year in which income is earned is called previous year.

→ in which taxed is Assessment year

- > There many more than one source of income but for all of them Previous year will be same
- > It starts from date of existence of business or profits in said F.Y.

\* Excepts to P.Y.

- ① Income of person who left India permanently
- ② Income of discontinued business.
- ③ Non-resident shipping companies

⑧ Person — Sec. 2(31)

It includes

- a) an individual ✓
- b) a HUF ✓
- c) a company ✓
- d) a firm ✓
- e) an association of person or body of individuals whether incorporated or not ✓
- f) a local authority. — (RBI, BHEL, GAIL)
- g) every artificial juridical person

Expl<sup>n</sup> — e, f, g. est. or incorporated with object of deriving income, profit or gain

→ Inclusive definition & not exhaustive

④ Assessee — S.2(7)

"a person who is liable to pay taxes under any provision of the Act"

- g) every person in respect of whom proceeding under act has taken place

④ > Minor child - separate assessee.

↳ acting in films, tuition income, etc.

→ Income from investment, capital gain on securities held by minor would taxable in father's income.

⑤ Assessment — S. 2(18)

" procedure to determine the taxable income of an assessee and the tax payable by him.

### \* Income & its Concept

→ no exhaustive defn.

→ Sec. 2(24) defn includes following

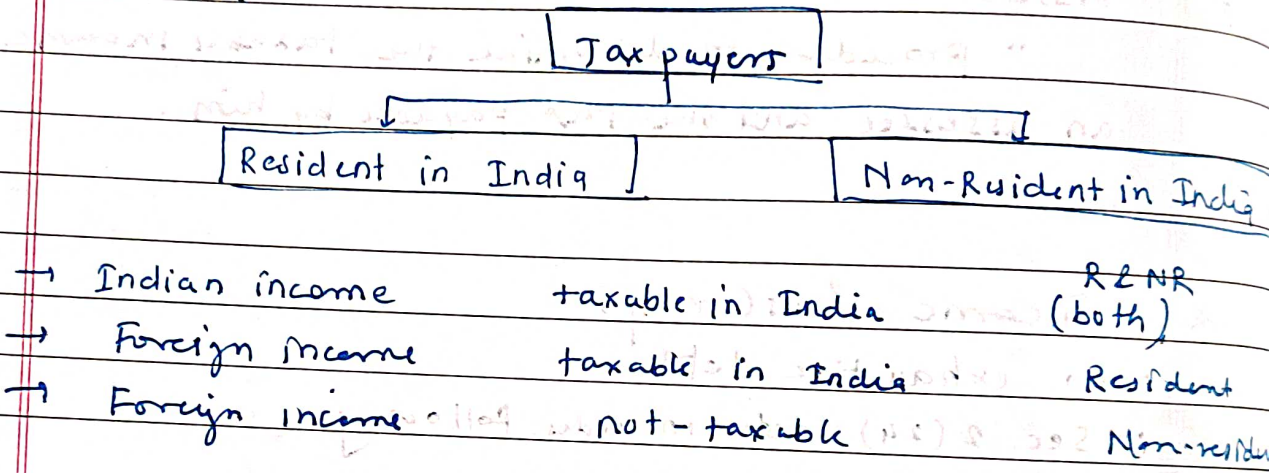
- i) profits & gains
- ii) Dividends S. 115-0
- iii) Voluntary contrib<sup>n</sup> received by certain institutions.
- iv) Receipts by employees the value of any benefit or perquisite, whether convertible into money or not.
- v) Any special allowance or benefit.
- vi) Incomes from business.
- vii) any capital gain chargeable u/s. 45.
- viii) any sum earlier allowed as deduction & chargeable to income tax u/s. 59

