



S. V. SHANBHAG & CO.
CHARTERED ACCOUNTANTS

DIRECT TAX PROPOSALS

By CA Satish Shanbhag

At NMSA, Vashi on 19th February 2022



RATES OF INCOME TAX

Assesse	Rates	Surcharge
Individuals/HUF	No CHANGE	CHANGE
Firm/LLP		No CHANGE
Companies		
AOP/BOI/AJP		CHANGE

RATES OF SURCHARGE

Capping of SC rate on LT Capital Asset @ 15%

Nature of Income

STCG (111A)

Equity Shares
Equity oriented
Funds

&

LTCG (112A)

Equity Shares
Equity oriented
Funds
Units of Business
Trust

56

Dividend

CURRENT RATES

Income	SC
Up to 50 Lakhs	-
50 L to 1 Cr.	10%
1 Cr. To 2 Cr.	15%
2 Cr. To 5 Cr.	25%
5 Cr. & above	37%

AMENDMENT

- Surcharge is capped at 15% for **LONG TERM CAPITAL ASSETS**

EFFECT

- SC on LTCG on land, building, jewellery, drawings, paintings, work of art would be maximum 15%
- What about Bitcoin sold after holding for 3 years ?

SURCHARGE CAPPING FOR AOP

Existing Provision

Surcharge as per progressive rates max 37%

Amendment

Surcharge capped @ 15%

Condition:

Members of AOP are only Company

REDUCTION IN SURCHARGE FOR CO-OPERATIVE SOCIETY

Existing Provision

Particulars	Rate
Income up to Rs. 1Cr	NIL
1 Cr & above	12%

Amendment

Particulars	Rate
Income up to Rs. 1Cr	NIL
1 Cr to 10 Cr	7%
Above 10Cr.	12%

REDUCTION OF AMT FOR CO-OPERATIVE SOCIETIES

w.e.f. 1st April 2023 (AY 2023-24)

- *For Co-op Societies from 18.5% to 15%*

Section 115JC	Existing Rate	Amendment
AMT for Co-op societies	18.5%	15%

- **PURPOSE OF AMENDMENT**

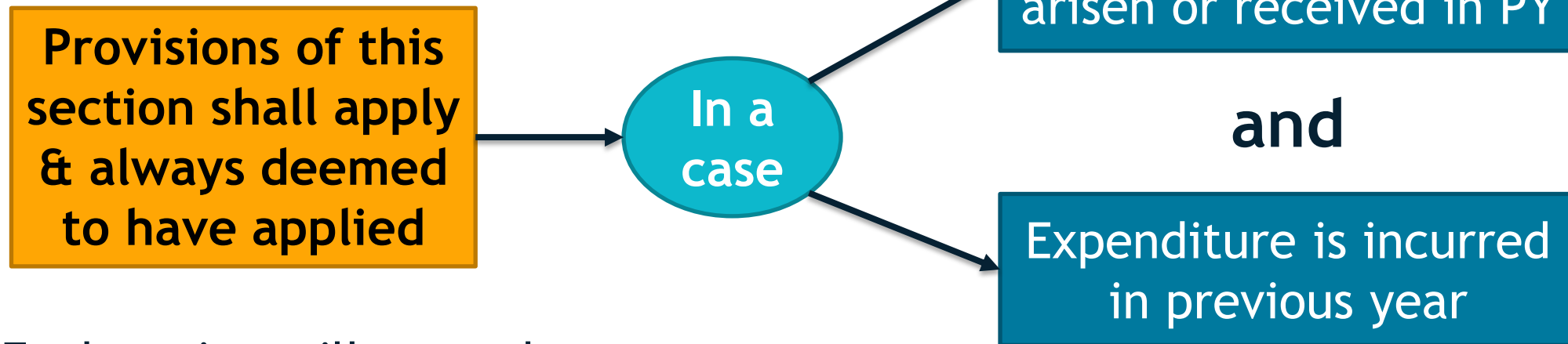
To bring parity between MAT Rate -15% for Companies

- AMT continues @ 18.5% for Individuals, HUF, AOP, BOI, AJP & Firms

SECTION 14A

w.e.f. 1st April 2021 (AY 2021-22)

- Expenditure incurred in relation to income not includable in total income u/s 14A
- Explanation inserted for removal of doubt



