**Frequently Asked questions:-**

**Q1) whether trading in securities or shares or commodity is speculative or normal business transaction?**

Ans : As per section 43(5) of I.T Act, speculative transaction means a transaction in which a contract for the purchase or sale of any **commodity**, **including stocks and shares**, is periodically or ultimately settled **otherwise** than by the **actual delivery** or transfer of the commodity or scrips:

**Provided** that for the purposes of this clause—

**a)…….**

b)……...

c)……..

d) an eligible transaction in respect of trading in derivatives referred to in clause [(*ac*)] of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange; **[***or***]**]

**The following clause (*e*) shall be inserted in proviso to clause (*5*) of section 43 by the Finance Act, 2013, w.e.f. 1-4-2014:**

*(*e*)  an eligible transaction in respect of trading in* ***commodity derivatives*** *carried out in a recognised association,*

shall not be deemed to be a speculative transaction.

**[**Explanation**]**.—For the purposes of [*this clause***]**, the expressions—

 (*i*)  "eligible transaction" means any transaction,—

(*A*)  carried out electronically on screen-based systems through a stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) and the rules, regulations or bye-laws made or directions issued under those Acts or by banks or mutual funds on a recognised stock exchange; and

(*B*)  which is supported by a time stamped contract note issued by such stock broker or sub-broker or such other intermediary to every client indicating in the contract note the unique client identity number allotted under any Act referred to in sub-clause (*A*) and permanent account number allotted under this Act;

(*ii*)  "recognised stock exchange" means a recognised stock exchange as referred to in clause (*f*) of section 2[73](http://law.incometaxindia.gov.in/DIT/HtmlFileProcess.aspx?FooterPath=D:\WebSites\DITTaxmann\Act2010\DirectTaxLaws\ITACT\HTMLFiles\2013&DFile=ftn73_section43.htm&tar=middle) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and which fulfils such conditions as may be prescribed and notified[74](http://law.incometaxindia.gov.in/DIT/HtmlFileProcess.aspx?FooterPath=D:\WebSites\DITTaxmann\Act2010\DirectTaxLaws\ITACT\HTMLFiles\2013&DFile=ftn74_section43.htm&tar=middle) by the Central Government for this purpose;]

|  |
| --- |
| **Reproduced :section 2 (ac) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)**  [(ac)] **“derivative**” includes—  (A) a security derived from a debt instrument, share, loan, whether secured or  unsecured, risk instrument or contract for differences or any other form of  security;  (B) a contract which derives its value from the prices, or index of prices, of  underlying securities;] |

**Conclusion:-**

1. It is clear from above discussion that dealing in derivatives of shares or securities was already excluded from speculative transaction as per sub clause (d) of sub-section(5) of section 43 of Income Tax Act.( However proviso to section 43(5) nowhere excludes intraday transactions in shares & securities, therefore intraday transaction still covered under speculative transaction)
2. Also From AY 2014-15 dealing in commodity derivatives is also excluded from the ‘speculative transaction’.(Therefore up till AY 2013-14 dealing in commodity derivatives is ‘speculative transaction’).

**Q2) Whether speculative loss from trading in securities or shares or commodity can be set off from normal business income?**

**Ans:** There is no Ambiguity in this point as law itself is very clear:

As per section 73 of Income Tax Act:-

**73.** (1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

(2) Where for any[71](http://law.incometaxindia.gov.in/DIT/HtmlFileProcess.aspx?FooterPath=D:\WebSites\DITTaxmann\Act2010\DirectTaxLaws\ITACT\HTMLFiles\2013&DFile=ftn71_section73.htm&tar=middle) assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

 (*i*)  it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and

(*ii*)  if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on

**Conclusion:** Speculative loss can only be setoff against speculative income even in the subsequent years for which it is carried forward.

**Issue pending :** can speculative loss from commodity trading ( upto AY 2013-14) be set off from commodity income which accrued in AY 2014-15 onwards( as its now normal business income from AY 2014-15 onwards.) ?

