Salient features of INCOME TAX ACT, 2025

Introduction

- The Income Tax Bill, 2025 was tabled before the Lok Sabha on 13.02.2025. The said bill is to replace the Income-Tax Act, 1961.

- The Lok Sabha Speaker constituted a 31-member Select Committee to review the proposed Income Tax Bill to file a report before the first day of the next session (i.e. the Monsoon Session which is likely to commence in the 3rd or 4th Week of July, 2025).

Introduction

- The Income Tax Bill, 2025 is not the first attempt in amending the Income Tax Act, 1961 with the view to simplify the law.

- Earlier, the Parliament introduced the Direct Tax Code, 2010 to amend the law relating to Income-Tax.

- After reports from the Standing Committee on Finance and the Kelkar Committee, the Government decided to revise the Direct Tax Code, 2010. A detailed version of the Direct Tax Code, 2013 was thereafter released. The Direct Tax Code, 2013 failed to find a breakthrough.

AVOWED OBJECTS OF THE ITA 2025

- To make the law simple
- To make the law straightforward
- To minimize litigation
- To remove redundant provisions

SALIENT FEATRES OF THE ITA 2025

- Language has been simplified to the extent possible.

- The texts of provisions have been converted into table form for ease of understanding –

a) Section 19 provides a table consisting of all salary deductions and exemptions like professional tax, standard deduction, gratuity exemption, commutation of pension, VRS compensation etc.

b) TDS provisions have been contained in a table form in section 393

- Related provisions which were earlier scattered under different chapters have been grouped together under a single Chapter to the extent possible to improve coherence –

a) Provisions relating to AOP/BOI are captured in sections 309 to 311 [Chapter XVII-A-4]

b) Charitable trusts provisions are captured in [Chapter XVII-B]

SALIENT CHANGES IN THE ITA 2025

- Provisos and Explanations have been converted into independent sub-sections.
- The words ‘notwithstanding anything’ or ‘notwithstanding anything to the contrary’ have been replaced with ‘irrespective of anything’.
- Redundant provisions have been removed – section 10(23C), several sections in Chapter VI-A
- Provisions have been serially and continuously numbered unlike under the existing Income Tax Act, 1961.
- The flow of sections has been revised to create logical links and ensure smooth progression.
- Formula based provisions have been introduced instead of lengthy text (for instance concepts like WDV in section 41).

Section 3 of IT Act 2025

Section 3

(*1*) For the purposes of this Act, “tax year” means the twelve months periodof the financial year commencing on the 1st April.

(*2*)In the case of a business or profession newly set up, or a source of incomenewly coming into existence in any financial year, the tax year shall be the period beginning with—

(*a*)the date of setting up of such business or profession; or

(*b*)the date on which such source of income newly comes into existence, and ending with the said financial year

Section 3(1)

- Section 3(1) of the Bill defines ‘tax year’ to mean the twelve months period of the financial year commencing on the 1st April.

- As per section 3(21) of the General Clauses Act, a “financial year” means the year commencing on the first day of April.

- Reference to financial year in Section 3 of the Bill would already mean the year commencing on the first day of April, which would entail the reference to a period of 12 months. Such being the case, the use of the words, *“the twelve months period of”* is a mere surplusage.

Section 3(2)

- The said provision may be dispensed with as it is not required even in case of new business or new source of income.

- As long as income from such new source or new business is earned during the tax year (i.e. the twelve months period beginning from 1st April), the same would be chargeable to tax under Section 4 read with Section 5 of the Act.

- There is no need to state that the tax year would commence from the date of setting up of such business or profession or date on which such source of income newly comes into existence.

Section 3(2)

- If Section 3(2) continues, there would be issues with regard to determination of residential status which would have to be made in the context of such curtailed period.
- It could be unworkable at times.
- Further, with regard to any other aspect where reference is made to a tax year, such reference will be with respect to such curtailed period. It could result in unintended consequences.
- Residential status being with reference to curtailed TY, could have potential of making a person on resident who is otherwise a resident.
- In the case of an existing assessee, whenever a new business is started or a new source of income comes into existence, there may be two or more tax years. Take a case where in a financial year, 3 new sources of income come into existence at three different points in time. In such case, there would be 3 different tax years.
- Consider cases where in a tax year, both new source and new business are coming into existence and how section 3(2) applies in such case.

Section 4 of IT Act 2025

Section 4

1) Where any Central Act enacts that income-tax shall be charged for anytax year at any rate or rates, income-tax for such tax year shall be charged at that rate or those rates in accordance with and subject to the provisions of this Act.

(*2*)The charge of income-tax under sub-section (*1*) shall be on the total incomeof the tax year of every person as per the provisions of this Act.

(*3*)Income-tax shall also include any additional income-tax, by whatevername called, levied under this Act.

(*4*)If this Act provides that income-tax is to be charged in respect of incomeof a period other than the tax year, it shall be charged accordingly.

(*5*)For the income chargeable under this section, income-tax shall be deductedor collected at source or paid in advance as provided under this Act.

Section 4(3) of IT Act 2025

Section 4(1),(2) & (3) of ITA 2025 corresponding to section 4(1) of ITA 1961

Section 4(3) of ITA 2025	Section 4(1) of ITA 1961
(1) Where any Central Act enacts that income-tax shall be charged for any tax year at any rate or rates, income-tax for such tax year shall be charged at that rate or those rates in accordance with and subject to the provisions of this Act. (2) The charge of income-tax under sub-section (1) shall be on the total income of the tax year of every person as per the provisions of this Act. (3)Income-tax shall also include any additional income-tax, by whatever name called, levied under this Act.	4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :

Section 4(3) - Splitting one sub section into more than one

- Section 4(3) of the ITA 2025 provides Income-tax shall also include any additional income-tax.

- Presently additional income tax applies in two cases i.e. payment of tax on Secondary adjustment and payment of tax on filing of updated return.

- One may argue that the above two taxes stand subsumed in the tax levied under Section 4(1) and therefore, the same cannot be levied and collected separately.

Section 4(3) - Splitting one sub section into more than one

- In order to obviate such an argument, the language ideally should have been as follows:

Any additional income-tax, by whatever name called, levied under this Act shall also be charged in addition to income tax under section 4(1).

Section 6

Section 6

(*1*) For the purposes of this Act, residential status in India in a tax year of a person shall be determined as per the provisions of this section.

(2) An individual shall be resident in India in a tax year, if he—

(*a*) is in India for a total period of one hundred and eighty-two days or more in that tax year; or

(*b*) is in India cumulatively for sixty days or more during that year and has been in India cumulatively for three hundred and sixty-five days or more in the four years preceding such tax year

Section 6(2)(a) of ITA 2025 corresponding to section 6(1)(a) of ITA 1961

6(2)(a) of ITA 2025	Section 6(1)(a) of the ITA 1961
(2) An individual shall be resident in India in a tax year, if he— (a) is in India for a total period of one hundred and eighty-two days or more in that tax year; or	For the purposes of this Act,— (1) An individual is said to be resident in India in any previous year, if he— (a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

Section 6(2)(b) of ITA 2025 corresponding to section 6(1)(c) of ITA 1961

6(2)(b) of ITA 2025	Section 6(1)(c) of the ITA 1961
(2) An individual shall be resident in India in a tax year, if he— (b) is in India cumulatively for sixty days or more during that year and has been in India cumulatively for three hundred and sixty-five days or more in the four years preceding such tax year	For the purposes of this Act,— (1) An individual is said to be resident in India in any previous year, if he— (c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year

Reckless omission or alteration - Needless omission of words

- Section 6(2)(a) of ITA 2025 requires an individual to be in India for a total period of 182 days or more in that tax year to qualify as a resident.

- The said provision does not use the word ‘period’ or ‘periods’. This could give an escape route to those persons who are not in India for a continuous period of 182 days though they may satisfy such length of stay on an overall basis during the tax year

- The said Section may be compared with section 6(1)(a) of the ITA 1961 which uses the words, ‘for a period or periods amounting in all to….’

- ‘Period’ would mean a fixed length of uninterrupted time as held in **B. Shah v. Presiding Officer, Labour Court, (1977) 4 SCC 38.**

II. Section 6(3) & (4) of ITA 2025

Section 6(2)(b) of ITA 2025 and Section 6(1)(c) of ITA 1961

Section 6(2)(b) of ITA 2025	Section 6(1)(c) of ITA 1961
(2) An individual shall be resident in India in a tax year, if he— (a)... (b) is in India cumulatively for sixty days or more during that year and has been in India cumulatively for three hundred and sixty-five days or more in the four years preceding such tax year.	6. For the purposes of this Act,— (1) An individual is said to be resident in India in any previous year, if he— (a).... (b) (c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Section 6(3) of ITA 2025 corresponds to Explanation 1(a) to section 6(1) of 1961

Section 6(3) of ITA 2025	Explanation 1(a) to Section 6(1) of ITA 1961
The provisions of sub-section (2)(b) shall not apply in the case of an individual who is a citizen of India and leaves India in any tax year—	Explanation 1.—In the case of an individual,— (a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted
(a) as a member of the crew of an Indian ship, as defined in section 3(18) of the Merchant Shipping Act, 1958; or	
(b) for the purposes of employment outside India	

Section 6(3) of ITA 2025 corresponds to Explanation 1(a) to section 6(1) of ITA 1961

- Explanation 1(a) to section 6(1) would have substituted 60 days in section 6(1)(c) by 182 days in case of citizen leaving India.

- Acting as independent sub section, its language suggests that a person would be entitled to benefit eternally if he leaves India in any tax year for the stated purposes.

- The same is not the intention as the benefit is limited to such tax year in which he leaves India.

Section 6(4) of ITA 2025 corresponds to Explanation 1(b) to section 6(1) of 1961

Section 6(4) of ITA 2025	Explanation 1(b) to Section 6(1) of ITA 1961
(4) The provisions of sub-section (2)(b) shall not apply, subject to the provisions of sub-section (5), in the case of an individual—	Explanation 1.—In the case of an individual,— (b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted and in case of such person having total income, other than the income from foreign sources exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted.
(a) who is a citizen of India or a person of Indian origin; and	
(b) who being outside India, comes on a visit to India in any tax year	

Section 6(4) of ITA 2025 corresponds to Explanation 1(b) to section 6(1) of 1961

- Likewise, Explanation 1(b) deals with citizen being outside visits India Section 6(4) corresponds to Explanation 1(b)

- The language suggests that a person would be entitled to benefit eternally if he is a citizen of India or a person of Indian origin and being outside India, comes on a visit to India in any tax year.

Section 6(7) of ITA 2025 corresponds with section 6(1A) of ITA 1961

Section 6(7) of ITA 2025	Section 6(1A) of ITA 1961
Irrespective of the provisions of sub-sections (2) to (6), an individual shall be deemed to be resident in India for a tax year, if he—	Notwithstanding anything contained in clause (*1*), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.
(a) is a citizen of India;	
(b) is not liable to tax in any other country or territory due to his domicile, residence, or similar criteria; and	
(c) has total income exceeding fifteen lakh rupees during such tax year (other than the income from foreign sources)	

Clause 6(8) of ITA 2025 corresponds to Explanation to section 6(1A) of ITA 1961

Section 6(8) of ITA 2025	Explanation to Section 6(1A) of ITA 1961
Sub-section (7) shall not apply to an individual, who is resident in India for a tax year under sub-sections (2) to (6)	Explanation.—For the removal of doubts, it is hereby declared that this clause shall not apply in case of an individual who is said to be resident in India in the previous year under clause (1).

Note:
Section 6(8) is separated from section 6(7) and has an independent existence

Clause 6(13)(c) of IT Act 2025 corresponds to section 6(6)(d) of IT Act of 1961

Section 6(13)(c) of ITA 2025	Section 6(6)(d) of ITA 1961
A person is not ordinarily resident in India in any tax year, if that person is—	A person is said to be "not ordinarily resident" in India in any previous year if such person is—
(a)	(a)
(b)	(b)
	(c)
(c) a citizen of India who is deemed to be resident in India under sub-section (7).	(d) a citizen of India who is deemed to be resident in India under clause (1A).