- Explanation will overrule
 - ***CIT vs Chettinad Logistic Pvt. Ltd.*** (2017) (80, Taxman 221)(Mad.)
 - ***CIT vs IL & FS Energy Development Company Ltd.*** , (2017) (84 taxman, 186)(Delhi)

PGBRP

CLARIFICATION ON ALLOWABILITY OF EXPENSE U/S 37

W.e.f. 1st April 2022 (AY 2023-24)

- Expenditure incurred for a purpose which is **OFFENCE or PROHIBITED BY LAW** - not allowable as deduction u/s 37
- **CBDT Cir No.5/2012 on 01.08.2012**
Gifts, travel facility, hospitality, cash/monetary grants etc. given by Pharma Co.'s to Doctors is prohibited by Medical Council Regulations. Not allowable expenditure.
- **Delhi HC - Max. Hospital Vs. Medical Council of India (2013)**
Provisions of Medical Council of India binds only to doctors & not pharma companies, therefore allowable exp. to Pharma companies.

CLARIFICATION ON ALLOWABILITY OF EXPENSE U/S 37

W.e.f. 1st April 2022 (AY 2023-24)

- To make intent of legislation clear Explanation-1 shall include following expenses will not be allowed
 - i. Expenses incurred for the *purpose which is prohibited by law in India or outside India*
 - ii. Benefit/perquisites provided to a person & acceptance of such *benefit/perquisite is in violation of any Law/Rules/Regulation governing such person*
 - iii. Expenditure on *compounding of offence under any law in India or outside India*

CLARIFICATION REGARDING DEDUCTIBILITY OF SURCHARGE & CESS U/S 40(a)(ii)

➤ Section 40(a)(ii):

Any sum paid on account of **TAX LEVIED ON PROFITS OR GAINS** is not deductible. **Cess & Surcharge** : not specifically mentioned & is claimed as business expenditure.

Favourable judgements

Sesa Goa Ltd. Vs. JCIT

(2020)(117, Taxman)(Bombay HC)

Chembal Fertilizers & Chemicals Vs. JCIT (Raj.HC)

Adverse Judgements

M/s. Kanoria Chemicals & Industries Ltd.,

2021, ITAT Kolkata

CIT Vs. K Shrinivasan (1972) 83 ITR 346

- SC has held that surcharge is an additional income tax.
- Fin. Act, 1984: Additional Surcharge be called educational cess

Amendment:

The term “tax” includes and always deemed to have included surcharge & cess

CASH CREDIT U/S 68

Effective Rate of Tax: 78% u/s 115BBE

Existing Provision:

Assessee should Prove
Identity
Genuineness
Credit worthiness

Amended Provision:

Assessee should Prove
Identity
Genuineness
Credit worthiness
Source of source

- Amendment is in line with provisions inserted by Finance Act, 2012 w.r.t. share capital, share application & share premium
- *Amendment will negate judgements of various courts that source of source need not be proved*

Orient Trading Co. Vs. CIT (1963)(49 ITR 723)(Bom HC.)

PROHIBITION ON SET OFF OF LOSSESS AGAINST UNDISCLOSED INCOME

w.e.f. FY 2021-22 (AY 2022-23)

➤ New Section : (Sec. 79A)

Total Income includes undisclosed income consequent to :

- Search u/s 132
- Requisitions u/s 132A
- Survey u/s 133A
(except TDS/TCS survey)

While
computing
total
Income

NO SET OFF of following is
allowed

- Loss
- B/f Loss
- Unabsorbed depreciation

➤ Purpose

To ensure that assessee pays full tax on undisclosed income and he is not allowed to reduce his tax by adjusting any losses, B/f losses or unabsorbed depreciation

