

PAPER – 7 : DIRECT TAXES

QUESTIONS

1. Basic Concepts

“The illegality tainted with the income has no bearing on its taxability” – Elucidate this statement with the help of a recent case law.

2. Residential Status and Scope of total income

“Territorial nexus is essential for taxing income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services” – Discuss the correctness or otherwise of this statement.

3. Incomes which do not form part of total income

Mr. Ramesh, aged 55 years, died on account of a bomb blast in a Mumbai local train. His son, Mr.Gopal, received a compensation of Rs.4 lakh from the State Government. Explain the tax treatment of the compensation received by Mr.Gopal from the State Government.

4. Charitable or religious trusts and institutions

An institution operating for promotion of education claiming exemption under section 11 since 1993 furnishes the following data for the assessment year 2009-10.

Sl. No.	Particulars	Rs. in crores
(i)	Fees collected from students	4.5
(ii)	Expenses incurred to run the institution	2.0
(iii)	Land acquired to be used as a cricket field for the students	1.2
(iv)	Amount earmarked and set apart for construction of an arts block within the next 4 years.	1.0

Compute the total income of the institution for the A.Y.2009-10.

5. Salaries

Find out the taxable value of perquisite from the following particulars in case of an employee to whom the following assets held by the company were sold on 1.8.2008:

	Amount in Rs.		
	Ford Car	Computer	Furniture
Cost of Purchase (July, 2006)	9,13,000	2,05,000	42,000
Sale Price	5,20,000	46,000	21,000

The assets were put to use by the company from the day they were purchased.

6. Income from house property

Rajesh owns a house in Hyderabad. During the previous year 2008-09, 3/4th portion of the house was self-occupied and 1/4th portion was let out for residential purposes at a rent of Rs.12,000 p.m. The tenant vacated the property on February 28th, 2009. The property was vacant during March, 2009. Rent for the months of January 2009 and February 2009 could not be realised in spite of the owner's efforts. All the conditions prescribed under Rule 4 are satisfied. Municipal value of the property is Rs.4,00,000 p.a., fair rent is Rs.4,40,000 p.a. and standard rent is Rs.4,80,000. He paid municipal taxes @10% of municipal value during the year. A loan of Rs.30,00,000 was taken by him during the year 2005 for acquiring the property. Interest on loan paid during the previous year 2008-09 was Rs.1,48,000. Compute Rajesh's income from house property for the A.Y. 2009-10.

7. Profits and gains of business or profession

- (a) A Ltd. paid IDBI a lump sum prepayment premium of Rs.1.2 lakh on 7.4.2008 for restructuring its debts and reducing its rate of interest. It claimed the entire sum as business expenditure for the P.Y.2008-09. The Assessing Officer, however, held that the prepayment premium should be amortised over a period of 10 years (being the tenure of the restructured loan), and thus, allowed only 10% of the pre-payment premium in the P.Y.2008-09. Discuss, with reasons, whether the contention of A Ltd. is correct or that of the Assessing Officer.
- (b) Explain the tax treatment for depreciation on emergency spares (of plant and machinery) acquired during the year which, even though kept ready for use, have not actually been used during the relevant previous year.

8. Profits and gains of business or profession

The written down value of plant and machinery on 1.4.2008 of ABC Ltd. engaged in manufacturing of PVG granules is Rs.800 lakh. The company purchased additional plant and machinery for Rs.500 lakh on 1.5.2008 inclusive of one second hand machinery of Rs.350 lakh imported from Japan to increase its installed capacity of production from 2000 TPA to 3000 TPA. The new machinery was put to use from 1.11.2008. Compute the depreciation allowable in the hands of ABC Ltd. for the A.Y.2009-10.

9. Capital Gains

Mr. Ganesh sold his residential house in Mumbai and purchased two residential flats adjacent to each other on the same day vide two separate registered sale deeds from two different persons. The builder had certified that he had effected necessary modification to make it one residential apartment. Mr. Ganesh sought exemption under section 54 in respect of the investment made in purchase of the two residential flats. The Assessing Officer, however, gave exemption under section 54 to the extent of purchase of one residential flat only contending that sub-section (1) of section 54 clearly restricts the benefit of exemption to purchase of one residential house only and the two flats cannot be treated as one residential unit since –

- (i) the flats were purchased through different sale deeds; and
- (ii) it was found by the Inspector that, before the sale, the residential flats were in occupation of two different tenants.