Clause 6(13)(c) of ITA 2025 corresponds to section 6(6)(d) of ITA 1961

- Section 6(13)(c) of ITA 2025 which corresponds to section 6(6)(d) of ITA 1961 is applicable to a person covered by Section 6(7).

- However, in Section 6(13), there is no reference to Section 6(8).

- Accordingly, the benefit of Section 6(13) would apply to Section 6(7) unaffected by Clause 6(8). This would mean even ordinary residents falling under section 6(1) may become NORs

- This would not have been the case earlier, as the Explanation was an integral part of Section 6(1A).

Section 9

Section 9(6)(a) : Income by way of royalty payable by—

(i) the Government;

(*ii*) a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of—

(*A*) a business or profession carried on by such resident outside India; or

(*B*) making or earning any income by such resident from any source outside India; or

(*iii*) a non-resident, if the royalty is payable in respect of any right, property or information used or services utilised for the purposes of—

(*A*) a business or profession carried on by such non-resident in India; or

(*B*) making or earning any income by such non-resident from any source in India,

shall be deemed to accrue or arise in India;

Section 9(6)(b) : Royalties

- Subclauses (i) and (vi) of Section 9(6)(b) of ITA 2025 use the additional words “grant of” before the words “all or any rights”.

- The same was missing in clauses (i) and (v) of Explanation 2 to 9(1)(vi) of ITA 1961.

- The reason for use of these words is not known nor is it possible to discern whether these words expand the scope of royalty.

Section 9(7)(a) : Income by way of FTS payable by—

(i)the Government;

(*ii*)a resident, except where it is payable in respect of services utilised **for—**

(*A*)a business or profession carried on by such resident outsideIndia; or

(*B*)making or earning any income by such resident from anysource outside India; or

(*iii*)a non-resident, if it is payable in respect of services utilised **for—**

(*A*)a business or a profession carried on by such non-resident inIndia; or

(*B*)making or earning any income by such non-resident fromany source in India,

shall be deemed to accrue or arise in India;

Section 9(9)(b) - Agency business connection

Section 9(9)(b)of ITA 2025 corresponding to Explanation 2 to section 9(1)(i) of ITA 1961

Section 9(9)(b) of ITA 2025	Explanation 2 to section 9(1)(i)
a business carried out in India shall include— (i) business activity carried out through a person who, acting on behalf of the non-resident,— (A) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—	Explanation 2.—For the removal of doubts, it is hereby declared that "business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident,— (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—

Section 9(9)(b)of ITA 2025 corresponding to Explanation 2 to section 9(1)(i) of ITA 1961

Section 9(9)(b) of ITA 2025	Explanation 2 to section 9(1)(i)
(I) in the name of the non-resident; or	(i) in the name of the non-resident; or
(II) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or	(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or
(III) for the provision of services by the non-resident; or	(iii) for the provision of services by the non-resident; or

Section 9(9)(b)of ITA 2025 corresponding to Explanation 2 to section 9(1)(i) of ITA 1961

Section 9(9)(b) of ITA 2025	Explanation 2 to section 9(1)(i) of ITA 1961
(B) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or	(b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
(C) habitually secures orders in India, mainly or wholly for the non-resident, or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident;	(c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident:

Section 9(9)(b)of ITA 2025 corresponding to Explanation 2 to section 9(1)(i) of ITA 1961

Section 9(9)(b) of ITA 2025 - in clause (a), a business carried out in India shall include—	2nd proviso to Explanation 2 to section 9(1)(i) of ITA 1961
(ii) a business activity carried out through a person who is a broker, general commission agent or any other agent, through whom such activity is carried out, and who is working mainly or wholly on behalf of— (A) a non-resident (referred to as the principal non-resident); or	Provided further that where such broker, general commission agent or any other agent works mainly or wholly on behalf of a non-resident (hereafter in this proviso referred to as the principal non-resident)...

Section 9(9)(b)of ITA 2025 corresponding to Explanation 2 to section 9(1)(i) of ITA 1961

Section 9(9)(b) of ITA 2025	2nd proviso to Explanation 2 to section 9(1)(i) of ITA 1961
(B) such non-resident and other non-residents who— (I) are controlled by the principal non-resident; or (II) have a controlling interest in the principal non-resident; or (III) are subject to the same common control as the principal non-resident, and such person shall not be deemed as having an independent status;	.....or on behalf of such non-resident and other non-residents which are controlled by the principal non-resident or have a controlling interest in the principal non-resident or are subject to the same common control as the principal non-resident, he shall not be deemed to be a broker, general commission agent or an agent of an independent status.

Section 9(9)(b)of ITA 2025 corresponding to Explanation 2 to section 9(1)(i) of ITA 1961

Section 9(9)(c) of ITA 2025	1st proviso to Explanation 2 to section 9(1)(i) of ITA 1961
in clauses (a) and (b), a business carried out in India shall not include any business activity or operations of the non-resident— (i) carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent is acting in the ordinary course of his business; or	Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business :

Section 9(9)(b) - Agency business connection

- There is a serious drafting error in Section 9(9)(b) of the Act insofar as Agency business connection is concerned.

- **<u>Restructuring is done as follows:</u>**

a. Explanation 2 is made into section 9(9)(b)(i). This section now deals with all agents carrying out prohibited activities.
b. 1st proviso to Explanation 2 is provided in section 9(9)(c)(i). This section deals with exemption to independent agents
c. Second proviso to Explanation 2 is captured in section 9(9)(b)(ii). This section now applies to all dependent agents no matter whether they are carrying prohibited activities or not.
d. Clauses (i) and (ii) are made independent of each other.

Section 9(9)(b) - Agency business connection

- Section 9(9)(b) contains two clauses, i.e., (i) and (ii).

- Clause (i) is similar to Explanation 2 of section 9(1)(i) which will bring agency business connection when an agent is carrying out one or more of three prohibited activities.

- Clause (ii) is to deal with dependent agent [person not of independent status]. This was defined in the 2nd proviso to Explanation 2 of ITA.

Section 9(9)(b) - Agency business connection

- Exemption under section 9(9)(c)(i) applies only to independent agents.

- However, while realigning existing provisions of ITA, above clause (ii) has become an independent line item in the form of section 9(9)(b)(ii) so as to bring agency business connection to all cases of dependent agents, having no regard to prohibited activities.

- This will make the clause (i) redundant.

Section 9(9)(b) - Agency business connection

- Sub clauses (i) and (ii) to clause (b) to section 9(8) read with section 9(9)(c)(i) of the ITA 2025 produce following results:

  - ❖All independent agents are out of agency business connection irrespective of whether they carry out prohibited activities or not;
  - ❖All dependent agents would trigger agency business connection irrespective of whether they carry out prohibited activities or not.

- Examples of dependent agents not carrying out prohibited activities could be those employed as marketing agents, delivery agents, logistics agents, and those agents carrying out prohibited activities but not habitually.

Section 9(9)(f) - Attribution

(*f*) in this section, only the income which is reasonably attributable to—

(*i*) operations carried out in India, when all operations of the business are not carried out in India;

(*ii*) transactions or activities referred to in clause (*d*),

shall be deemed to accrue or arise in India from any business connection;

Section 9(9)(f) - Attribution

- Section 9(9)(f)(ii) which deals with SEP refers to transactions referred to in (d) but does not exclude the transactions referred to in (e).

- Ideally, it should have read as clause (d) read with clause (e).

- Clause (e) says that clause (*d*) shall not apply to the transactions or activities which are confined to the purchase of goods in India for the purpose of export

- This problem is arising as a result of conversion of 2nd proviso to Explanation 2A into a separate clause in the new Act.

- Section 9(9)(f) would apply to whole of section 9 and not just section 9(9). This would mean no need to pay tax under FTS and royalty as well. However, ending words of clause (f) may not allow this.

Section 9(9)(g) – Additional attribution

(*g*) the income attributable to operations of any business or significant economic presence in this section shall also include income from—

(*i*) such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;

(*ii*) sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India; and

(*iii*) sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.

Section 9(9)(g) - Attribution

- Whole of section 9(9)(g) is rendered otiose.

- In so far as generic business connection is concerned, it provides that income attributable to operations of any business includes (i) to (iii). This is unlike Explanation 3A in ITA where the language used is “income attributable to operations carried out in India”.

- Accordingly, while items (i) to (iii) of clause (g) would be included while considering income attributable to all operations, same would not alter the figure of ‘income deemed to accrue or arise in India” which is separately dealt with by clause (f)(i).

- By splitting (g) from (f), and by making them separate, (g) is effectively rendered redundant.

Section 9(9)(g) - Attribution

- Similar position applies to SEP as well.

- In ITA 1961, proviso to Explanation 3A dealt with the case of SEP and connected these three streams to activities or transactions listed in Explanation 2A. Now, in ITA 2025 as clause (g)(ii) appears independent of clause (f); two interpretations are possible;

a) Adverse : whole of income [not attributable portion] of three items would get added.

b) Favourable : while all these three items are attributable to SEP, what is deemed to accrue in in India is only what is stated in (f).

Transition and repeal provisions

Section 536(3) of ITA 2025

Where any reference is made in this Act to any tax year commencing on 1.4.2025 or to any earlier tax year, the same shall be construed as a reference to the corresponding previous year under the repealed Income-tax Act.

- This will govern the understanding of provisions of ITA 2025

- This will also govern the operation of section 536(2)

Section 536(3) of ITA 2025

- **Its effect could be seen in the following;**

➢ Meaning of block period under section 301(a) [old section 158B(a)]

➢ Carry forward of excess interest under section 177 [old section 94B]

➢ Continuing deduction under section 146 [old section 80JJAA]

➢ Application of existing provision when the FA is not passed as on 1st day of TY [section 530, old section 294].

➢ Section 38(1)(d) [old section 41(1)]

Section 301(a) of ITA 2025	Section 158B(a) of ITA1961
For the purposes of this Part— (a) “block period” means the aggregate of— (i) the period comprising six tax years preceding the tax year in which the search was initiated or any requisition was made; and (ii) the period starting from the 1st April of the tax year in which search was initiated or requisition was made and ending on the date of the execution of the last of the authorisations for such search or such requisition;	In this Chapter, unless the context otherwise requires,— (a) "block period" means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was initiated under section 132 or any requisition was made under section 132A and also includes the period starting from the 1st day of April of the previous year in which search was initiated or requisition was made and ending on the date of the execution of the last of the authorisations for such search or such requisition;

Section 177(5) of ITA 2025	Section 94B of ITA1961
Interest expenditure not wholly deducted against income under the head “Profits and gains of business or profession” for any tax year shall be— (a) carried forward to the following tax year or years; and (b) allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for such tax year, to the extent of maximum allowable interest expenditure as per sub-section (4).	(4) Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2): Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed

Section 146 of ITA 2025	Section 80JJAA of ITA1961
(1) Subject to the conditions specified in sub-sections (2) and (3), if the gross total income of an assessee, to whom section 63 applies, includes any profits and gains derived from business, a deduction of an amount equal to 30% of additional employee cost incurred in the course of such business in the tax year shall be allowed. (*2*) The deduction referred to in sub-section (*1*) shall be allowed for three consecutive tax years, beginning from the tax year in which the employment is provided	Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

Section 38(1)(d) of ITA 2025	Section 41(4) of ITA1961
The following sums shall be deemed to be profits and gains of business or profession and shall be chargeable to income-tax, in the manner specified below, subject to the provisions of sub-section (2):— (d) in a case where a deduction has been allowed for a bad debt (or part of it) under the provisions of section 31(2), and any amount subsequently recovered exceeds the difference between such debt and the amount allowed, then the amount in excess, in the tax year in which recovery is made;	Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (vii) of sub-section (1) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly chargeable to income-tax as the income of the previous year in which it is recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not.