\* IT

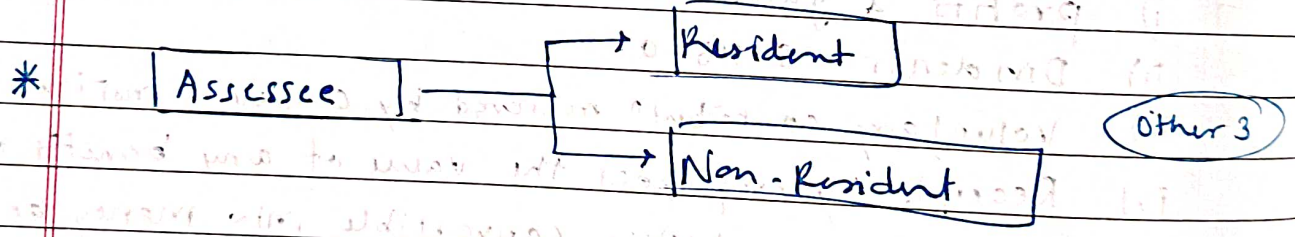
- > It is an annual tax
- > Tax rates are fixed by Financial Act, 2021

\* Residential Status

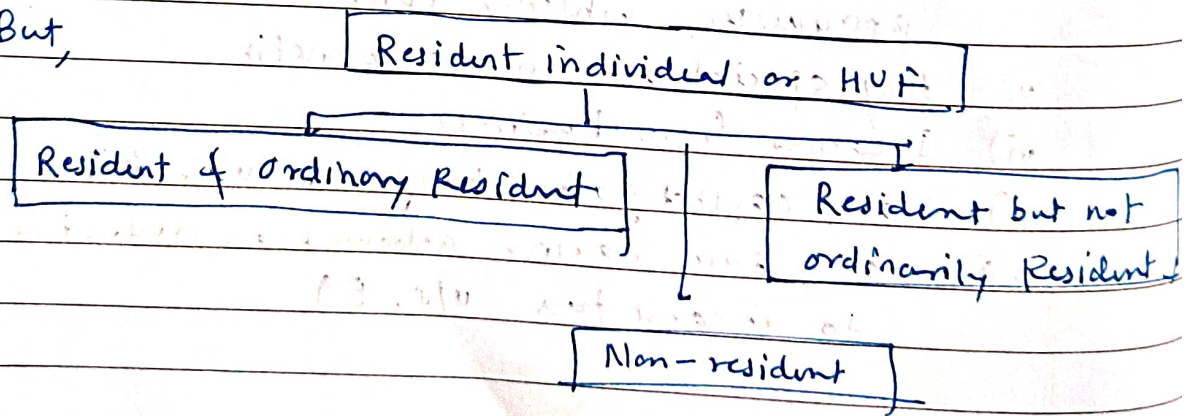
→ Tax incidence on an assessee depends on his Residential status.



\* Assessee



But,



\* Residential Status of an individual.

\* Conditions

- 1) whose period of stay in India is 182 days or more in P.Y.
- 2) whose period of stay is 365 days or more in 4 years preceding the previous year and 60 days or more in P.Y.

\* Resident but not ordinarily resident. (RNO R)

\* Conditi<sup>n</sup>

- 1) has been non-resident in India in 9/10 P.Y. preceding the P.Y.
- 2) who has stayed in India for a period of 729 days or less during 7 P.Y. preceding that year.

\* Amendment.

3 cond<sup>n</sup> for RNO R

- 1) Total income more than Rs 15 L other than foreign income
- 2) stayed in India b/w 120 - 182 days in P.Y.
- 3) stayed in India for period of 365 days or more in 4 years preceding the P.Y.

Income which do not form part of Total Income

\* Exemption - Sec. 10

→ provided on particular source of income & not on total income

→ do not have to pay tax for such income

→ It means exclusion

→ will not be included for tax purpose

→ dealt u/s. 10

→ Applies to all taxpayer in the country

Sec. 10(1) Exempt of Agricultural Income ✓

Sec. 10(2) Exempt of income of HUF ✓

Sec. 10(2a) profit sharing from partnership firm ✓

Sec. 10(10d) Exempt on tax of LIC ✓

Sec. 10(bc) Compensation amount of Natural disaster

Sec. 10(14) Exempt of Special allowance

↳ to HC & SC judges

↳ to UNO employees.

\* Sec 10 A - Not available now a days

> Sec. 10AA - Special provision in respect of newly est. Unit in SEZ

\* Sec. 11 - Exemption in respect of income from prop. held for charity.

Charitable purpose includes

↳ relief to poor, Education, Yoga, Medical Relief, preservation of environment & monument.