Discuss the correctness of the contention of the Assessing Officer.

10. Capital Gains

Rewari Ltd. owns two industrial undertakings – one engaged in production of television sets and the other engaged in production of air-conditioners. As a restructuring drive, the company has decided to sell its undertaking producing air-conditioners as a going concern by way of slump sale for Rs.525 lakh to a new company called Adya Ltd., in which it holds 80% equity shares. The balance sheet of Rewari Ltd. as on 31st March, 2009 reads as follows:

Particulars	Rs. in lakh	
	Television Unit	Air-conditioner Unit
	Rs.	Rs.
Fixed Assets (Depreciable assets)	200	250
Debtors	180	150
Inventories	100	50
Liabilities	90	100
 Paid up share capital	 500	
General Reserve	200	
Share Premium	40	

The company set up the air-conditioner unit on 1st January, 2005. The written down value of the block of assets for tax purpose as on 31st March, 2009 is Rs.300 lakh of which Rs.120 lakh is attributable to the air-conditioner unit. Determine the tax liability which would arise to Rewari Ltd. as a consequence of the slump sale.

11. Income from other sources

Mrs. Harini Rao, who draws a salary of Rs.12,000 p.m. received the following gifts during the previous year 2008-09 -

- (i) Gift of Rs.1,50,000 on 15-5-2008 from her close friend.
- (ii) Gift of jewellery worth Rs.3,00,000 on 1-8-2008 from her fiancée.
- (iii) Gifts of Rs.51,000 each received from her two friends on the occasion of her marriage on 30-10-2008.
- (iv) Gift of Rs.51,000 on 1-11-2008 from her father's sister.
- (v) Gift of Rs.21,000 from her husband's friend on 1-1-2009.

- (vi) Gift of Rs.25,000 on 12-1-2009 from her family friend.
- (vii) Gift of Rs.11,000 on 12-2-2009 from her brother's mother-in-law.
- (viii) Gift of Rs.75,000 from her sister-in-law.

Compute her gross total income for the assessment year 2009-10.

12. Deductions from Gross Total Income

- (a) Mr.Harsh, aged 42 years, furnishes the following information relating to premium on mediclaim policy paid by cheque for the year ending 31.03.2009 :
 - (i) for self – Rs.8,000;
 - (ii) for spouse, aged 35 years – Rs.8,000;
 - (iii) for non-dependent father, aged 70 years - Rs.21,000;
 - (iv) for dependent mother-in-law, aged 65 years - Rs.11,000.

Compute his eligible deduction under section 80D for A.Y.2009-10. Would your answer be different, in case the premium was paid in cash?

- (b) Mr.Ravi, a Cost Accountant, derives Rs.2,12,000 as taxable professional income. Income of Mr.Ravi from other sources is Rs.21,000. He pays medical insurance premium of Rs.28,000 for insuring the health of his non-dependant parents; Rs.17,000 for self and spouse and Rs.4,000 for his sister. He incurs expenditure of Rs.25,000 on medical treatment of his dependant mentally retarded (severe disability) brother in an approved hospital duly certified. He pays rent of Rs.4,000 per month. Calculate his total income for the assessment year 2009-10.

13. Relief under section 89

In the case of Mr. Hari, you are informed that the salary for the previous year 2008-09 is Rs.6,20,000 and arrears of salary received is Rs.80,000. Further, you are given the following details relating to the earlier years to which the arrears of salary received is attributable to:

Previous year	Taxable Salary	Arrears now received (Rs.)
2000 - 2001	75,000	15,000
2001 - 2002	80,000	25,000
2002 - 2003	90,000	40,000

Compute the relief available under section 89 of the Income-tax Act and the tax payable for the A.Y. 2009-10.

Note 1: Rates of Taxes:

- (a) For A.Y. 2001-02; 2002-03 & 2003-04
 - Upto 50,000 – Nil; 50,001 to 60,000 – 10% ;
 - 60,001 to 1,50,000 – 20% ; above 1,50,000 –30%

(b) Surcharge

A.Y. 2001-02	-12% (if total income exceeds Rs.60,000)
	-17% (if total income exceeds Rs.1,50,000)
A.Y. 2002-03	- 2% (if total income exceeds Rs.60,000)
A.Y. 2003-04	- 5% (if total income exceeds Rs.60,000)

14. Assessment of Firms – Computation of total income of a firm

M/s. Harilal Industries, a partnership firm, submits the following profit and loss account for computation of its business income for the assessment year 2009-10.