Repeal - section 536

section 536(2)(c) of ITA 2025

Irrespective of the repeal of the Income-tax Act, 1961 (herein referred to as the repealed Income-tax Act), and subject to sub-section (3)—

(*a*) nothing shall affect the previous operation of the repealed Income-tax Act and orders or anything duly done or suffered thereunder; or

(*b*) nothing shall affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Income-tax Act or orders under such repealed Act;

section 536(2)(c) of ITA 2025

(c) the provisions of the repealed Income-tax Act shall continue to apply to any proceeding pending on the date of commencement of this Act and to any proceedings initiated on after the 1st April, 2026 (including notices, assessment, re-assessment, re-computation, rectification, penalty, reference, revision and appeals) in respect of any tax year beginning before the 1st April, 2026 and such proceedings shall be carried out as per the procedure specified in the repealed Income-tax Act;

Those covered in repeal section 536

- 536(2)(c) makes ITA 1961 apply to all PYs upto 25-26
- Provisions of ITA 1961 and its procedure will apply to above PYs even if proceedings are initiated on or after 1.4.2026
- Proceeding initiated – should mean initiated by assessee or by AO as the case may be
- This has two limbs
- First limb is substantive and second limb is procedural

Those covered in repeal section 536

- Purpose of second limb is to clarify that even procedural aspects are governed by ITA

- Critical question is what is tax year. If it is 25-26 or earlier, ITA would apply.

- All reassessments for such tax year, will have to be under ITA. For PY 25-26, 5 years and 3 months from AY 26-27 would be 20.6.2032

- All updated returns for such tax year, will have to be under ITA. For PY 25-26, AY being 26-27, updated could be filed upto 31.3.2031.

Those covered in repeal section 536

- In case of search after 1.4.26, if the block is split between old Act and New Act – how is to be handled?

❑Section 301(a) defines block period as consisting of six tax years preceding the tax year of search

❑Section 536(3) provides for reference to TY [upto 25-26] as reference to Pys

❑If search takes place in TY 26-27, six TYs of the block would be 6 PYs of Old Act.

❑This would mean application of New Act for income earned before New Act takes effect.

❑However, on abatement, there are transition issues. As per section 292(2) only assessment etc., pending under new Act would abate. Therefore, pending assessments under Old Act do not abate

In case of search after 1.4.26, if the block is split between old Act and New Act – how is to be handled?

- Section 301(a) defines block period as consisting of six tax years preceding the tax year of search

- Section 536(3) provides for reference to TY [upto 25-26] as reference to PYs

- If search takes place in TY 26-27, six TYs of the block would be 6 PYs of ITA 1961

In case of search after 1.4.26, if the block is split between old Act and New Act – how is to be handled?

- This would mean application of ITA 2025 for income earned before New Act takes effect.

- However, on abatement, there are transition issues. As per section 292(2) only assessment etc., pending under ITA 2025 would abate.

- Therefore, pending assessments under ITA 1961 do not abate.

Section 536(2)(d)

(*d*) any proceeding for the imposition of a penalty in respect of any tax year beginning before the 1st April, 2026, may be initiated and any such penalty may be imposed under the repealed Income-tax Act, as if this Act had not been enacted;

- this is subsumed in (c) above
- ending words “as if this Act had not been enacted” – what is the purpose of these words. These words are not found at the end of clause (c)

Section 536(2)(e) of ITA 2025

(*e*) any proceeding pending on the commencement of this Act before any income-tax authority or any other authority constituted under the repealed Income-tax Act, Appellate Tribunal, or any court, by way of application, appeal, reference or revision or by any other means, shall be continued and disposed of as if this Act had not been enacted;

Section 536(2)(e) of ITA 2025

- Prima facie this looks subsumed into clause (c)
- This is same as section 297(2)(c) of ITA 1961
- However, on a closer reading the following points emerge

❑It applies to specified pending proceedings. In that sense, it is a carve out of clause (c)

❑The proceedings covered here should be disposed of as if new Act has not been enacted. However, it is not provided that the proceedings should be disposed of under the repealed Act. Mere use of words ‘irrespective repeal’ does not necessarily mean that provisions repealed Act would apply.

❑See clauses (c) and (d), where it is specifically provided that the provisions of repealed Act would apply.

Section 536(2)(f) of ITA 2025

(*f*) any election or declaration made, or option exercised, by an assessee under any provision of the repealed Income-tax Act and in force immediately before the commencement of this Act shall be deemed to have been an election or declaration made, or option exercised, under the corresponding provision of this Act;

Section 536(2)(f) of ITA 2025

- Deals with election, declaration made or option exercised and this will continue to apply in the new Act

- It would apply to only those election etc., which will last beyond the year of such election.

- Where election etc., is year on year, this clause does not apply.

- Take section 115BAC which is a default section. Therefore, section applies not because of election etc. therefore, merely because 115bac applied to an assessee for PY 25-26 under default regime, it does not mean that he is stuck to it in the new regime.

Section 536(2)(f) of ITA 2025

A) Examples covered

- section 11(1) – Explanation 1 : postponing application
- depreciation for power assessee – st line v. WDV
- section 115BAA etc.
- 36(1)(via)

B) Examples not covered

- choices are not covered
- choices are not options. For ex : to marry or not is an option and not a choice. Once u decide to marry, u have a choice of various persons to pick as a spouse.
- Choice between cit(a) and DRP is not an option.

Section 536(2)(g) of ITA 2025

Where in respect of any proceeding relating to any tax year beginning before the 1st April, 2026,—

(i) a refund falls due after commencement of this Act; or

(ii) default is made after such commencement in the payment of any sum due under such proceeding,

the provisions of this Act, relating to interest payable by the Central Government on refunds and interest payable by the assessee for default, shall apply for the period after the commencement of this Act

Section 536(2)(g) of ITA 2025

- This is an exception to clause (c)
- In respect of refund which became due under old Act, interest under old Act will continue to apply. Therefore, this clause will not apply
- This clause will apply only to refunds that became due after commencement of this Act. In such case, interest on refund would be computed under new Act for the period from 1.4.26

Section 536(2)(g) of ITA 2025

- However, in so far as interest payable by assessee,

❑This clause will not apply for default committed in payment of tax before commencement of new Act

❑Applies only for default committed in payment of tax after the commencement of new Act

❑In such case, under clause (c), interest would have been computed under the old Act. However, new Act says interest would be computed under the New Act. Question of computation of interest under old Act does not arise in such case.

❑Therefore, this portion may not serve the purpose

Section 536(2)(g) of ITA 2025

- It is stated that interest will be applied under new Act from commencement of new Act.

- However, it is not stated what would be case for period upto commencement of new Act. Compare this with section 297(2)(i) of ITA 1961.

where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement in the payment of any sum due under such completed assessment, the provisions of this Act relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply

Section 536(2)(h) of ITA 2025

where any deduction has been allowed or any amount has not been included in the total income of any person, subject to fulfilment of certain conditions for any tax year beginning before the 1st April, 2026, and in case of violation of such conditions in any tax year beginning on or after 1st April, 2026, any sum (on account of deduction earlier allowed or amount not included) was required to be included in the total income of such subsequent tax year under the repealed Income-tax Act if it had not been so repealed, then such sum shall be—

(i) deemed to be the income of the tax year in which the violation takes place; and

(ii) included in the total income of the said person under the same head of income as it would have been included under the repealed Income-tax Act;

Section 536(2)(h) of ITA 2025

- This will apply to deduction or exemption given under old Act subject to conditions
  - Such conditions are breached after commencement of new Act
  - Old Act should provide for taxing such income in the year of breach.

- This clause says that such income shall be included in subsequent tax year under the old Act. However, old Act does not recognize tax year.

- Even if it is assumed that the old act is not repealed, there is no reference to tax year.

- Section 536(3) would deem tax year as PY only if it is 25-26 and earlier. It would not apply to tax year 26-27 onwards.

Section 536(2)(h) of ITA 2025

- Examples covered

❑Non utilization of capital gains deposits under 54 and 54F

❑Violation of 54F

❑54EC lock in violated

❑Non utilization of SEZ reserve

❑11(2)/(3)

❑80C – transfer of house within 5 years

- Examples not covered

❑Withdrawal from reserve section 36(1)(viii)

❑Rebates and reliefs are not covered

❑Section 41 is not covered

Section 536(2)(i) of ITA 2025

(*i*) any sum payable under the repealed Income-tax Act may be recovered under this Act without prejudice to any action already taken for the recovery of such sum under repealed Income-tax Act;

Similar clause existed in section 297(2) of ITA

Section 536(2)(j) of ITA 2025

any agreement entered into, appointment made, approval given, recognition granted, circular, direction, instruction, notification, order or rule or any scheme framed therein issued under any provision of the repealed Income-tax Act shall, so far as it is not inconsistent with the corresponding provisions of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision of this Act and shall continue in force accordingly

Section 536(2)(j) of ITA 2025

- Deals with continuation of agreement etc.
- Scheme is also covered.
- Certificates issued are not covered.
- APAs are covered.
- DTAAs will continue
- Appointment of special auditors, valuers etc. will continue

Section 536(2)(j) of ITA 2025

- Reference to rule issued in this clause – will it mean old IT Rules continue in the new Act? Seems bizarre!

- Rule prescribed v. Rule issued

- Circulars, directions or instructions issued under 119 : will they continue?

- Guidelines, if not in the form of orders may not bet covered viz those issued under sections 9A, 9B,101, .- will section 24 of GCA apply to such guidelines

Section 536(2)(j) of ITA 2025

- Section 24 of GCA would have otherwise applied. However, due to this special clause, section 24 of GCA will now not apply.

- As agreements etc., are deemed to have been entered into under the new Act, before issuing any new agreement etc., under the new Act, it is necessary to rescind the old ones.

- If not so rescinded, both will continue and whichever is beneficial will prevail.

Section 24 of GCA

Continuation of orders, etc., issued under enactments repealed and re-enacted.— Where any 1 [Central Act] or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any 3 [appointment notification,] order, scheme, rule, form or bye-law, 3 [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been 3 [made or] issued under the provisions so re-enacted, unless and until it is superseded by any 3 [appointment notification,] order, scheme, rule, form or bye-law, 3 [made or] issued under the provisions so re-enacted 7 [and when any 1 [Central Act] or Regulation, which, by a notification under section 5 or 5A of the 8 Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section]

Section 536(2)(k) of ITA 2025

(*k*) where the period provided for any application, appeal, reference or revision under the repealed Income-tax Act had expired on or before the commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate authority;

- 536(2)(k) – not needed as it is completely addressed by clause (c)

Section 536(2)(l) of ITA 2025

(*l*) any amount of credit, in respect of tax paid, allowable to be carried forward in the case of an assessee, under the provisions of section 115 JAA or 115JD of the repealed Income-tax Act for the tax year beginning before the 1st April 2026, had the Income-tax Act, 1961 not been repealed,—

(*i*) shall be deemed to be the amount eligible for credit under corresponding provision of this Act in the case of said assessee; and

(*ii*) credit for the tax paid under the repealed Income-tax Act shall be allowed under this Act for the period for which it would have been allowed under the repealed Income-tax Act if the assessee otherwise continues to satisfy the conditions as specified in the corresponding provisions of this Act in such tax years;

Section 536(2)(l) of ITA 2025

- Mat and amt credit will be for same assessee for balance number of years

- Assessee has to comply with conditions of corresponding provisions of new Act to be eligible to carry forward the same.

Section 536(2)(m) of ITA 2025

(*m*) any amount of loss under the source or head of income specified in column B of the Table given below and referred to in the section of the repealed Income-tax Act specified in column C of the said Table, brought forward for the tax year beginning before the 1st April, 2026 had the Income-tax Act, 1961 not been repealed, shall be set off and carried forward against the income computed under this Act, in the manner provided in the respective section of the repealed Income-tax Act specified in column C of the said table, for the tax years beginning on or after the 1st April, 2026:

Section 536(2)(m) of ITA 2025

Sl. No.	Source or head of income under the repealed Income-tax Act	Section of the repealed Income-tax Act
A	B	C
1	Income from house property.	71B
2	Profits and gains of business or profession.	72
3	Speculation business.	73
4	Specified Business.	73A
5	Activity of owning and maintaining race horses.	74A

Section 536(2)(m) of ITA 2025

- Carry forward conditions of old Act will continue to apply even in the new regime for brought forward losses [i.e. legacy losses]. For this purpose, even decisions governing old law should apply.
- Compare this with ending words of (ii) of clause (l)
- Language “set off and carried forward against the income” is not elegant
- See the language : *“against the income”* – does it mean against any income
- What is the meaning of ‘manner provided in the respective sections’
- Does the manner apply only to number of years or does it also govern the nature of income against which brought forward loss should be set off.