**Q3) How to compute turnover for purpose of section 44AB of I.T Act, 1961 in case of speculative transaction?**

**Ans:** THE TURNOVER OR GROSS RECEIPTS IN RESPECT OF TRANSACTION IN SHARES, SECURITIES AND DERIVATIVES MAY BE DETERMINED IN THE FOLLOWING MANNER.

**Link (**<http://220.227.161.86/30357dtc19988.pdf>**)** for ICAI guidance note page no 23.

(a) **SPECULATIVE TRANSACTION**: A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scripts. Thus, in a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving delivery so as to result in the sale as per value of contract note. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such transaction the **difference amount is 'turnover'**. In the case of an assessee doing speculative transactions there can be both positive and negative difference arising by settlement of various such contracts during the year. Each transaction resulting into whether a positive or negative difference is an independent transaction. Further, amount paid on amount of negative difference paid is not related to the amount received on account of positive difference. In such transactions though the contract notes are issued for full value of the purchased or sold asset the entries in the books of account are made only for the differences. Accordingly, the aggregate of both positive and negative differences is to be considered as the turnover of such transaction for determining the liability to audit vide section 44 AB.

**(b) Derivatives, futures and options:** Such transactions are completed without the delivery of shares or securities. These are also squared up by payment of differences. The contract notes are issued for the full value of the asset purchased or sole but entries in the books of account are made only for the differences. The transactions may be squared up any time on or before the striking date. The buyer of the option pays the premia. The turnover in such types of transactions is to be determined as follows:

1. The total of favourable and unfavourable differences shall be taken as turnover.
2. Premium received on sale of options is also to be included in turnover.
3. In respect of any reverse trades entered, the difference thereon, should also from part of the turnover.

**(c)  Delivery based transactions:** Where the transaction for the purchase or sale of any commodity including stocks and shares is delivery based whether intended or by default, the total value of the sale is to be considered as turnover.

Further, an issue may arise whether such transactions of purchase or sale of stocks and shares undertaken by the assessee are in the curse of business or as investment. The answer to this issue will depend on the facts and circumstances of each case taking into consideration the nature of the transaction, frequency and volume of transactions etc. For this attention is invited to the following judgments where this issue has been considered.

1. CIT v P.K.N. and Co., Ltd (1966) 60 ITR 65 (SC)
2. Saroj Kumar Mazumdar v CIT (1959) 37 ITR 242 (SC)
3. CIT v Sutlej Cotton Mills supply Agency (1975) 100 ITR 706 (SC)
4. G Venkataswamy Naidu(1959) 35 ITR 591 (SC)

In case such transactions are for the purposes of investment and income / loss arising therefrom is to be computed under the head 'Capital Gains, then the value of such transaction is not be included in sales or turnover for deciding the applicability of audit under section 44 AB. However, in case such transactions are in the course of business, then the total of such sales are to be included in the sale, turnover or gross receipts as the case may be of the assessee for determining the applicability of audit under section 44 AB.

**Q4) where speculative transactions constitute a business, whether such speculation business is deemed to be distinct and separate business from any other business?**

**Ans:** Yes, as per Explanation 2 of guidance note issued by ICAI, where speculative transactions constitute a business, such speculation business is deemed to be distinct and separate business from any other business

**Q5) What is (Commodity turnover tax) i.e. CTT and how it impacts nature of income?**

**ANS:** Nature ofCTT is almost same as of STT(securities turnover Tax) .CTT is introduced by FA 2013 effective from  1st july ,2013on trading of non agricultural commodities.Simultaneously, the budget amended the definition of speculative transaction under income tax laws to exclude commodity derivative transactions carried out in a recognized commodity association (“recognized commodity exchange”)(i.e section 43(5)(e) as discussed in Q1 above). The exclusion would apply to all commodity derivatives transactions in agricultural as well as non-agricultural commodities and not just non-agricultural commodity derivatives, which are subject to CTT.Therefore all it would apply to all transactions on or after 1 April 2013, this means that all commodity derivative transactions are no longer to be treated as speculative transactions.