Profit and loss account for the year ending 31.03.2009

Expenses	Rs.	Income	Rs.
To Salaries	4,23,000	By gross profit	7,35,000
“ Rent	32,000	“ Dividend from UTI	8,000
“ Printing & Stationery	5,600		
“ Telephone	3,700		
“ Conveyance	21,000		
“ Travelling	14,000		
“ Interest	72,000		
“ Depreciation	27,000		
“ Legal fees	15,000		
“ Auditor's fees	18,000		
“ PF contribution	24,000		
“ Net profit	<u>87,700</u>		
Total	<u>7,43,000</u>	Total	<u>7,43,000</u>

Additional information:

- Salaries include Rs.1,50,000 paid to working partner A and Rs.1,00,000 to working partner B.
- Interest paid includes Rs.54,000, being interest paid on loan given by partner B at the rate of 18% simple interest.
- Out of provident fund contribution debited to profit and loss account, Rs.10,000 is outstanding beyond the due date of filing of return.
- The firm purchased goods by issuing account payee drafts except in the case of one bill for Rs.80,000 for which payment has been made by cash. This has been debited to trading account as part of purchases.

15. Fringe Benefit Tax

Discuss whether fringe benefit tax liability is attracted in respect of the following expenses -

- (i) Expenditure on gifts to employee on the occasion of his marriage;
- (ii) Payment of club membership fee;
- (iii) Expenditure on use of telephones installed in office;
- (iv) Expenditure on Group Medical Insurance;
- (v) Subsidy provided to a school not meant exclusively for employees' children.

16. Assessment of Companies – Computation of Minimum Alternate Tax

ABC Ltd., engaged in diversified activities, earned a net profit of Rs.4,25,000 after debit/credit of the following items to its profit and loss account for the year ended on 31.3.2009:

(a)	Items debited to Profit and Loss Account	Rs.
	Provision for income-tax	80,000
	Interest on income-tax	4,000
	Education cess on income-tax	1,600
	Secondary and higher education cess on income-tax	800
	Dividend distribution tax	10,000
	Provision for deferred tax	7,000
	Wealth-tax	19,000
	Securities Transaction Tax	13,500
	Fringe Benefit Tax	16,000
	Transfer to General Reserve	15,000
	Provision for gratuity based on actuarial valuation	12,000
	Provision for losses of subsidiary company	14,000
	Proposed dividend	16,000
	Preference dividend	13,000
	Expenditure to earn agricultural income	5,000
	Expenditure to earn LTCG exempt under section 10(38)	4,000
	Expenditure to earn dividend income	2,000
	Depreciation (including depreciation of Rs.15,000 on revaluation)	35,000
(b)	Items credited to Profit and Loss Account	
	Amount credited to P & L A/c from Special Reserve	10,000
	Amount credited to P & L A/c from Revaluation Reserve	18,000

Agricultural income	25,000
LTCG exempt under section 10(38)	16,000
Dividend income	12,000

The company provides the following additional information:

Brought forward Business Loss/Unabsorbed Depreciation:

Assessment Year	Amount as per books	
	Loss	Depreciation
2006-07	50,000	40,000
2007-08	30,000	Nil
2008-09	10,000	25,000

You are required to examine the applicability of section 115JB of the Income-tax Act, and compute book profit and the tax credit to be carried forward, assuming that the total income computed as per the provisions of the Income-tax Act is Rs.1,20,000.

17. Assessment Procedure

- Explain the scheme for submission of returns through tax return preparers.
- In respect of a case which is pending before the Appellate Tribunal, does the Assessing Officer have the power to assess or reassess an income which is chargeable to tax and has escaped assessment? Discuss.

18. Appeals and Revision

"The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal and such period of stay can exceed one year from the date of such order, if the delay is not attributable to the assessee" – Discuss the correctness or otherwise of this statement.

19. Collection and Recovery of tax

"The scope of coverage of TDS provisions under section 194C has been widened by the Finance Act, 2008" – Discuss the correctness of this statement.