Section 536(2)(m) of ITA 2025

- Section 79 of old Act does not apply to legacy loss. Even the words, ‘had not ITA not been repealed” would not create problem, as section 79 bars ‘carried forward and setoff’. This bar of ‘c/f and set off’ cannot be vivisected as bar of c/f and bar of set off. Take the example of drink and drive. Further, section 79 never bars c/f and b/f thereby if in a future year, an assessee overcomes section 79 by regaining shareholding, he will get the benefit of set off of brought forward loss.
- Next question is whether section 119(3) of new Act would apply? on a very literal reading section 119(3) read with section 536(3) seems to apply.
- However, compare the ending words of (ii) to clause (l) where there is reference to conditions of the new Act. In the absence of such reference, one may argue that section 119(3) would not apply to legacy loss.

Section 536(2)(m) of ITA 2025

- This clause is not addressing all cases of section 72A. While all other cases are well covered, case of demerger under section 72A(4) is not covered. This is for the reason that section 72A(4) stands as a separate section granting allowance unlike section 72A(1) which will make other provisions of c/f and set off of Act to be applicable. Therefore, there is a risk where legacy loss and depreciation under section 72A(4) may be lost in the new regime. It may also be noted that evergreening aspect of 72A(1) is different from evergreening aspect of 72A(4).
- There is another problem when an assessee carries forward legacy business loss into new regime and thereafter becomes subject to a business reorganization. In such case, the accumulated loss as defined in section 116(13)(a) does not refer to legacy loss but only to loss of new regime by making specific reference to section 112. Therefore, such legacy loss would be lost upon business reorganization. However, this problem will not exist for unabsorbed depreciation as separately discussed under section 536(2)(r)

Section 536(2)(n) of ITA 2025

(*n*) any amount of loss under the head capital gains, whether related to a long-term capital asset or a short term capital asset, referred to in section 74 of the repealed Income-tax Act, brought forward from the tax year beginning before the 1st April, 2026 had the Income-tax Act, 1961 not been repealed, shall be carried forward and set off, in accordance with the manner provided in the repealed Income-tax Act, against the income under the head "Capital gains" computed under this Act for any tax year beginning on or after the 1st April, 2026 upto eight financial years immediately succeeding the financial year in which such loss was first computed under the repealed Income-tax Act

- There does not seem any purpose to carve out (n) from (m)
- Clause (m) uses 'against the income' and clause (n) uses 'against the capital gains'
- This would make (m) more liberal than (n)

Section 536(2)(o) of ITA 2025

(*o*) any set off of loss or allowance for depreciation made in any tax year beginning before the 1st April, 2026 in the hands of the amalgamated company, successor company or the successor limited liability partnership, in accordance with the provisions of section 72A of the repealed Income-tax Act, shall be deemed to be the income of the amalgamated company, successor company or the successor limited liability partnership, as the case may be, chargeable to tax under this Act for the year in which any of the conditions specified in that section are not complied with

This deals with benefit of 72A already availed under old Act but continuing conditions are breached after the coming into force of new Act. In such case, benefit availed under erstwhile 72A would be taxed in the hands of successor under the new Act.

Section 536(2)(p) of ITA 2025

(*p*) any set off of accumulated loss or unabsorbed depreciation allowed in any tax year beginning before the 1st April, 2026 to the successor co-operative bank, in accordance with the provisions of section 72AB of the repealed Income-tax Act, shall be deemed to be the income of the successor co-operative bank chargeable to tax under this Act for the year in which any of the conditions specified in that section are not complied with

Section 536(2)(q) of ITA 2025

Any amount of profits or gains arising out of transfer of capital asset not charged under the head capital gains by virtue of the provisions contained in section 47(iv), (v), (xiii), (xiiib) or (xiv) of the repealed Income-tax Act in any tax year beginning before the 1st April, 2026 shall be deemed to be the income chargeable under the head "Capital gains" under this Act, for the tax year—

(A) in which the transfer took place if any of the conditions laid down in section 47A(1)(i) or (ii) of the repealed Income-tax Act are satisfied; or

(B) in which any of the conditions laid down in section 47(xiii), (xiiib) or (xiv) of the repealed Income-tax Act are not complied with,

as the case may be;

Section 536(2)(q) of ITA 2025

- Covers section 47A including case of 47(iv)/(v)],

- Reference to 47A(1)(i) and (ii) is uncalled for as tax year would relate to Old Act regime but taxability is provided under the New Act. There is a complete mess up in this provision.

- Further, in case of other clauses of section 47A violation, it is not provided in whose income it will be charged to tax. It is not provided in the new Act that it is charged to tax in the hands of the successor. Though old Act provides for it, it is not possible to go to repealed Act when such repeal is not saved.

Section 536(2)(r) of ITA 2025

Where any allowance or part thereof, under section 32(2) or 35(4) of the repealed Income-tax Act, is to be carried forward to tax year beginning on the 1st April, 2026, had the Income-tax Act, 1961 not been repealed, then, the allowance or part thereof shall be added to the amount of capital allowances referred to corresponding provisions of this Act for the tax year beginning on the 1st April, 2026 and deemed to be part of that allowance, or if there is no such allowance for that tax year, be deemed to be allowance for that tax year

Section 536(2)(r) of ITA 2025

- Unabsorbed depreciation under old regime will be deemed to be current depreciation under new regime.

- Unlike clause (m) where legacy loss remains as such, legacy depreciation ceases to be so but becomes current depreciation.

- Consider the case of an assessee carries forward legacy depreciation into new regime and thereafter becomes subject to a business reorganization. In such case, the accumulated depreciation defined in section 116(13)(e) refers to depreciation allowable under the Act. Therefore, such legacy depreciation which became current depreciation by virtue of 536(2)(r) would not be lost upon business reorganization.

Section 536(2)(s) of ITA 2025

(s) the deduction referred to in section 35ABA, 35ABB, 35D, 35DD, 35DDA, 35E or the first proviso to section 36(1)(ix) of the repealed Income-tax Act, shall, on fulfilment of the conditions mentioned in the said provisions, continue to be allowed under this Act for tax year beginning on or after the 1st April, 2026 had the Income-tax Act, 1961 not been repealed and such deduction shall be added to the amount of deferred revenue expenditure allowance referred to corresponding provisions of this Act for the tax year beginning on or after the 1st April, 2026 and deemed to be part of that allowance, or if there is no such allowance for a tax year, be deemed to be that allowance for that tax year;

Section 536(2)(t) of ITA 2025

(t) Credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) of the repealed Income-tax Act standing on the last day of the tax year beginning on 1st April, 2025 shall be added to the amount credited to the provision for bad and doubtful debts accounts referred to in the corresponding provisions of this Act for the tax year beginning on the 1st April, 2026 and deemed to be part of amount credited to the provision for bad and doubtful debts accounts, or if there is no such amount credited for that tax year, be deemed to be amount credited for that tax year

Section 536(2)(u) of ITA 2025

(u) any scheme which has been notified under the provisions of the repealed Income-tax Act with a view to eliminating the interface with the assessee or any other person, the said scheme shall be deemed to have been made—

(i) under the corresponding provisions of this Act; or

(ii) under section 532 where there is no such corresponding provision,

and shall continue in force accordingly; and

Section 536(2)(u) of ITA 2025

- This deals with continuation of faceless schemes.
- Scheme made under old Act shall be deemed to be scheme made under corresponding provisions of the new Act, if there is any such corresponding provisions. For eg., faceless jurisdiction scheme made under section 130 shall now be deemed to be made under section 245.
- If there is no corresponding provision in the new Act, scheme shall be deemed to be made under section 532. For example, faceless reassessment scheme made under section 151A of old Act shall now be deemed to made under section 532.
- Apply generalia specialibus non derogant wrt scheme referred to in clause (j). therefore, for all schemes for elimination of interface with the assessee, are covered under (u) and not under (j)

Section 536(2)(v) of ITA 2025

(v) where a search has been initiated under section 132 or requisition is made under section 132A prior to the commencement of this Act, the provisions of repealed Income-tax Act, shall continue to apply to any proceedings connected in respect of such search or requisition, as the case may be, as if this Act has not been enacted

Section 536(2)(v) of ITA 2025

- This deals with search initiated in old regime.
- See section 158B(a) which defines block period

"block period" means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was initiated under section 132 or any requisition was made under section 132A and also includes the period starting from the 1st day of April of the previous year in which search was initiated or requisition was made and ending on the date of the execution of the last of the authorisations for such search or such requisition

- Consider a search initiated on 25.3.26. this case is covered by clause (v). let us assume that search is concluded on 21.3. 27. Block period thereby extends upto 21.3.27. By virtue clause (v), new Act should be ignored and old Act provisions should apply. This would mean that even income earned from 1.4.26 to 21.3.27 shall be determined under old law and all the provisions of old law would apply.

Are there issues beyond section 536

- 41(1) now dealt with under section 38(1)(a) : will continue to apply read with section 536(3).

Are there issues beyond section 536

- 41(3) [sale of scientific research capital asset] now dealt with under section 38(1)(c) :

(*c*) in a case where an asset representing expenditure of a capital nature on scientific research, referred to in section 45(*1*)(*a*)(*i*) is sold, without having been used for other purposes, and the sale proceeds **together with the total deductions allowed under that section** exceed the amount of capital expenditure, the excess or the amount of deduction so made, whichever is less, in the tax year in which the asset was sold;

Are there issues beyond section 536

- 41(3) [sale of scientific research capital asset] now dealt with under section 38(1)(c) :

❑If it relates to claim in made in ITA 1961, ITA 2025 will apply.

❑However, when you add deduction claimed to sale proceeds, the following possibilities would arise;

- If claimed and fully absorbed under old act, nothing will be added to sales proceeds
- If claimed and not at all absorbed under old act, entire deduction will be added to sales proceeds
- If claimed and only partly absorbed under old act, carried forward deduction will be added to sales proceeds

Are there issues beyond section 536

- Bad debt recovery under section 41(4) is now dealt with by section 38(1)(d). No provision for taxing bad debt allowed under ITA 1961 but recovered under ITA 2025.

- Withdrawal from special reserve under section 32(e) [corresponds to section 36(1)(viii) and section 41(4A)], is taxed under section 38(1)(e). however, what is withdrawn from reserve under section 36(1)(viii) is not taxed under ITA 2025. Such case is not covered by section 536(2)(h) as there is no violation of condition when amount is withdrawn from the reserve.

Are there issues beyond section 536

- **<u>92CE [secondary adjustment] – section 170 of the new Act deals with secondary adjustment.</u>**

- What is the effect of deemed loan under section 92CE in the new Act
- Should interest be computed in respect therefore even in the new Act
- Can assessee pay additional tax in respect thereof under the New Act to stop computation of interest thereon.
- Assessment of past years of Old Act be continued under the Old Act after coming into force of New Act under section 536(2)(c). In such case, how is section 170 pressed into service
- The events of section 92CE(1) may take place after the new Act. In such case, there could be issues.

Are there issues beyond section 536

- Section 94B – thin capitalization : section 177 of the new Act deals with this. Though Section 536 does not provide for carry forward of excess interest under section 94B(4), on the basis of section 536(3), it is possible to interpret that such carry forward should be permissible under section 177(5).

- 80JJAA : Section 146 of the New Act provides for similar deduction. The deduction claimed under 80JJAA could be continued for balance number of years under section 146 by the interplay of section 536(3).