EXTENSION OF TIME LIMIT FOR START UPS & NEW MANF. COMPANIES

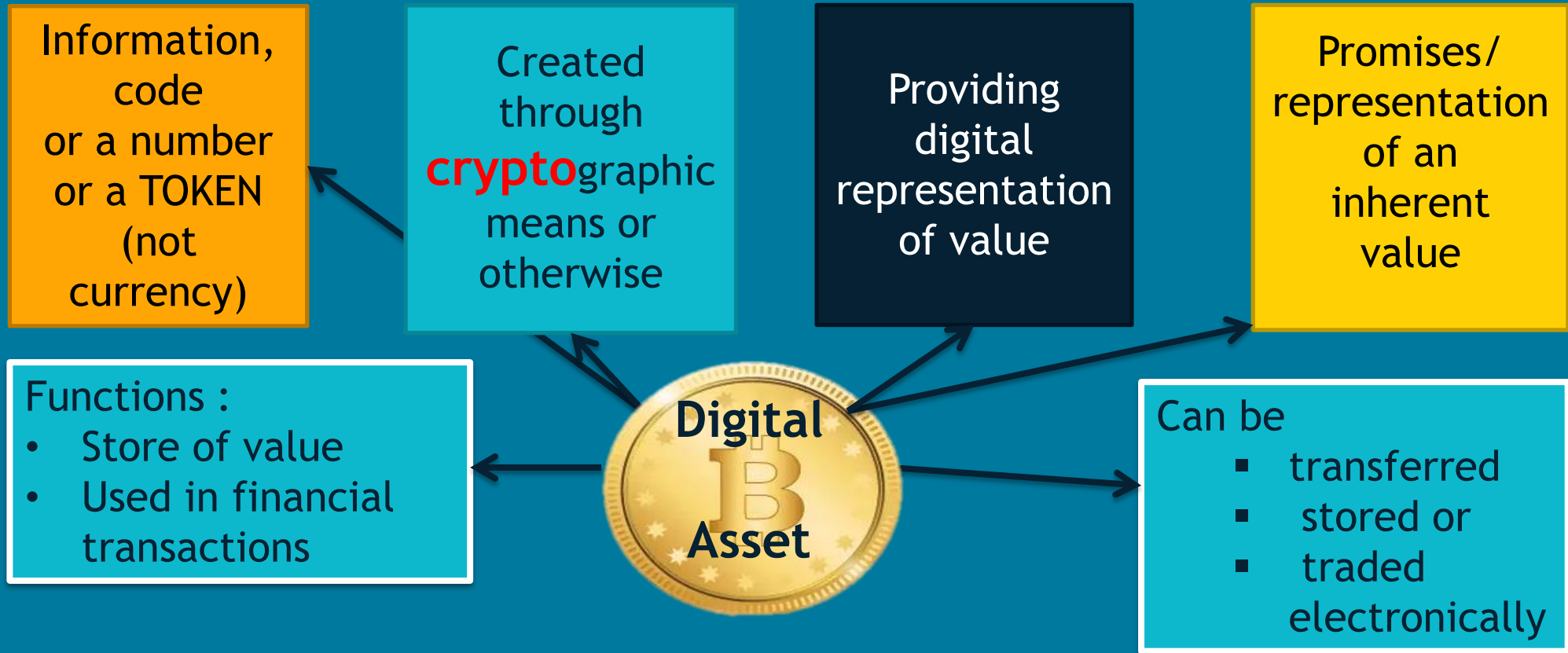
Particulars	Original Date	Extended Date
Start Ups u/s 80IAC	31 st March 2022	31 st March 2023
New Manufacturing Companies u/s 115 BAB	31 st March 2023	31 st March 2024

TAXATION ON VIRTUAL DIGITAL ASSETS



VIRTUAL DIGITAL ASSETS [Sec. 2(47A)]

a



b

Non fungible tokens (NFT)

c

Any other digital asset as may be notified

TAXATION SCHEME (Sec. 115BBH)



w.e.f. 1st April 2022 AY(2022-23)

- Taxability: On transfer of Virtual Digital Assets
- Rate of Tax : 30%

Deductions allowed:

- Cost of Acquisition

Deductions not allowed:

- Loss on Crypto transactions against profit
- No basic deduction of Rs. 2.5 lakhs for crypto income
- Interest Cost
- Transaction Cost etc.

- Gifts taxed u/s 56(2)(X) i.e. in the hands of receiver

Should the Investor sell virtual digital assets before 31st March 2022 ?