20. Penalties and Prosecution

- "The presence of "mens rea" is essential for imposition of penalty under section 271(1)(c)" – Discuss the correctness or otherwise of this statement with the aid of a recent Apex Court ruling.
- Does the Commissioner of Income-tax have power to grant immunity from penalty and prosecution in respect of a person whose case has been abated under section 245HA? If so, can such immunity granted be withdrawn? Discuss.

21. Assessment Procedure / Transfer Pricing

What is the time limit for completion of assessment/re-assessment where a reference is made to the Transfer Pricing Officer under section 92CA(1) in the following cases –

- (i) for completion of assessment under section 144 for the A.Y.2009-10.
- (ii) for completion of re-assessment under section 147, if notice is served under section 148 on 1.5.2008.
- (iii) for completion of assessment in cases where the last of the authorizations for search under section 132 was executed during the financial year 2008-09.

22. Double Taxation Relief

Gautam, a resident both in India and Malaysia in the previous year 2008-09, owns a land, a rubber estate and a residential house at Malaysia. He has earned income of Rs.35 lakh from his rubber estate in Malaysia during the financial year 2008-09. He also sold his land in Malaysia resulting in short-term capital gain of Rs.17 lakh during the year. Gautam has no permanent establishment of business in India. However, he has derived rental income of Rs.4 lakh from property let out in Pune. He has a house in Mumbai where he stays during his visit to India. The Article 4 of the Double Taxation Avoidance Agreement between India and Malaysia provides that where an individual is a resident of both the Contracting States, then he shall be deemed to be resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests).

You are required to state with reasons whether the business income of Gautam arising in Malaysia and the capital gains in respect of sale of land situated in Malaysia can be taxed in India.

23. Wealth-tax

Enlist the persons who are not liable to wealth-tax under the Wealth-tax Act, 1957.

24. Wealth-tax

Gamma Limited is engaged in the construction of residential flats. For the valuation date 31.3.2009, it furnishes the following data and requests you to compute the taxable wealth:

- (i) Land in urban area (Construction is not permitted as per municipal laws in force) Rs.42 lakh
- (ii) Motor-cars (used for running on hire by the company) Rs.12 lakh.
- (iii) Jewellery (investment) Rs.25 lakh. Loan taken for purchase of the same Rs.14 lakh.
- (iv) Cash balance (as per books) Rs.3 lakh.
- (v) Bank balance Rs.8 lakh.

- (vi) Guest House (situated in a place which is 45 kms away from the local limits of the municipality) Rs.15 lakh.
- (vii) Residential flat occupied by the Managing Director Rs.12 lakh. The managing director is on whole time appointment and is drawing remuneration of Rs.1.50 lakh per month.
- (viii) Residential house let out on hire for 150 days Rs.6 lakh.

The computation should be supported with proper reasoning for inclusion or exclusion.

25. Wealth-tax

State, with reasons, whether the following constitute assets chargeable to wealth tax on the valuation date 31.3.2009:

- (i) Agricultural farm house situated 50 kms outside the municipal limits of Jaipur, but within 18 kms of Niwai Municipal Corporation.
- (ii) Factory building and godowns leased out on rent.
- (iii) Silver and gold in the jewellers shop
- (iv) Cash balance of Rs.4 lakh.

SUGGESTED ANSWERS/HINTS

1. The statement is correct.

This issue came up before the Madras High Court in CIT v. K. Thangamani (2009) 309 ITR 0015. The Court observed that the income-tax authorities are not concerned about the manner or means of acquiring income, and allowing tainted income to escape the tax net would be nothing but a premium or reward to the person for doing illegal trade. The Income-tax Act treats the income earned legally as well as illegal income alike. In the event of taxing the income of only those who acquire the same through legal manner, the tendency of those who acquire income by illegal means would increase.

In this case, the assessee had collected refund from the Income-tax Department on the basis of bogus TDS certificates filed by it. The Court held that such income received by the assessee by getting refund from the Income-tax Department by fabricating TDS certificates is taxable. Therefore, even if the assessee has been prosecuted by the law enforcing authorities for commission of offence, the income earned by him would be an income liable for assessment. It would not be a defence in such cases that the State is also becoming a party to the illegal act by sharing the ill-gotten wealth.

Therefore, illegality tainted with the earning has no bearing on its taxability.