Chapter -VI : Cash credits etc. sections 102 to 106

Section 177 of ITA 2025 and section 94B of ITA 1961

Section 102(1) of ITA 2025	Section 68 of ITA1961
(1) Where any sum is found credited in the books of an assessee maintained for any tax year, and— (a) the assessee offers no explanation about the nature and source of such credit; or (b) the explanation offered about the nature and source of such credit by assessee is not satisfactory in the opinion of the Assessing Officer, then, the sum so credited shall be charged to income-tax as income of the assessee of that tax year.	Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Cash Credit – Section 102 to 106

- Section 102(1) uses the word ‘shall’ making invocation of the provision mandatory.

- However, under section 68 of the IT Act right from the inception i.e. 01.04.1962, the power to invoke the provision is at the discretion of the Assessing Officer as it uses the word ‘may’.

- In CIT v. Smt. P.K. Noorjahan [1999] 237 ITR 570 (SC) and CIT v. P. Mohanakala [2007] 291 ITR 278 (SC), it has been held that the said provision is not mandatory and may not be invoked in appropriate cases.

Cash Credit – Section 102 to 106

- The said provision is based on the rule of evidence as held in A. Govindarajulu Mudaliar v. CIT 1958] 34 ITR 807(SC).

- Hence, the said provision only casts a burden of proof on the assessee.

- However, in every case where the explanation is not offered by the assessee or the explanation offered is not satisfactory, the said provision should not be made mandatory.

- In a given case, even though the explanation is not satisfactory, the Assessing Officer may considering the theory of human probability or other facts and circumstances may not want to make an addition. Hence, discretion should be given to the Assessing Officer.

Cash Credit – Section 102 to 106

- The tax rate is 60%. The surcharge and cess at present are 25% and 4% respectively.

- Further a penalty of 10% of tax is levied. If all this is added up, the effective outflow comes to 84% [(60+25%)+4%]+(60*10%).

- Such high outflow would necessitate the provision being discretionary rather than mandatory.

Section 103(b) of ITA 2025	Section 69 of ITA 1961
Where in any tax year, any investment has been made by the assessee which is not recorded in the books of account, if any, maintained by such assessee for any source of income, or, the Assessing Officer finds that the amount of such investment exceeds the amount recorded in such books of account and– (b) the explanation offered about the nature and source of such investment by the assessee, is not satisfactory in the opinion of the Assessing Officer then, the value of such investment, or such excess amount, as the case may be, shall be deemed to be the income of the assessee of that tax year	Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

Section 104(1)(b) of ITA 2025	Section 69A of ITA 1961
Where in any tax year, any asset has been found to be owned by or belonging to the assesse which is not recorded in the books of account, if any, maintained by such assessee for any source of income, or the Assessing Officer finds that the amount expended in acquiring such asset exceeds the amount recorded in such books of account and— (b) the explanation offered about the nature and source of acquisition of such asset by the assessee, is not satisfactory in the opinion of the Assessing Officer, then, the value of such asset, or such excess amount, as the case may be, shall be deemed to be the income of the assessee of the tax year in which such asset has been found to be owned by, or belonging to, the assessee.	Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

Cash Credit – Section 102 to 106

- Sections 103(b) and 104(1)(b) give an escape route in case of partially recorded investment, money etc.,

- In such cases, it is enough if the assessee offers an explanation about the nature and source of excess. There is no scope for AO to examine such explanation and make an opinion.

- The moment an explanation is made in respect of such excess, no addition under above sections can be made.

Cash credit – Section 102 to 106

- Although addition may be made using rule of evidence applying Govoindraju Mudaliar 34 ITR 807SC, the same should suffer normal rate of tax.

- Similar aspect applies with reference to section 105(1)(b), where assessees furnishes explanation as regards nature and source of part of expenditure.

Section 105(1)(b) of ITA 2025	Section 69C of ITA 1961
(1) Where any expenditure has been incurred by the assessee in any tax year, and— (b) the explanation offered about the source of such expenditure by the assessee is not satisfactory in the opinion of the Assessing Officer, then, the amount covered by such expenditure or part thereof, shall be deemed to be the income of the assessee for that tax year.	Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year : Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

Salaries

Section 17(1)(b) of ITA 2025	Section 17(2)(ii) of ITA 1961
1) For the purposes of this Part, “perquisite” includes— (b) the value of any accommodation, computed in such manner as may be prescribed, provided to the assessee by his employer at a concessional rate which is in excess of rent recoverable from or payable by the assessee;	"perquisite" includes— [(ii) the value of any accommodation provided to the assessee by his employer at a concessional rate. Explanation.—For the purposes of this sub-clause, it is clarified that accommodation shall be deemed to have been provided at a concessional rate, if the value of accommodation computed in such manner as may be prescribed, exceeds the rent recoverable from, or payable by, the assessee.

“To the extent it exceeds” v. “in excess of”

- **Concessional accommodation :** Section 17(1)(b) of ITA 2025 corresponds to section 17(2)(ii) of ITA 1961. It brings to tax accommodation the value of accommodation provided at a concessional rate.

- Section 17(2)(ii) of the Act brought to tax the entire value of the accomodation if provided at a concessional rate.

- The language of section 17(1)(b) of the Bill appears to be worded better than section 17(2)(ii) of the Act.

“To the extent it exceeds” v. “in excess of”

- However, the problem continues to subsist even in section 17(1)(b) of the Bill in as much as the entire value of accommodation would be taxed, due to the use of the words, “which is in excess of”.

- Ideally the language should have been “to the extent it exceeds” as used in section 17(2)(vii) of the Act.

Section 17(1)(h) of ITA 2025	Section 17(2)(vii) of ITA 1961
1) For the purposes of this Part, “perquisite” includes— (h) aggregate amount of any contribution, ***in excess of ₹ 750000*** in a tax year, made to the account of the assessee by the employer— (i) in a recognised provident fund; (ii) in the scheme referred to in section 124(1); and (iii) in an approved superannuation fund	"perquisite" includes— (vii) the amount or the aggregate of amounts of any contribution made to the account of the assessee by the employer— (a) in a recognised provident fund; (b) in the scheme referred to in sub-section (1) of section 80CCD; and (c) in an approved superannuation fund, ***to the extent it exceeds seven lakh and fifty thousand rupees*** in a previous year;

Employer's contribution to PF :

Section 17(1)(h) of ITA 2025 corresponds to section 17(2)(vii) of ITA 1961 and deals with contribution made by employer to account of employee in RPF, pension scheme or approved superannuation fund in excess of Rs. 7,50,000/-,.

The ITA 1961 clearly brings to tax only the amount of contribution to **the extent it exceeds Rs. 7,50,000**. The ITA 2025 on the other hand uses the language, "aggregate amount of any contribution, in excess of ₹ 750000 in a tax year....".

This is making entire amount taxable viz., in a case of Rs.7.6L, while the Act sought to tax only Rs.10k, the ITA 2025 seeks to tax entire Rs.7.6L.

Section 17(1)(i) of ITA 2025	Section 17(2)(viia) of ITA 1961
1) For the purposes of this Part, “perquisite” includes— (i) the annual accretion by way of interest, dividend or any other amount of similar nature during the tax year to the balance at the credit of the fund or scheme referred to in clause (h), computed in such manner, as may be prescribed (to the extent it relates to the contribution referred to in the said clause in any tax year).	"perquisite" includes— the annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme referred to in sub-clause (vii) to the extent it relates to the contribution referred to in the said sub-clause ***which is included in total income under the said sub-clause in any previous year*** computed in such manner as may be prescribed;

Annual accretion to employer's contribution

- Section 17(1)(i) of ITA 2025 corresponds to section 17(2)(viia) of ITA 1961.

- It deals with taxation of annual accretion by way of interest, dividend or any other amount of similar nature with respect to balance of fund or scheme referred to in section 17(1)(h) to the extent it relates to contribution referred to in section 17(1)(h).

Annual accretion to employer's contribution

- However, applicability of section 17(1)(i) is with regard to accretion to the extent it relates to contribution referred to in section 17(1)(h) irrespective of the contribution which is includible in the total income under section 17(1)(h) unlike section 17(2)(viia) of ITA 1961 which provided that accretion to the extent it relates to contribution referred to in section 17(2)(vii) irrespective of the contribution which is includible in the total income under section 17(2)(vii).

Annual accretion to employer's contribution

- The contribution referred to in section 17(1)(i) is the entire contribution to the funds or schemes and not the contribution to the extent it exceeds Rs. 7,50,000.

- A fortiori, due to absence of words ***'which is included in total income under said sub-clause'*** in section 17(1)(i) of ITA 2025, the annual accretion on the entire contribution would become the perquisite.

Entertainment allowance – Section 16(ii) of ITA 1961

Deductions from salaries.

The income chargeable under the head "Salaries" shall be computed after making the following deductions, namely :—

(ii) a deduction in respect of any allowance in the nature of an entertainment allowance specifically granted by an employer to the assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less;

- Entertainment allowance to government employees under section 16(iii) – 1/5th of salary or Rs.5000 whichever is less [applied only to non default regime]. This does not seem to exist in ITA 2025.

Section 17(2) of ITA 2025 v. 1st Proviso to section 17(2) of ITA 1961

- Section 17(2)(b)(ii) exempts reimbursement of medical treatment incurred in hospitals approved by the CIT. this corresponds to clause (ii)(b) of the first proviso to section 17(2) of the Old Act.

- However, old clause had a proviso stating that the employee shall attach with his return of income a certificate from the hospital specifying the disease or ailment for which medical treatment was required and the receipt for the amount paid to the hospital. Such condition is not found in the new Act.

Section 19 of ITA 2025 - VRS

- VRS – under section 10(10C), compensation under voluntary separation scheme in a public sector company would get exemption.

- Now, the VRS exemption is covered by entry 12 of table below section 19(1) for an employee covered by section 19(2)(h).

- while entry 12 applies only to VRS, section 19(2)(h)(i) refers to employee of public sector company (under a scheme of voluntary separation).

- However, scheme of voluntary separation is not covered by entry 12. This would keep such employees out of exemption

Section 19 of ITA 2025 - VRS

- Section 10(10C) – 3rd Proviso – bars exemption where relief under section 89(1) is given.

- Section 19(2)(e)(iii) is not worded elegantly.

- It bars deduction not from ‘salaries’ but from ‘compensation’ where as entry 12 read with section 19(1) provides for deduction from ‘salaries’.

Section 19 of ITA 2025 – Encashment of leave salary

- Explanation to section 10(10AA) restricts the entitlement of earned leave to 30 days for every year of actual service [rendered by him as an employee of the employer from whose service he has retired].

- The words in bracket are missing in item 14 of table below section 19(1) tempting one to consider even his service with the previous employers to compute the entitlement.

House property income

Income from house property

Section 21(2) of ITA 2025	Section 22 of ITA1961
If the property or any part of it is let and was vacant for the whole or any part of the tax year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in sub-section (1)(a), the annual value of such property shall be deemed to be the amount so received or receivable.	The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property"

House property

- Section 21(2) of ITA 2025 states that provisions of sub-section (*1*) shall not apply to such portions of the property, as the assessee may occupy ***for his business or profession***, the profits of which are chargeable to income-tax

- In contrast, section 22 of ITA 1961 used the words “other than such portions of such property as he may occupy ***for the purposes of any business or profession*** carried on by him”

- Notice the change from “for the purposes of” to “for”. It appears that the latter makes it wider. On this basis, can one argue against pressing of section 20 in case of property held as stock beyond 2 years?

Difference between phrases ‘for the purpose of business’ and ‘for his business’

- As per (source: Google AI Overview):

"For the purpose of business" specifies a goal or reason for action, highlighting why something is done in the context of commercial, industrial, or professional activities. In contrast, "for business" functions as a more general phrase indicating something is related to, intended for, or characteristic of the commercial sphere without necessarily defining a specific purpose.”