T₂ D₂ S₂



194S TDS On VDA

w.e.f. 1st July 2022

Crypto Exchanges (Unregulated)



Crypto Currencies



- Rate : 1%
- Who is liable to deduct TDS ?
 - A resident liable to make payment (practically crypto exchanges in India would be liable).
- Consideration is wholly in kind or partly in cash & partly in kind - deductor responsibility to pay full tax

194IA TDS On Purchase of Immovable property

TDS deducted @ 1%

Consideration

Stamp Duty Value

Whichever is higher

Threshold limits :Rs. 50 lakhs & above

Applicability

All transactions of immovable property/other than agriculture land) having agreement value lower than 50 Laks & SDV of Rs.50 Lakhs or more

194R TDS On Benefit or Perquisite to a Resident

- **Section 28(iv)** : Value of any benefit or perquisite whether convertible into money or not, arising from business or profession is Income of business or profession.
- **Section 194R** : Seeks to provide TDS @ 10%
- **Threshold** : Rs. 20,000
- In cash or both in cash or kind : Person responsible to ensure deduction of TDS
- **Exempted to** : Individual/HUF (T/o > Rs.1 Cr/50 Lakhs)
- **Effective** : 1st April 2022 (AY 2022-23)

A person in a white shirt and purple tie is writing in a notebook on a desk. A gavel and books are visible in the background. The text "LITIGATION MANAGEMENT" is overlaid in the center.

LITIGATION MANAGEMENT

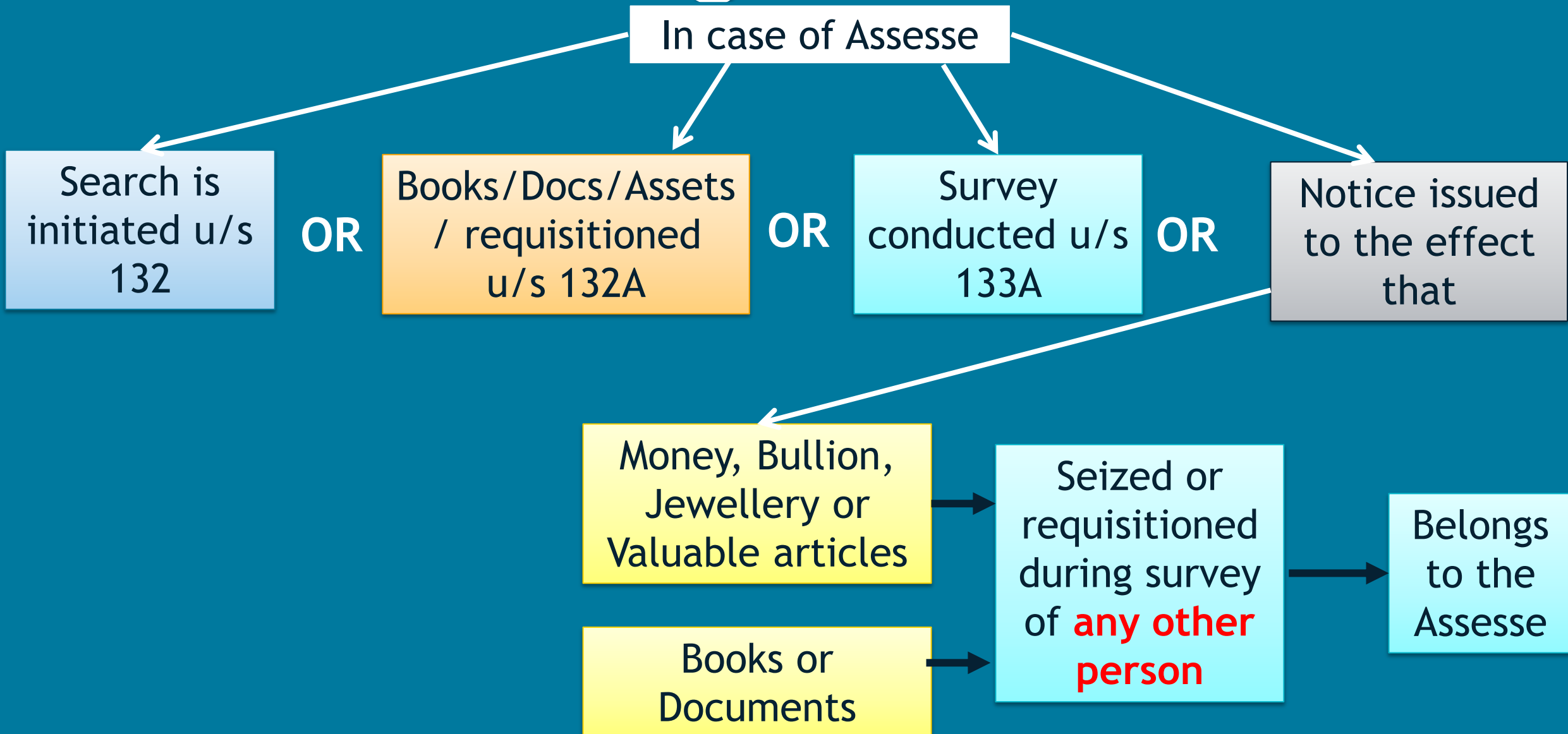
UPDATED RETURN OF INCOME [Sec. 139(8A)]