2. This statement is not correct.

The Supreme Court, in *Ishikawajima-Harima Heavy Industries Ltd. v. Director of Income-tax* (2007) 288 ITR 408, observed that in order to tax the income of a non-resident assessee under section 9(1)(vii), relating to fee for technical services, the income sought to be taxed must have sufficient territorial nexus with India i.e. the fees paid for technical services provided by a non-resident cannot be taxed in India unless the services were utilized in India and rendered in India. This observation is not in consonance with the source rule spelt out in the law and the stand taken by India in the bilateral treaties with different countries.

The Finance Act, 2007 has now clarified that such income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India. An Explanation has been inserted in section 9 to clarify that income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services is to be taxed irrespective of territorial nexus.

3. Section 10(10BC) exempts any amount received or receivable as compensation by an individual or his legal heir on account of any disaster. Such compensation should be granted by the Central Government or a State Government or a local authority. However, exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.

"Disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence. It should have the effect of causing -

- (1) substantial loss of life or human suffering; or
- (2) damage to, and destruction of, property; or
- (3) damage to, or degradation of, environment.

It should be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

Therefore, the compensation received by Mr. Gopal on the death of his father in the Mumbai bomb blast, is exempt under section 10(10BC) since it is received -

- (1) on account of a disaster;
- (2) from the State Government; and
- (3) by the legal heir.

4. Computation of total income of the institution for the A.Y. 2009-10

Particulars	Rs. in crores
Fees received	4.500
Less : Expenses incurred to earn the income	<u>2.000</u>
	2.500
Less : 15% (exempt even if not spent for the objects of the institution)	<u>0.375</u>
	2.125
Less : Accumulated for specified purpose (See Note 2)	<u>1.000</u>
Balance to be spent	1.125
Actual amount spent on purchase of land for cricket field (See Note 1)	
Rs.1.2 crores - restricted to	<u>1.125</u>
Total income	<u>Nil</u>

Notes –

1. The institution must utilise 85% of its income within the previous year for the objects of the institution. The institution can apply its income either for revenue expenditure or for capital expenditure provided the expenditure is incurred for promoting the objects of the institution. Therefore, land acquired to be used as a cricket field for students amounts to capital expenditure incurred for promoting the objects of the institution.
2. Section 11(2) provides that a trust/institution can accumulate or set apart its income for a specified purpose by informing the concerned Assessing Officer. However, the period for which the funds can be accumulated cannot exceed 5 years. The amount so accumulated should be invested in the specified forms and modes. In this case, it is assumed that the institution has informed the concerned Assessing Officer and invested Rs.1 crore in the specified forms and modes.

5. Computation of taxable value of perquisite

Sl. No.	Description of asset	Value of perquisite Rs.
1.	Ford Car	64,320
2.	Computer	5,250
3.	Furniture	<u>12,600</u>
	Total	<u>82,170</u>

	Nature of Asset		
	Ford Car – 20% (WDV)	Computer – 50% (WDV)	Furniture - 10% (SLM)
Sale Price (B)	<u>5,20,000</u>	<u>46,000</u>	<u>21,000</u>
Cost of purchase (July, 2006)	9,13,000	2,05,000	42,000
Less : Normal wear & tear	<u>1,82,600</u>	<u>1,02,500</u>	<u>4,200</u>
Reduced actual cost (July 2007)	7,30,400	1,02,500	37,800
Less : Normal wear & tear	<u>1,46,080</u>	<u>51,250</u>	<u>4,200</u>
Reduced actual cost (July 2008) (A)	<u>5,84,320</u>	<u>51,250</u>	<u>33,600</u>
Taxable perquisite (A) – (B)	<u>64,320</u>	<u>5,250</u>	<u>12,600</u>

Note: According to Rule 3(7), the value of perquisite in respect of transfer of a movable asset shall be the difference between sale price and the actual cost as reduced by the specified rate for normal wear and tear for each completed year of usage.

6. There are two units of the house. Unit I with 3/4th area is used by Rajesh for self-occupation throughout the year and no benefit is derived from that unit, hence it will be treated as self-occupied and its annual value will be nil. Unit 2 with 1/4th area is let-out during the previous year and its annual value has to be determined as per section 23(1).