- *“For the purpose of business: - It defines the core mission and overarching objectives that guide the business.*

Difference between phrases ‘for the purpose of business’ and ‘for his business’

- *“For business: - It indicates that something relates to the general sphere of business operations or interests, rather than a narrow, core purpose*

- *In summary, a business has a fundamental purpose (the "why"), and it also engages in various activities and considerations that are "for business" (the "what" or "how")”*

- From the above, it may be said that the phrase ‘for the purpose of business’ is narrower in as much as it qualified with reason or condition i.e. ‘the purpose’. On the other hand, the phrase ‘for his business’ is wider as the said phrase is unqualified.

Difference between phrases ‘for the purpose of business’ and ‘for his business’

- Hence, it may be said that ‘for the purpose of business’ is narrower and requires stronger nexus to the business whereas ‘for his business’ is wider and includes even remotest nexus to the business.

- One may argue that there is another view for the said phrases, wherein the phrase ‘for the purpose business’ is understood as having wider meaning and the phrase ‘for his business’ as having narrower meaning. The reasoning for the aforesaid proposition is made in the following paragraphs.

- In this regard a reference may be made to the meaning of the phrases ‘for the purpose of business’ & ‘for his business’. As there is difficulty in finding the meaning of the whole phrases, we will break the same into two words viz. ‘for’ and ‘purpose’:

Difference between phrases ‘for the purpose of business’ and ‘for his business’

- **For:** As per Oxford Learner’s Dictionary - https://www.oxfordlearnersdictionaries.com/us/definition/english/for_1

1. “used to show who is intended to have or use something or where something is intended to be put: We got a new table for the dining room.

2. in order to help somebody/something: Can you translate this letter for me?

3. used to show purpose or function: Let's go for a walk.

4. used to show a reason or cause: He got an award for bravery.

5. in order to obtain something: He came to me for advice.

6. used to show a length of time: I'm going away for a few days.

- *7. used to show a distance: The road went on for miles and miles.”*

Difference between phrases ‘for the purpose of business’ and ‘for his business’

- As per Cambridge English: https://dictionary.cambridge.org/dictionary/english/for:

“- intended to be given to: I'd better buy something for the new baby.

- having the purpose of: Everyone in the office is contributing money for his leaving present.

- because of or as a result of something: Scotland is famous for its spectacular countryside.

- used to show an amount of time or distance: We walked for miles.

- on the occasion of or at the time of: What did you buy him for Christmas?

- in order to help someone: Let me carry those bags for you.

Difference between phrases ‘for the purpose of business’ and ‘for his business’

‘Purpose’:

- As per Oxford Learner’s Dictionary - https://www.oxfordlearnersdictionaries.com/us/definition/english/purpose:

- *“the intention, aim or function of something; the thing that something is supposed to achieve*

- *the ability to plan something and work successfully to achieve it*

Difference between phrases ‘for the purpose of business’ and ‘for his business’

- As per Cambridge Dictionary - https://dictionary.cambridge.org/dictionary/english/purpose:

- *“an intention or aim; a reason for doing something or for allowing something to happen:*

- *The purpose of the book is to provide a complete guide to the university.*

- *A meeting was called for the purpose of appointing a new treasurer.*

- *an intended result or use:*

Difference between phrases ‘for the purpose of business’ and ‘for his business’

- *the reason for doing something or the reason that something exists:*

- *determination or a feeling of having a reason for what you do:*

- From the above, it may be said that both the words ‘for’ and ‘purpose’ are used to ‘convey or show the reason or intent’. However, the line of distinction is that:

- The word ‘for’ is used to ‘question or answer the reason or intent’ for example *“he got an award ‘for’ bravery”* or *“Scotland is famous for its spectacular countryside”*.

Difference between phrases ‘for the purpose of business’ and ‘for his business’

- The word ‘purpose’ is used to ‘give reason for achieving the intent’ for example *“The purpose of the book is to provide a complete guide to the university”* or *“A meeting was called for the purpose of appointing a new treasurer”*.

- Thus, applying the aforesaid meaning to the phrases ‘for the purpose of business’ and ‘for his business’, it may be said that:

- The phrase ‘for the purpose of business’ would mean ‘whatever the nexus that exists with or for the business’ i.e. remotest nexus to the business. The phrase ‘for his business’ would mean that ‘particular nexus’ which itself is ‘business’ i.e. strongest nexus.

Section 22(1)(b) of ITA 2025 corresponds with section 24(b) of ITA 1961

Section 22(1)(b) of ITA 2025	Section 24(b) of ITA 1961
22(1) The income under the head “Income from house property” shall be computed after making the following deductions:— (a).... (b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital;	24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:— (a)..... (b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Section 22(2)(a) of ITA 2025 corresponds with Second proviso to section 24(b) of ITA 1961

Section 22(2)(a) of ITA 2025	Second proviso to Section 24(b) of ITA 1961
In case of property or properties referred to in section 21(6), aggregate amount of deduction under sub-section (1)(b) shall not exceed- (a) 200000, subject to the following conditions: (i) the property has been acquired or constructed with borrowed capital and such acquisition or construction is completed within five years from the end of tax year in which capital was borrowed; (ii) the assessee furnishes a certificate from the person to whom interest is payable on such capital;	Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed, the amount of deduction or, as the case may be, the aggregate of the amounts of deduction under this clause shall not exceed two lakh rupees.

Section 22(1)(b) of ITA 2025 corresponds with section 24(b) of ITA 1961

Section 22(2)(b) of ITA 2025	First proviso to Section 24(b) of ITA 1961
In case of property or properties referred to in section 2(16), aggregate amount of deduction under sub-section (1)(b) shall not exceed- (a)... (b)Rs 30,000 in any other case	Provided that in respect of property referred to in sub-section (2) of section 23, the amount of deduction or, as the case may be, the aggregate of the amount of deduction shall not exceed thirty thousand rupees :

Section 22(1)(c) of ITA 2025 corresponds with Explanation section 24(b) of ITA 1961

Section 22(1)(c) of ITA 2025	Explanation to Section 24(b)
Where the capital referred to in clause (b) is borrowed during any period prior to the tax year in which the property has been acquired or constructed, the amount of any interest payable for the said prior period in five equal instalments for the said tax year and for each of the four immediately succeeding tax years.	Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years:

House property

- Consider section 24(b) of ITA 1961 which provides for interest deduction. The first two provisos to section 24(b) restrict the interest deduction to Rs.30k/Rs.2L in case of SOP. The Explanation below second proviso provides for pre-construction period interest.

- The combined effect of section 24(b), first and second provisos and the Explanation is that the overall interest including preconstruction period interest in the case of SOP is restricted to Rs.30k/Rs.2L

House property

- In the new Act, the restriction of interest in case of SOP is provided in section 22(2). The above two provisos have been pushed into section 22(2)(a) and (b). The Explanation has been taken as section 22(1)(c).

- The combined effect of these changes is that in case of SOP, preconstruction period interest is now allowed as a separate deduction under section 22(1)(c) and not as part of overall limit under section 22(2). Thus, preconstruction period interest allowance is unhindered by section 22(2)(a) and (b).

- This would mean an additional benefit to taxpayer as he now gets Rs.30k/Rs.2L plus 1/5th of preconstruction period interest.

Section 202(2)(v) of ITA 2025 vis-à-vis section 115BAC(2)(i) of ITA 1961

Section 202(2)(a)(v) of ITA 2025	Section 115BAC(2) of ITA 1961
(2) For the purposes of sub-section (1), the total income of the assessee shall be computed— (a) without any exemption or deduction under— (v) Section 22(1)(b), in respect of properties referred to in section 21(6)	(2)For the purposes of sub-section (1A), the total income of the person referred to therein, shall be computed— (i) without any exemption or deduction under the provisions of.... .....clause (b) of section 24 in respect of the property referred to in sub-section (2) of section 23

Section 202(2)(v) of ITA 2025 vis-à-vis section 115BAC(2)(i) of ITA 1961

- Section 202 of ITA 2025 [corresponding to section 115BAC of ITA 1961] only bars deduction under section 22(1)(b) and does not bar deduction of pre-construction period interest under section 22(1)(c).

Capital gains

Section 70(1)(c)&(d) of ITA 2025	Section 47(iv) of ITA1961
(c) of a capital asset, not being stock-in-trade, by a company to its subsidiary company, if— (i) the parent company or its nominees hold the whole of the share capital of the subsidiary company; and (ii) the subsidiary company is an Indian company;	any transfer of a capital asset by a company to its subsidiary company, if— (a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and (b) the subsidiary company is an Indian company;

Section 70(1)(c)&(d) of ITA 2025	Section 47(v) of ITA1961
(d) of a capital asset, not being stock-in-trade, by a subsidiary company to the holding company, if— (i) the whole of the share capital of the subsidiary company is held by the holding company; and (ii) the holding company is an Indian company	any transfer of a capital asset by a subsidiary company to the holding company, if— (a) the whole of the share capital of the subsidiary company is held by the holding company, and (b) the holding company is an Indian company : **Provided** that nothing contained in clause (*iv*) or clause (*v*) shall apply to the transfer of a capital asset made after the 29th day of February, 1988, as stock-in-trade;

Transfer of stock in trade v. transfer as stock in trade

- Section 70(1)(c) and (d) of ITA 2025 use the extra words ‘not being stock-in-trade’ while qualifying capital asset, which would mean that transfer of stock-in-trade which are otherwise classified as capital assets would not be eligible for exemption.

- This is wholly different from the Proviso after section 47(v) of the Act which deals with transfer of capital assets as stock-in-trade.

Transfer of stock in trade v. transfer as stock in trade

- Where the capital assets transferred are taken over as stock-in-trade by the transferee, the exemption under Sections 70(1)(c) and (d) would now be available to the transferor which was denied under sections 47(iv) and (v) read with the Proviso of the Act.

- The objective of the Proviso was explained in Memorandum to Finance Bill 1988 stating that receipt of a capital asset as a stock in trade by the transferee would frustrate section 47A which bars conversion of capital asset within 8 years from the date of transfer.

Section 92(3)(g) of ITA 2025	1st Proviso (clause IX) to section 56(2)(x) of ITA1961
The provisions of sub-section (2)(m) shall not apply to any sum of money or any property received— (g) by way of a transaction not regarded as transfer under section 70(1)(a), (c), (d), (e), (f), (g), (i), (j), (k), (l), (n), (o), (t), (u), (v) or (w); or	Provided that this clause shall not apply to any sum of money or any property received— by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) or clause (viiac) or clause (viiad) or clause (viiae) or clause (viiaf) of section 47; or

Transfer of stock in trade v. transfer as stock in trade

- Likewise, the transferee would be entitled to exemption under Section 92(3)(g) of ITA 2025 which was not available under 1st Proviso (clause IX) to section 56(2)(x) of the Act.

Income from other sources

Section 93(1)(g) & (h) of ITA 2025

- The income chargeable under the head “Income from other sources” shall be computed after making the following deductions:

(g) for income in the nature of commutation of pension received from a fund as specified in Schedule VII (Table: Sl. No. 3), the entire amount;

(h) for income in the nature of gratuity as referred in section 19(2)(g), received on the death of the employee, the entire amount.

Income from other sources – Section 93

- Section 93(1)(g) provides for deduction with respect to income in the nature of commutation of pension received from a fund as specified in Schedule VII (Table: Sl. No. 3) of the entire amount of such income.

- No similar deduction contained in the said clause was available in the ITA 1961

- Death cum retirement gratuity received by the employee is taxable under the head ‘salaries’ and is deductible under Section 19(1) [Table- Sl. No. 3].

- If a non employee receives the same, Section 93(1)(h) provides for deduction of the entire amount. Similar provision is absent in the ITA 1961.

Income from other sources

Reckless alteration of language

- Section 92(2)(m)(ii)(B) of ITA 2025 which deals with receipt of an immovable property for a consideration falling short of stamp duty value has not been appropriately worded and gives a meaning as though the entire stamp duty value must be taken as the income if it exceeds the amount of consideration by the higher of the two amounts.