→ Religious purpose

↳ practice & advancement

→ Wholly (100% charitable purpose)

Deductions - 80C - 80U

Page No.	
Date	

\* Deduction — Sec 80

- can be claimed on gross total income
- Certain specified investment & expenditure are considered to claim deduction
- It refers to amount of money that is reduced from your total taxable income
- final tax is calculated on taxable income.
- It aims to promote culture of saving & investment among general public
- Specific criteria / Specific investment
- Sec. 80C to 80U deal with deductions.

\* Various Deductions.

- ① PPF — Sec. 80C ✓
- ② Life Insurance Premium — Sec - 80C ✓
- ③ National saving Certificate — Sec - 80C ✓
- ④ FDs (for 5 yrs) ✓
- ⑤ Senior Citizen Saving Scheme ✓
- ⑥ Post office Time Deposit (5 yrs) ✓
- ⑦ Home Loan, Mutual Fund ✓
- ⑧ Tuition fees (College, school) does not include donation
- ⑨ Charitable Contribution ✓
- ⑩ Interest paid on Education loan
- ⑪ Deduction on House Rent paid (Sec. 80GG) ✓

- \* Income of other person included in Assessee's T.I.
- Aggregation of T.I.
  - Set off and carry forward of Losses
  - ✓ Various deductions to be made in computing T.I. [Sec 67]
  - Rebates and Relief
  - Applicable rates of taxes and tax liability

### Clubbing of Income

Assessee has to pay tax in respect of another income

S. 60 - 64

Income of other person ~~not~~ includible in assessee's T.I.

S. 60-63

Income of other person includible in <sup>Individual's</sup> assessee's T.I.

S. 64

### \* Importance of Clubbing

- To counteract tendency to dispose / transfer prop. to avoid or reduce tax liability.
- 

Sec. 60 Transfer of income w/o transfer of asset.

- such income is to be included in T.I.
- It is immaterial when it was transferred
- eg:- A transferred his wife B right to collect rent w/o transferring house

Sec. 61 Income arising from revocable transfer of assets  
 → such income to be included in that person's T.I.

sec. 63 :- Revocable transfer.

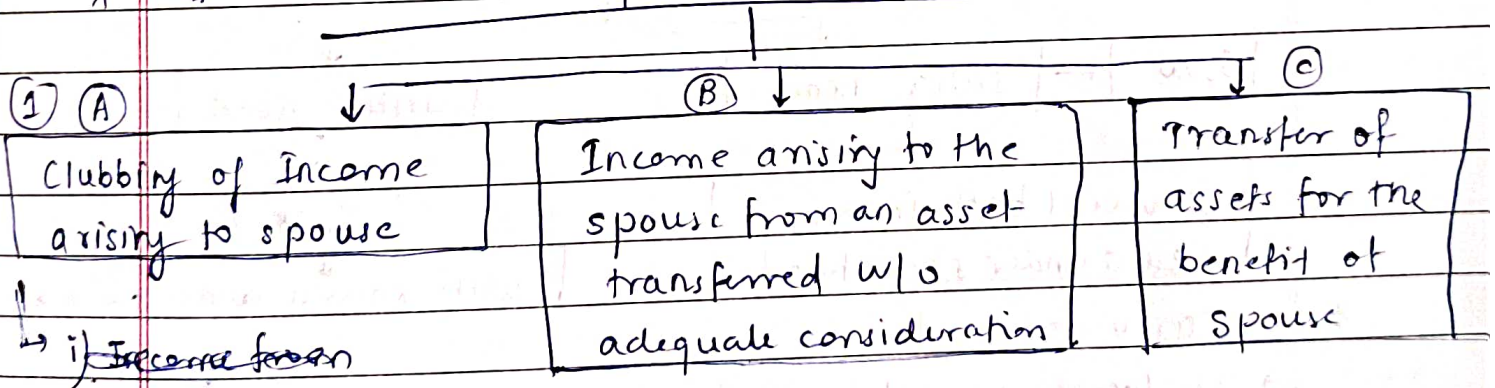
IF prop.

- 1) contains provision for retransfer (directly / indirectly)
- 2) it gives, in any way to transferor, a right to reassume power

Sec. 62 Exceptions -

- 1) Transfer by way of trust.
- 2) any other transfer (not revocable during lifetime of transferee).