Computation of Income from house property of Mr. Rajesh for the A.Y. 2009-10

Particulars	Amount in rupees
Unit I (3/4 th area – self-occupied)	
Annual Value	Nil
Less: Deduction u/s 24(b)	
3/4th of Rs.1,48,000	<u>1,11,000</u>
Income from Unit I (self-occupied)	<u>-1,11,000</u>

Unit II (1/4th area – let out)

Computation of GAV

Step 1 – Computation of Annual Letting Value (ALV)

ALV = Higher of municipal valuation (MV) and fair rent (FR), but restricted to standard rent (SR). However, in this case, standard rent of Rs.1,20,000 (1/4th of Rs.4,80,000) is more than the higher of MV of Rs.1,00,000 (1/4th of Rs.4,00,000) and FR of Rs.1,10,000 (1/4th of Rs.4,40,000). Hence the higher of MV and FR is the ALV. In this case, it is the fair rent.

1,10,000

Step 2 – Computation of actual rent received/ receivable

$$12,000 \times 9 = 1,08,000 \quad 1,08,000$$

[The property was let-out for 11 months. However, rent for 2 months i.e. January and February, 2009 could not be realized. As per Explanation to section 23(1), actual rent should not include any amount of rent which is not capable of being realized. Therefore, actual rent has been computed for 9 months]

Step 3 – GAV is the higher of ALV and actual rent received/receivable. However, as per section 23(1)(c), where the let-out property is vacant for part of the year and owing to vacancy, the actual rent is lower than the ALV, then the actual rent received would be the GAV of the property. In this case, the actual rent is lower than the ALV owing to vacancy, since had the property not been vacant in March 2009, the actual rent would have been 1,20,000 (i.e., 1,08,000 + 12,000), which is higher than the ALV of Rs.1,10,000. Therefore, in this case, section 23(1)(c) would apply and the actual rent of Rs.1,08,000 would be the GAV, since it is lower than the ALV owing to vacancy.

Gross Annual Value(GAV) 1,08,000

Less: Municipal taxes paid by the owner during the previous year relating to let-out portion

$$1/4\text{th of } (10\% \text{ of Rs.4,00,000}) = 40000/4 = 10,000 \quad \underline{10,000}$$

Net Annual Value(NAV) = (1,08,000-10,000) 98,000

Less: Deductions under section 24

(a) 30% of NAV = 30% of Rs.98,000 29,400

(b) Interest paid on borrowed capital (relating to let out portion) [1/4th of Rs.1,48,000] 37,000 66,400

Income from Unit II (let-out) 31,600

Loss under the head “Income from house property” = -1,11,000 + 31,600 -79,400

7. (a) This issue came up before the Delhi High Court in CIT v. Gujarat Guardian Ltd (2009) 177 Taxman 434. The Court observed that the assessee company's claim for deduction has to be allowed in one lump sum keeping in view the provisions of section 43B(d), which provide that any sum payable by the assessee as interest on any loan or borrowing from any financial institution shall be allowed to the assessee in the year in which the same is paid, irrespective of the periods, in which the liability to pay such sum is incurred by the assessee according to the method of

accounting regularly followed by the assessee. The High Court concurred with the Tribunal's view supporting the assessee that in terms of section 36(1)(iii) read with section 2(28A), the deduction for pre-payment premium was allowable. Since there was no dispute that prepayment premium paid was nothing but interest and that it was paid to a public financial institution i.e. IDBI, the Court held that, in terms of section 43B(d), the assessee's claim for deduction has to be allowed in the year in which the payment has actually been made.

Therefore, applying the ratio of the above case, the contention of A Ltd. is correct and not that of the Assessing Officer.

Note – Section 36(1)(iii) provides for deduction of interest paid in respect of capital borrowed for the purposes of business or profession. Section 2(28A) defines interest to include, inter alia, any other charge in respect of the moneys borrowed or debt incurred. Section 43B provides for certain deductions to be allowed only on actual payment. From a combined reading of these three sections, it can be inferred that –

- (i) pre-payment premium represents interest as per section 2(28A);
 - (ii) such interest is deductible as business expenditure as per section 36(1)(iii);
 - (iii) such interest is deductible in one lump-sum on actual payment as per section 43B(d).
- (b) This issue was dealt with by the Delhi High Court in CIT v. Insilco Ltd (2009) 179 Taxman 55. The Court observed that the expression “used for the purposes of business” appearing in section 32 also takes into account emergency spares, which, even though ready for use, yet are not consumed or used during the relevant period. This is because these spares are specific to a fixed asset, namely plant and machinery, and form an integral part of the fixed asset. These spares will, in all probability, be useless once the asset is discarded and will also have to be disposed of. In this sense, the concept of passive use which applies to standby machinery will also apply to emergency spares. Therefore, once the spares are considered as emergency spares required for plant and machinery, the assessee would be entitled to capitalize the entire cost of such spares and claim depreciation thereon.