- This is as a result of use of the words ‘that exceeds’ in Clause 92(2)(m)(ii)(B) of ITA 2025 as against section 56(2)(x)(b)(B) of ITA 1961.

- The words ‘That exceeds’ is different from ‘as exceeds’. ‘That exceeds’ would refer to the entire amount whereas ‘as exceeds’ would refer only to the excess amount

Section 92(2)(m)(ii)(B) of ITA 2025 corresponding to section 56(2)(x)(b)(B) of ITA 1961

Section 92(2)(m)(ii)(B) of ITA 2025	Section 56(2)(x)(b)(B) of ITA 1961
In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes shall be chargeable to income-tax under the head "Income from other sources":— (m) where any person receives in any tax year, from any person or persons– (ii) any immovable property— (B) for a consideration, the stamp duty value of such property ***that exceeds*** such consideration, if this excess amount is more than the higher of the following amounts:— (I) ₹ 50000; or (II) 10% of the consideration;	where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,— (b) any immovable property,— ... (B) for a consideration, the stamp duty value of such property ***as exceeds*** such consideration, if the amount of such excess is more than the higher of the following amounts, namely:— (i) the amount of fifty thousand rupees; and (ii) the amount equal to ten per cent of the consideration:

Instances in ITA 1961 – "As exceeds"

- Section 2(24)"income" includes—

(xvi) any consideration received for issue of shares **as exceeds** the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56

- Section 56(2)(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(B) for a consideration, the stamp duty value of such property **as exceeds** such consideration, if the amount of such excess is more than the higher of the following amounts, namely:— (i) the amount of fifty thousand rupees; and (ii) the amount equal to ten per cent of the consideration:

Instances in ITA 1961 – "As exceeds"

Section 56(2)(xiii) : Where any sum is received, including the amount allocated by way of bonus, at any time during a previous year, under a life insurance policy, other than the sum,—

(a) received under a unit linked insurance policy;

(b) being the income referred to in clause (iv), which is not to be excluded from the total income of the previous year in accordance with the provisions of clause (10D) of section 10,

the sum so received **as exceeds** the aggregate of the premium paid, during the term of such life insurance policy, and not claimed as deduction under any other provision of this Act, computed in such manner as may be prescribed. Explanation.—For the purposes of this clause "unit linked insurance policy" shall have the meaning assigned to it in Explanation 3 to clause (10D) of section 10.]

Instances in ITA 1961 – "As exceeds"

Section 78 (1) : Where a change has occurred in the constitution of a firm, nothing in this Chapter shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner **as exceeds** his share of profits, if any, in the firm in respect of the previous year

Instances in ITA 1961 – "As exceeds" and "that exceeds"

- Section 56(2)(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person any consideration for issue of shares **that exceeds** the face value of such shares, the aggregate consideration received for such shares **as exceeds** the fair market value of the shares:

Section 93(1) of ITA 2025 pari materia to Section 57 of ITA 1961

Section 93(1) of ITA 2025	Section 57 of ITA 1961
The income chargeable under the head “Income from other sources” shall be computed after making the following deductions:—	The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—
(a) for dividends [excluding those referred to in section 2(40)(f)] or interest on securities, any reasonable sum paid as commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee;	(i) in the case of dividends, other than that referred in sub-clause (f) of clause (22) of section 2 or interest on securities, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee ;

Section 93(1) of ITA 2025 pari materia to Section 57 of ITA 1961

Section 93(1) of ITA 2025	Section 57 of ITA 1961
The income chargeable under the head “Income from other sources” shall be computed after making the following deductions:—	The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—
(e) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for making or earning such income;	(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;

Section 93(2) of ITA 2025 pari materia to Second proviso to section 57 of ITA 1961

Section 93(2)(a) of ITA 2025	Second proviso to section 57 of ITA 1961
In respect of— (a) dividend income of the nature referred to in section 2(40)(f), no deduction shall be allowed	Provided further that no deduction shall be allowed in case of dividend income of the nature referred to in sub-clause (f) of clause (22) of section 2

Section 93(2) of ITA 2025 pari-materia to 1st proviso to section 57 of ITA 1961

Section 93(2)(b) of ITA 2025	1st proviso to section 57 of ITA 1961
In respect of— (b) any other dividend income [other than in clause (a)], or income from units of a Mutual Fund specified under Schedule VII (Table: Sl. No. 20 or 21) or income from units of a specified company as referred to in section 2(h) of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002, only deduction allowed shall be interest expense which, for any tax year, shall be limited to 20% of such income (included in the total income for that year, without deduction under this section).	Provided that no deduction shall be allowed from the dividend income, or income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or income in respect of units from a specified company defined in the Explanation to clause (35) of section 10, other than deduction on account of interest expense, and in any previous year such deduction shall not exceed twenty per cent of the dividend income, or income in respect of such units, included in the total income for that year, without deduction under this section:

Section 93(2) of ITA 2025 corresponds to two provisos to section 57 of ITA 1961

- These provisions limit the claim of expenses from dividends (other than dividend from buy back of shares) to interest expense which shall not exceed 20% of such income.

- Under the ITA 1961, the two Provisos act as exception to section 57 and prevent any claim of deduction other than interest expenses under various clauses of section 57.

- However, under the ITA 2025, due to the reckless conversion of the Provisos into a sub-section, the effect would be that Section 93(1) and 93(2) are put on the same pedestal and run parallelly.

Section 93(2) of ITA 2025 corresponds to two provisos to section 57 of ITA 1961

- Hence, one may argue that the claim of expenses from dividend income other than interest expenses may be made under Section 93(1) and such claim cannot be overridden by Section 93(2) in the absence of any non obstante clause in Section 93(2).

Assessment

Processing of returns

- Presently, section 143(1) provides for processing of returns and carrying out about 6 adjustments.
- Section 143(1A) provides a CPC Scheme and (1B) provides for such scheme to make necessary exceptions, adaptations and modifications.
- CPC Scheme of 2011 provides for limited adjustment and does not provide for carrying out the adjustments listed in section 143(1)
- ITA 2025 has section 270(1) to (5) that correspond to section 143(1) and section 270(6) corresponds to section 143(1A).
- However, there is no provision in ITA 2025 that corresponds to section 143(1B).
- Therefore, the CPC scheme now is not enabled to make necessary exceptions, adaptations and modifications.

Section 273 of ITA 2025 and section 144B of ITA 1961

Section 273 (1) of ITA 2025	Section 144B (1) of ITA1961
Irrespective of anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under section 270(10) or 271 or 279, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per such procedure, as may be prescribed in this behalf	Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—

Assessment and reassessment

- Section 273 corresponds to section 144B of the Act and deals with faceless assessment. While section 144B(1) codifies the procedure to be followed, Section 274(1) provides for prescribing the procedure of making faceless assessment.

- Delegatee is not clearly specified – Central Government or Board. Section 532 in respect of other faceless schemes makes it clear that it is Central Government.

- Section 273(1) has an overriding effect over entire Act.

- Permitting the executive to prescribe the procedure has not only led to lack of clarity and transparency but has also amounted to excessive delegation by way of abdication of necessary legislative functions.

Assessment and reassessment

- Delegation of the power to lay down the procedure to the Board under the said provision which has such wide overriding effect has resulted in excessive delegation and is open to challenge on constitutionality.

- While the rest of faceless schemes are to be place before both houses of Parliament [see section 532(4)], there is no such provision in section 273

- Any rule made in terms of section 533(1) has to be placed before both houses of Parliament in terms of section 534.

- Whether the power given under section 273(1) is covered by section 534?

Assessment and reassessment

- Section 144B(6) of the ITA 1961 deals with various important and significant aspects such as authentication, service or communication of notice or electronic communication, filing of responses, personal hearing though VC, place and time of dispatch and receipt of electronic record (by drawing reference to section 13 of the Information Technology Act), etc.

- No provision similar to section 144B(6) is contained in section 273 of the ITA 2025.

Assessment and reassessment

- Section 273(1) of ITA 2025 only enables procedure for faceless assessment to be prescribed.

- What the said provision permits is only the power to prescribe the procedure of faceless assessment and not other aspects.

- By way of the Rules, the Board cannot prescribe the various aspects dealt with in section 144B(6).

- If the Rules contain such aspects, the said Rules would be ultra-vires section 273(1).

Assessment and reassessment

- Section 536(2)(u) talks about continuation of faceless scheme made under old Act as made under corresponding provisions of the New Act.

- However, in so far as section 144B was concerned, there was no scheme and the faceless was made part of section 144B itself.

- Therefore, in so far as section 273(1) is concerned, it is now necessary to prescribe a scheme.

- If no scheme is prescribed, there cannot be faceless assessment.

Reassessment

Information suggesting escapement – Existing six situations

(a) any information in the case of the assessee for the relevant tax year as per the risk management strategy formulated by the Board from time to time;

(b) any audit objection to the effect that the assessment in the case of the assessee for the relevant tax year has not been made as per this Act;

(c) any information received under an agreement referred to in section 159 of this Act;

(d) any information made available to the Assessing Officer under the scheme notified under section 260;

(e) any information which requires action in consequence of the order of a Tribunal or a Court;

(f) any information in the case of the assessee emanating from the survey conducted under section 253, other than under sub-section (4) of the said section;

Information suggesting escapement

- Earlier there were 6 circumstances under which it could be said that there was information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment, now there are 8 circumstances under ITA 2025. The 2 additional circumstances recognised are:

(g) any directions in the case of the assessee given by the Approving Panel under section 274(6);

(h) any finding or direction contained in an order passed by any authority, Tribunal or court in any proceeding under this Act by way of appeal, reference or revision, or by a Court in any proceeding under any other law.

Clash between clause (e) and (h)

- It may be noted that Clause (e) deals with any information which requires action in consequence of the order of a Tribunal or a Court while Clause (h) deals with any finding or direction contained in an order passed by any authority, Tribunal or court in any proceeding under this Act by way of appeal, reference or revision, or by a Court in any proceeding under any other law. Clause (e) is same as 148(3)(v) of IT Act 1961, while Clause (h) appears to effectuate section 283 [similar to section 150 of ITA].
- Clause (e) appears to have become surplusage and should therefore be omitted. In some situations, these two clauses overlap and could create issues as these two clauses are governed by different conditions. Clause (h) does not require notice under section 281(1) whereas clause (e) requires complying with section 281.

Time limit for notices under sections 148/280:

Limitation in case of:	Notice under 148	Notice under 280
Under normal circumstances	3 years 3 months u/s Sec.149(1)(a)	4 years 3 months u/s Sec.282(1)(a)
Special cases [Possession of books by AO + Asset/ expenditure / transaction / entries + IEA>Rs.50 lakhs)	5 years 3 months u/s Sec.149(1)(b)	6 years 3 months u/s Sec.282(1)(b)

Time limit for notices under sections 148A/281:

Limitation in case of:	Notice under 148A	Notice under 281
Under normal circumstances	3 years u/s Sec.149(2)(a)	4 years u/s Sec.282(2)(a)
Special cases [IEA as ISE>Rs.50 lakhs)	5 years u/s Sec.149(2)(b)	6 years u/s Sec.282(2)(b)

Section 283 of ITA 2025 v. Section 150 of ITA 1961

Provision as per the Income Tax Act, 1961	Provision as per the Income Tax Bill 2025 (IT Bill passed by Lok Sabha)
150(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.	283. (1) Irrespective of anything contained in section 282, the notice under section 280 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to— (a) any finding or direction contained in an order passed by any authority, Tribunal or court in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law; or (b) the directions issued by the Approving Panel under section 274(6).

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.	(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to a tax year in respect of which an assessment, reassessment or recomputation could not have been made, by reason of any other provisions limiting the time within which any action for assessment, reassessment or recomputation may be taken, at the time when,— (a) the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made; or (b) the reference from the jurisdictional Principal Commissioner or Commissioner is made to the Approving Panel under section 274(4).