\* Income of other person includible in Individual's T.I.



(A)  
 i) Income by way of remuneration which individual has substantial interest.

(B)  
 i) Transfer of asset (other than house prop.)  
 ii) Transfer of house prop.  
 iii) Income from accretion of transferred asset).

- ② Clubbing of income arising to son's wife
- ③ Clubbing of minor's income

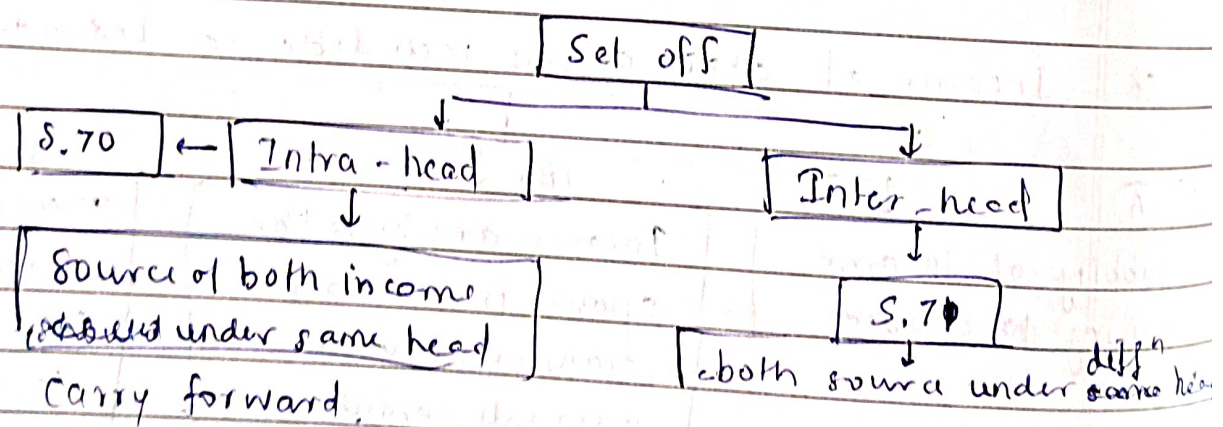
Ⓐ Set off and Carry forward

\* Aggregation of income

- > Some amounts are deemed to be income in hand of assessee though actually they are not
- > Assessee required to furnish expl<sup>n</sup> else it is deemed income

\* Set off

→ means adjustment of losses against the profits from another source/head of income in the same assessment year.



\* Carry forward

→ If losses cannot be set-off in the same year due to inadequacy of eligible profits, then such losses are carried forward to the next assessment year for adjustment against the eligible profits of that year.

i) Intra-head set off / Inter source

S. 70

→ Income from diff source

→ But same head (in same A.Y.)

→ Eg:- Loss from Business A can be set off against profit of Business B [A & B → common head of Income]

\* Exceptions.

i) Long term Capital Loss [S. 70(3)]

→ Short term C.L. against both L.T. & S.T.

→ But Long term C.L. only against L.T. C.L.

ii) Speculation Loss [S. 73(1)]

iii) Loss from activity of owning & maintaining race horses [S. 74A(3)]

iv) Losses from specified business [73A(1)]

ii) Inter-head set off [Sec. 71]

→ Loss from one income head.

→ can be adjusted to profit from other income head.

→ in same A.Y.

\* following points.

① Loss under any head (except capital gain)  $\xrightarrow{\text{can be set off}}$  against any other head including capital gain

② Loss under head of "Profits & gains from business or profession"  $\xrightarrow{\text{can be set off}}$  against any head of income except salaries

- ④ Loss under head of 'Capital Gains' can be set off against Income under any other head.
- ④ Loss under head of "Income of House prop." can be set off against under same head.
- ⑤ Speculation loss & loss from owning/maintaining race horse can be set off against under same head only  
 Capital Losses  
 Specified business loss

\* Carry forward & Set off of Loss.

- ① from House Prop. [s. 71B]
- ② Business Losses [s. 72]
- ③ Speculation Business [s. 73]
- ④ of Specified Business [s. 73A]
- ⑤ Capital Gains [s. 74]

① ~~From~~ Losses of from House property. [s. 71B].  
 - can be carried forward upto next 8 A.Y.  
 - can be adjusted only against Income from house prop.