w.e.f. 1st April, 2022

Provisions of Updated Return of Income

- URI can be filed whether or not a regular, revised or belated ITR is filed or not
- In prescribed form
- **Time Limit:** within 2 years
- **Purpose:** Voluntary tax compliance & reducing litigations
- **URI is not available if** URI
 - Is a loss return
 - Decreases tax liability in return already filed
 - Results in refund or increase in refund

Who are not eligible to file Return ?



No URI is permitted for the year of search/survey and preceding 2 years

URI cannot be filed

URI was already filed u/s 139/8A

Proceedings of Assessment, reassessment, revision pending or completed

AO has info under money laundering, Benami Property Act, Black Money Act communicated to Assesse before filing URI

Prosecution initiated prior to the filing of URI

Information rcvd under info Ex: Agreement u/s 90 or 90A & communicated before filing of URI

Points to be noted

- Additional income offered & **additional tax** is paid.
- Only one URI can be filed for an AY. No Revision of URI.

Additional Tax	Timeline
25 % of aggregate tax + interest	Within 12 months from end of AY
50 % of aggregate tax + interest	Within 24 months from end of AY

IMPORTANT CHANGES IN FACELESS ASSESSMENT SCHEME U/S 144B

➤ Litigations before HC on

- Dept. issuing Draft Assessment Orders w/o issuing SCN
- Dept. depriving grant of personal hearing

➤ Assesse has vested right of personal hearing and the same be granted if Assesse asks for it, irrespective of facts of the case

Bhaarat Aluminum Co. VS. Union of India (2021)(Chattisgarh, HC)

➤ Amendment

Personal Hearing be granted to the assessee where

- Draft assessment order is sent along with SCN
- Assesse has made written submission in response to draft assessment order and
- makes request for personal hearing



TAXATION OF CHARITABLE TRUST w.e.f 1st April 2021 AY 2021-22)

Voluntary Contributions - related to corpus donations Sec.11 (Expl 3A)

Received by

- Temple or
- Mosque or
- Church or
- Gurudwara or
- As notified

Purpose

- Repairs or
- Renovation of property

Conditions

- Maintain separate corpus funds.
- Invested in specific modes u/s 11(5).
- Used only for given purpose.
- Not to donate to any other person.

➤ Taxable if conditions are violated (Expl-3B)

APPLICATION ALLOWED ONLY ON ACTUAL PAYMENT

- “Application” includes incurred and not paid
- **Amendment:**
- Explanation to Sec.11
Any amount payable by the Trust is treated as applied only on its actual payment
- Applies to both revenue and capital exp.
- Effective : AY 2022-23

CLARIFICATION

Maintenance of Books by Trust is mandatory [Sec. 12A]

CANCELLATION OF REGISTRATION [Sec. 13AB(4)]

- Where a registration/provisional registration is granted & subsequently ,
 - a) PCIT/CIT noticed occurrence of “specified violation” in PY , or
 - b) Reference is received from AO u/s 143(3) for PY, or
 - c) Case is selected according to CBDT’s Risk Management Strategy

- CIT will call for information & carryout such enquiries and
 - Pass order cancelling registration or refusing to cancel
 - Forward Copy to AO & to Trust

CANCELLATION OF REGISTRATION [Sec. 13AB(4)]

Income Applied

- Other than for objects of the Trust
- For private religious purpose or
- For particular religion or caste

Non compliance/Violation

- Carrying on business which is not incidental to main object
- Non compliance of applicable law
- Non compliance of Conditions of Registration

➤ Time Limit to complete process

6 months from the end of quarter in which notice was issued

Revenue Expenditure allowed even in case of Denial of Exemption u/s 13(10)

When is exemption denied ?