Notwithstanding v. irrespective of

Meaning of - Notwithstanding

- In *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram"* [1986] 3 SCR 866 case, the Hon'ble Supreme Court praised the non-obstante clause in the following manner: "A clause starting with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause." So, to summarize this judgement, it was stated that if there is any non - obstante clause present, then the prevailing law shall operate and other law contradicting it shall be set aside.

Meaning of -Notwithstanding

- The scope of the non-obstante clause has been explained in *UOI* v. *G.M. Kokil,* [1984] Supp. SCC 196 cited in *Vodafone Idea Ltd*. v. *Asstt. CIT* [2020] 116 taxmann.com 393/273 Taxman 91/424 ITR 664 (SC) as under:

"... It is well known that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non-obstante clause in Section 70, namely, "notwithstanding anything contained in that Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act. ..."

Meaning of - irrespective of

- R S Raghunath Vs State of Karnataka & Ors [(1992) 1 SCC 335 (SC)] Use of “irrespective of anything contained in the Act”, may mean that to interpret this statutory provision, every other provision can be simply disregarded.

- As per Oxford law dictionaries: [https://www.oxfordlearnersdictionaries.com/definition/english/irrespective-of]

Irrespective of means - without considering something or being influenced by it.

Meaning of - irrespective of

- As per collins dictionary: https://www.collinsdictionary.com/dictionary/english/irrespective

Irrespective means regardless; without due consideration

- As per Advanced law of lexicon (page 2461), “Irrespective of” means – Without respect or regard to or independent or regardless of

- The words “irrespective of” are broader than notwithstanding.

Notwithstanding v. irrespective of - Interpretation

- Madhav Rao Jivaji Rao Scindia v. UOI [1971] 1 SCC 85 Hidayatullah C.J. observed when the section containing the said clause does not refer to any particular provision which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all along by itself.

- Maxwell on the Interpretation of Statutes (Twelfth Edition) : Collision may also be avoided by holding that one section, which is ex facie in conflict with another, merely provides for an exception from the general rule contained in that order."

Notwithstanding v. irrespective of - Interpretation

- Bengal Immunity Company Limited v. State of Bihar [1955] 6 STC 446 SC : court should avoid absurd consequences in any part of the statute and refuse to regard any word, phrase, clause or sentence superfluous, unless such a result is clearly unavoidable.

- Therefore, the expression “notwithstanding” implies that the related provision will have “an overriding effect in case of (and only in case of) a conflict” and that “the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation”

Implication on section 67

Implication on section 67

- Section 67(1) dealing with charge of capital gains saves rollback from capital gains under sections 82 to 89.

- However, as sections 67(2) [insurance], 67(5) [ULIP], 67(6) [conversion], 67(10) [firm paying tax on reconstitution], 67(12) [compulsory acquisition], 67(14) [similar to 45(5A)], use the word ‘irrespective of’, whole of section 67(1) is negated.

- This would mean no rollback in cases covered by the above sub sections.

Section 67(2) of ITA 2025 corresponding to section 45(1A) of ITA 1961

Section 67(2) of ITA 2025	Section 45(1A) of ITA 1961
Irrespective of anything contained in sub-section (1), if a person receives during any tax year any money or other assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of circumstances mentioned in sub-section (3), then.....	Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any money or other assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of—

Section 67(5) of ITA 2025 corresponding to section 45(1B) of ITA 1961

Section 67(5) of ITA 2025	Section 45(1B) of ITA 1961
Irrespective of anything contained in sub-section (1), if any profits or gains arises to a person from receipt of any amount, including a bonus, under a unit linked insurance policy to which the exemption specified at Schedule II (Table: Sl. No. 2) does not apply, then,—	Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any amount under a unit linked insurance policy, to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof,....

Section 67(6) of ITA 2025 corresponding to section 45(2) of ITA 1961

Section 67(6) of ITA 2025	Section 45(2) of ITA 1961
(6) Irrespective of anything contained in sub-section (1), if the profits or gains arising from the transfer by way of conversion of a capital asset into, or its treatment by the owner as, stock-in-trade of a business carried on by him, then,—	(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him .....

Section 67(10) of ITA 2025 corresponding to section 45(4) of ITA 1961

Section 67(10) of ITA 2025	Section 45(4) of ITA 1961
(10) Irrespective of anything contained in sub-section (1), if a specified person receives during the tax year, any money or capital asset, or both, from a specified entity in connection with the reconstitution of such specified entity, then,—	(4) Notwithstanding anything contained in sub-section (1), where a specified person receives during the previous year any money or capital asset or both from a specified entity in connection with the reconstitution of such specified entity, then any profits or gains arising from such receipt by the specified person shall be chargeable to income-tax as income of such specified entity under the head "Capital gains“.....

Section 67(12) of ITA 2025 corresponding to section 45(5) of ITA 1961

Section 67(12) of ITA 2025	Section 45(5) of ITA 1961
Irrespective of anything contained in sub-section (1), if the capital gain arises from the transfer of a capital asset by way of compulsory acquisition under any law,..	Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law,...

Section 67(14) of ITA 2025 corresponding to section 45(5A) of ITA 1961

Section 67(14) of ITA 2025	Section 45(5A) of ITA 1961
Irrespective of anything contained in sub-section (1), if the capital gains arises to a person (being an individual or a Hindu undivided family), from the transfer of a capital asset, being land or building or both, under a specified agreement,	Notwithstanding anything contained in sub-section (1), where the capital gain arises to an assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax

Implication on sections 199 [sec 115BA], 200 [115BAA], 201 [115BAB], 202 [115BAC]

Implication on sections 199 [sec 115BA], 200 [115BAA], 201 [115BAB], 202 [115BAC]

- Under existing regime, section 4 creates a charge. This charge was contingent on charge created by Finance Act with rates. However, such charge is subject to other provisions of the Act

- Section 115BA etc., use ‘not withstanding’. This would provide for limited overriding wherein while the charge remains in-tact, the rates of FA would be overridden.

- With the use of ‘irrespective’, the entire charge of section 4 is effaced. This would mean that new sections 199 etc., would not have basic charge. These sections which only provide for computing the tax payable stand in vacuum in the absence of basic charge or a specific charge.

Implication on sections 199 [sec 115BA], 200 [115BAA], 201 [115BAB], 202 [115BAC]

- Kesoram Industries & Cotton Mills Ltd. vs. Commissioner of Wealth-tax [1966] 59 ITR 767 (SC) *The primary object of the Finance Act is only to prescribe the rates so that the tax can be charged under the Income-tax Act. The Income-tax Act is a permanent Act, whereas the Finance Act is passed every year and its main purpose is to fix the rates to be charged under the Income-tax Act for that year*

Section 199 of ITA 2025 corresponding to section 115BA of ITA 1961

Section 199 of ITA 2025	Section 115BA of ITA 1961
Irrespective of anything contained in this Act, but subject to the provisions of Parts A, B, E and this Part (other than sections 200 and 201) of this Chapter, **the income-tax payable in respect of the total income of a person, being a domestic company, for any tax year, shall, at the option of such person, be computed at the rate of 25% subject to the following conditions**:	Notwithstanding anything contained in this Act but subject to the other provisions of this Chapter, other than those mentioned under section 115BAA and section 115BAB, the **income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.**

Section 200 of ITA 2025 corresponding to section 115BAA of ITA 1961

Section 200 of ITA 2025	Section 115BAA of ITA 1961
Irrespective of anything contained in this Act but subject to the provisions of Parts A, B, E and this Part (other than sections 199 and 201) of this Chapter**, the income-tax payable for a tax year shall be at the rate of 22%,** at the option of a person being a domestic company, in respect of the total income of such person computed in the following manner:—	(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, **the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent,** if the conditions contained in sub-section (2) are satisfied

Section 201 of ITA 2025 corresponding to section 115BAB of ITA 1961

Section 201 of ITA 2025	Section 115BAB of ITA 1961
Irrespective of anything contained in this Act, but subject to the provisions of Parts A, B, E and this Part (other than sections 199 and 200) of this Chapter, the income-tax payable in respect of the total income of an assessee, being a domestic company, specified in column B of the Table below, shall, at the option of such assessee, be computed at the rates specified in column C, if the conditions contained in column D thereof are fulfilled	Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of fifteen per cent, if the conditions contained in sub-section (2) are satisfied:

Section 202 of ITA 2025 corresponding to section 115BAC of ITA 1961

Section 202 of ITA 2025	Section 115BAC of ITA 1961
Irrespective of anything contained in this Act other than Chapter XVII-B but subject to Parts A, B, E and this Part of this Chapter, the income-tax payable by a person, being—	Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, the income-tax payable in respect of the total income of a person, being an individual or a Hindu undivided family, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2021 35[but before the 1st day of April, 2024], shall, at the option of such person, be computed at the rate of tax given in the following Table, if the conditions contained in sub-section (2) are satisfied, namely:—

Reckless omission or alteration

Section 530 of ITA 2025 and section 294 of ITA 1961

Section 530 of ITA 2025 and section 294 of ITA 1961

Section 530 of ITA 2025	Section 294 of ITA1961
If on the 1st April in any tax year, provision has not yet been made by a Central Act for the charging of income-tax for that tax year, this Act shall nevertheless have effect until such provision is so made, as if the provision in force in the preceding tax year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force	If on the 1st day of April in any assessment year provision has not yet been made by a Central Act for the charging of income-tax for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.

Section 530 of ITA 2025 and section 294 of ITA 1961

- Compare the above provisions
- One refers to 1st day of AY and other refers to 1st day of TY
- Earlier as FA provided for levy for AY, the parliament had ample time. For eg, for AY 25-26 [PY 24-25], the Finance Bill would be placed in Feb 25 and time was available till 31.3.2026 to enact FA.
- Whereas now, assume that TY 24-25 and it is now mandatory that entire process of enacting FA should be done by 1.4.24 itself.
- If not so done, existing FA or pending FB whichever is more favourable to tax payer will prevail.

Section 530 of ITA 2025 and section 294 of ITA 1961

- It is not possible to introduce retro levy anytime after 1st of TY unless such retro Act overrides section 530.

- See the starting words of 530 i.e. “If on the 1st April in any tax year, provision has not yet been made by a Central Act for the charging of income-tax for that tax year” – retro amendment would not erase the words “ “If on the 1st April in any tax year, provision has not yet been made”.

Section 530 of ITA 2025 and section 294 of ITA 1961

- In Kesoram Industries & Cotton Mills Ltd. vs. Commissioner of Wealth-tax [1966] 59 ITR 767 (SC), it was held as follows:

"If the Finance Act is passed, it is the rate fixed by that Act ; if the Finance Act has not yet been passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more favourable to the assessee"

Section 530 of ITA 2025 and section 294 of ITA 1961

In Commissioner of Wealth-tax vs. Raipur Manufacturing Co. Ltd. [1964] 52 ITR 482 (Gujarat)[15-10-1962] {approved in Commissioner of Wealth-tax vs. Standard Vacuum Oil Co. Ltd. [1966] 59 ITR 569 (SC)[25-10-1965]}

“The legislature has been so careful as to provide even for a circumstance where for any length of time there may not be a Finance Act on the statute book after the commencement of a particular assessment year. The legislature has by section 67B enacted as under :

If on the 1st day of April in any year provision has not yet been made by a Central Act for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force."

Section 530 of ITA 2025 and section 294 of ITA 1961

Karthick Natarajan vs. Deputy Commissioner of Income-tax, International Taxation [2023] 154 taxmann.com 136 (Chennai - Trib.)/[2023] 202 ITD 552 (Chennai – Trib

"The Income-tax Act provides a vehicle to give effect to the provisions of the Finance Act and Section 294 provides that –

- if, in any assessment year,

- the Finance Act charging income-tax is not enacted by 1st April of that year, then, this Income-tax Act shall nevertheless have effect until the Finance Act is passed,

- As if the Finance Act of the immediately preceding year was in force for that assessment year or

- as if the provision in the Finance Bill for that year was duly passed into an Act,

Whichever of these two provisions is more advantageous to the assessee.

10.5 It means that the provisions of Section 294 of the Act are valid only upto the time of finance bill proposed for the assessment year is duly enacted into law."