② Business Losses [s. 72]  
 → carried forward to next 8 A.Y.  
 → adjusted only against Income from business / prof  
 → Not necc. to continue the business at the time of set-off in future years.

③ Speculative Business Loss.  
 → carried forward upto next 4 A.Y.  
 → adjusted only against speculative business.

- not necc. to continue business at time of set off.
- set off only against income from any speculation

(4) business carried on by assessee

(5) Capital Gains.

↳ Head cannot be set off against any head of income.

→ upto 8 A.Y. (carry forward)

(D) Rebates & Relief.

\* Rebate. [Sec 87].

- It is deduction from income tax payable.
- It is from tax payable & not total income
- Inc. Tax payable = Tax Payable + Cess + Surcharge + Interest

TDS

\* Rebates of Individual (87A)

- Resident Individual whose T.I. does not exceed 5 lacs is eligible for this rebate.

↳ Taxable payable - 12,500/-

100% deduction of Income Tax Payable. as rebate

↳ (Lowering)

\* Rebate on LIC or PF contribution (88).

GTI b/w 50,000 - 1,50,000/- for Ind. & HUF

(20% of lowering)

GTI b/w 1,50,001 - 5,00,000/-

→ 15% lowering

\* Relief of Salary, (Sec. 89)

→ Assessee will be entitled to relief in foll.

- i) Salary being received in advance
- ii) Salary being received in arrear
- iii) Gratuity Received (service is less than 5 yrs)
- iv) Commuted Pension received.

\* Applicable rates of taxes and tax liability.

→ slab system

(A) for Individuals

- Below 60 yrs
- Age b/w 60 to 80 yrs
- Above 80 yrs

Sr No.	Income Range (per annum)	Tax Percentage
1	Up to 2,50,000	Nil
2	2,50,000 - 5,00,000	5%
3	5,00,000 - 7,50,000	10%
4	7,50,000 - 10,00,000	15%
5	10,00,000 - 12,50,000	20%
6	12,50,000 - 15,00,000	25%
7	Above 15,00,000	30%

Age b/w 60-80 yrs

Sr. No.	Income Range	Tax Percentage
1	Upto 3,00,000	Nil
2	3,00,000 - 5,00,000	5%
3	5,00,000 - 10,00,000	20%
4	Above 10,00,000	30%

Age above 80 yrs

Sr. No.	Income Range	Tax Percentage
1	Upto 5,00,000	Nil
2	5,00,000 - 10,00,000	20%
3	Above 10,00,000	30%

(B)\* Tax slab for Co-operative Societies

Upto Rs 10,000	10%
Rs 10,000 to Rs 20,000	20%
Above Rs 20,000	30%

(C)\* Income Tax slab for Partnership firm/LLP/ Local Authority

Upto 1 crore	→	30% + 4% (health & education cess)
Above 1 crore	→	30% + 12% + 4% (b. — 11 — ) (surcharge)

(D)

Revised I T Slabs for New Tax Regime (default) FY 23-24

1	Upto 3 lakh	0%
2	3 lakh to 6 lakh	5%
3	6 L to 9 L	10%
4	9 L to 12 L	15%
5	12 L to 15 L	20%
6	Above 15 L	30%

\* HUF (Including AOP, BOI & Artificial Juridical) Person

~~Upto 2,50,000/-~~  
~~5 L to 10 L Rs~~  
~~Above Rs 10L~~

AY 23-24  
 Upto 2,50,000/-  
 Rs 2,50,000 to Rs 5 L 5%  
 Rs 5 L to 10 L 20%  
 Above Rs 10 L 30%

## Unit :- 4

The total income is computed on the basis of the residential status of the assessee. The income is classified into the following five heads.

Income from Salaries;

2. Income from House Property;
3. Profits of Business and Profession;
4. Capital gains and
5. Income from other sources.

5 Heads of Income Tax Act

### 1. Income from Salary

If you are a professional with a salary as your primary source of income, this head is primarily applicable to you. Under this heading, any compensation paid to you as employee remuneration, is accounted for. However, remember that income will only be considered under this head if there is an employee-employer relationship between the payee and the payer of such salary.