- i. Business receipts exceed 20% of the total receipts
- ii. Not getting books of accounts audited
- iii. Not filing of ITR

Clarificatory Amendment

Expenditure **other than capital expenses** is allowed as deduction from Total Income

Conditions

Expense is not out of corpus

Expense is not out of Loan

No depreciation on asset is claimed as application

Such Expense is not donation given to others

Taxability of Specified Income [Sec. 115BBI]

Income Accumulated

- u/s 11(2) not utilized for declared purpose and **by 5th year**
- not invested as per 11(5)

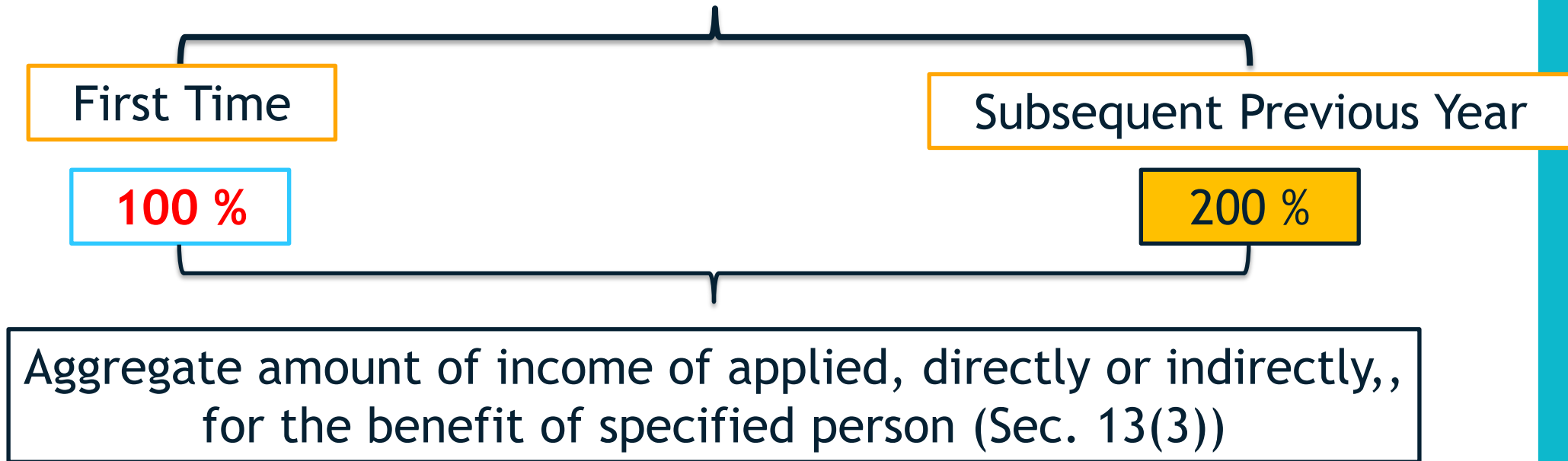
Income Applied

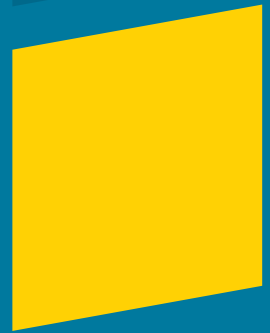
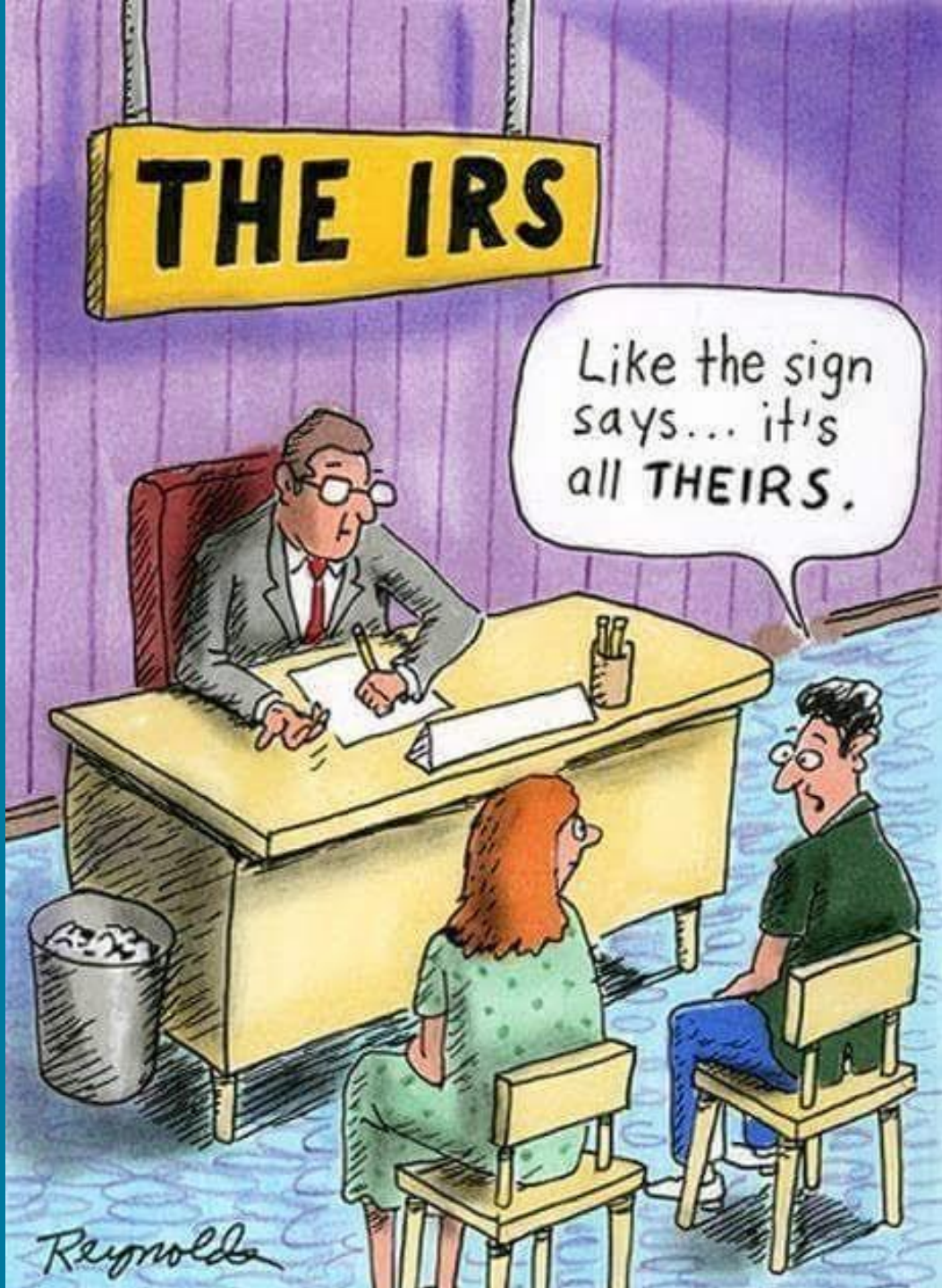
- for benefit of specified person(Trustee/Donor)
- for charitable purpose outside India
- Not for charitable purpose

Taxed @ 30% without allowing any deduction

Section 271AAE

Penalty on TRUSTS for application of income for the benefits of trustee or specified persons







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**THANK
YOU**

SECTION 43B

➤ Interest payable by assessee on loan allowable on actual payment u/s 43B

➤ Issue :

Whether conversion of interest into debenture would be deemed to be actual payment of interest ?

Case Law

Conversion of interest into debentures is not conversion of interest into loan

➤ Amendment

Conversion of interest into debenture or any other instrument will not be treated as actual payment of interest

➤ **Effective date : 1st April 2023**

RATIONALISATION OF TDS/TCS FOR NON FILERS [Sec. 206AB]

Existing

- States ITR filing for 2 preceding years (due date expired) be checked.
- If default is found & aggregate TDS exceeds Rs.50,000, TDS deductible is

Twice the applicable
Or
@ 5%

Whichever is higher

Amendment

- Period of two years is reduced to 1 year