The income under the salary head involves an employee's basic wages, pension, perquisites, gratuity, commission, annual bonus and any salary paid in advance, if applicable. Upon adding the various components under this head, one can get their gross income.

The following are some of the common allowances for which you can claim tax deductions:

#### 1. HRA

House Rent Allowance (HRA) is generally part of a standard salary package. It is an allowance that employees receive to pay their house rent. Subject to certain conditions, you can claim exemptions for HRA under Section 10 (13A) of I-T Act,

1961. The tax exemption you can claim for HRA will be the lowest among the following:

HRA received from your employer

50% of the basic salary if you live in a metro city or 40% if you live in a non-metro city

Actual rent paid per month minus 10% of your annual salary

## 2. Conveyance Allowance

This is an allowance that employers generally pay to compensate for the cost of travel between your home and workplace. Under Section 10 (14(ii)) of I-T Act 1961, you can claim a maximum tax exemption of ₹1,600 per month or ₹19,200 per year.

## 3. LTA

Leave Travel Allowance or LTA is a part of your compensation which you can use to pay for your personal travel expenses. It is a cost-to-the-company (CTC) component and is usually offered as a yearly benefit. However, note that subject to certain conditions and limits, you can claim tax benefits against LTA for up to 2 leisure trips in a block of 4 calendar years, under Section 10(5).

## 4. Medical Allowance

This is an allowance that is paid to employees to help them meet their medical expenses. Under Section 17 (2) of I-T Act, 1961, you can claim tax exemption of up to ₹15,000 by producing your supporting medical documents.

## 2. Income from House Property

The second of the 5 heads of income includes income from house property. It accounts for all rental income earned by a taxpayer. Sections 22 to 27 of I-T Act, 1961 cover this income head in great detail. However, note that if a taxpayer's house has

not been rented out, then the amount that the person would have received as rent if he/she had let it out, would be considered as taxable income under this head.

This is a head under which tax is calculated on the basis of assumption. Moreover, tax is levied both on income earned from house property and commercial property. The different deductions that come under this head of income are standard deduction, deductions for home loan interest payment, and deduction for municipal tax.

Here, an assessee will also have to pay 10% TDS on rent if the rent value is more than the specified limit.

Here are a few conditions that must be fulfilled for the income to be taxable under this head:

The assessee should be the house property owner

House property can include a building, a land appurtenant, or a bungalow

Individuals must not use their property for any other purposes than residency

### 3. Income from Capital Gains

If any profit/gain arises from the transfer or sale of a capital asset held as an investment, it is taxable under capital gains. Income or proceeds from a large number of asset classes, such as stocks, bonds, mutual funds, gold, and real estate among others, can be considered under this head. You should also remember that capital gains are generally classified as short- and long-term gains. Based on the asset class, long-term capital gains tax is applied at a maximum rate of 20% on investments held for 3 years or more, while short-term capital gains tax is applied at a maximum rate of 15% on investments held for less than 3 years. However, you must check if the income is eligible for an exemption under Sections 54, 54B, 54EC, 54F, 54D, 54ED, 54GA, or 54G.

#### 4. Income from Profits and Gains of Business/Profession

Your income will be considered under this head if your earnings come from a business or if you are self-employed. To calculate your profit or gross income, you will have to deduct your expenses from the total revenue. Then, tax will be applicable under this income head.

This head will also include incomes, such as bonuses, salary, and profit earned due to a partnership with a business organisation. However, the following rules apply:

A taxpayer must be controlling the operations of this business or profession

The business or profession declared under this head must be legitimate

The business or profession in question must be carried out by the taxpayer themselves.

The taxpayer must be actively engaged in a particular business or profession for the greater part of the previous year

If taxpayers operate any other professions or businesses, they must also include it

#### 5. Income from Other Sources

For the earnings that do not belong to any of the heads of income mentioned above, it will fall under the 5th category called income from other sources. Some common examples of earnings that fall under this head include income from lottery, gambling, gift card games, bank deposits, rewards from other sports, and more. Section 56(2) of the IT Act covers these incomes.

#### **Procedure for computing the total income:**

For computing the total income of an assessee and the tax payable by him, following procedure is followed –

1. Classify the income under each of the five heads and then deduct from the income under each head the deductions permissible under the Act in respect of that head of