Note – One of the conditions for claim of depreciation is that the asset must be “used for the purpose of business or profession”. In the past, courts have held that, in certain circumstances, an asset can be said to be in use even when it is “kept ready for use”. For example, depreciation can be claimed by a transport company on spare engines kept in store in case of need, though they have not actually been used by the company. Hence, in such cases, the term “use” embraces both active use and passive use for business purposes.

8. Computation of allowable depreciation in the hands of ABC Ltd. for the A.Y. 2009-10

Particulars	Rs. in lakh
WDV as at 1.4.2008	800
Add : Addition during the year (put to use for less than 180 days)	<u>500</u>
WDV as at 31.3.2009	<u>1300</u>
Normal depreciation	
- On opening WDV of Rs.800 lakh @15%	120.00
- On addition of Rs.500 lakh @ 7.5% (i.e. 50% of 15%) [See Note 1]	37.50
Enhanced depreciation	
- On addition of Rs.150 lakh @ 10% (i.e. 50% of 20%) [See Note 2]	<u>15.00</u>
Total depreciation allowable	<u>172.50</u>

Notes –

- (1) Normal depreciation would be restricted to 50% of the specified rate if the new asset is put to use for less than 180 days during the year.
 - (2) In addition to normal depreciation, enhanced depreciation @ 20% of the actual cost of new machinery or plant installed is allowable in the year in which the new machinery is first put to use. Such enhanced depreciation shall also be restricted to 10% (i.e., 50% of 20%), if the new machinery is put to use for a period of less than 180 days in the year. Further, such enhanced depreciation is not available in respect of second-hand machinery. Hence, imported second hand machinery of Rs.350 lakh is not eligible for such enhanced depreciation.
9. This issue came up recently before the Karnataka High Court in CIT v. D.Ananda Basappa (2009)309 ITR 0329. The Court observed that the assessee had shown that the flats were situated side by side and the builder had also certified that he had effected modification of the flats to make them one unit by opening the door between the apartments. Therefore, it was immaterial that the flats were occupied by two different tenants prior to sale or that it was purchased through different sale deeds. The Court observed that these were not the grounds to hold that the assessee did not have the intention to purchase the two flats as one unit. The Court held that the assessee was entitled to exemption under section 54 in respect of purchase of both the flats to form one unit.

Applying the ratio of the above decision to the case on hand, Mr. Ganesh is entitled to exemption under section 54 in respect of purchase of two flats to form one apartment. Therefore, the contention of the Assessing Officer is not correct.

10. Computation of tax liability of Rewari Ltd. consequent to slump sale

Particulars	Rs. in lakh
Sale consideration	525
Less : Net worth (as per Working Note below)	<u>220</u>
Long term capital gain (See Notes 1 & 2 below)	<u>305</u>
Income tax thereon @ 20%	61.000
Add : Surcharge @ 10%	<u>6.100</u>
	67.100
Add : Education cess @ 2% and secondary and higher education cess @ 1%	<u>2.013</u>
Tax liability as a consequence of slump sale	<u>69.113</u>

Working Note – Computation of net worth of the air-conditioner unit

Particulars	Rs. in lakh
Written down value of depreciable assets as per the Income-tax Act (relating to air-conditioner unit)	120
Book value of non-depreciable assets	
Debtors	150
Inventories	<u>50</u>
Total assets	320
Less : Liabilities (value as appearing in the books of account)	<u>100</u>
Net worth	<u>220</u>

Notes -

- (1) As per section 50B, any profits or gains arising from the slump sale effected in the previous year is chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain. In this case, since the undertaking was held for a period of more than 36 months, it is a long term capital asset and the capital gain on transfer of such asset would be regarded as long term capital gain.

- (2) In the case of slump sale, indexation benefit is not allowed.

11. Computation of gross total income of Mrs. Harini Rao for the A.Y.2009-10

Particulars	Rs.	Rs.
Salary		
Salary 12,000 x 12		1,44,000
Income from other sources		
(i) Gift from close friend is taxable	1,50,000	
(ii) Gift of jewellery is exempt as it is in kind	-	
(iii) Gifts received from her two friends are exempt as they have been received on the occasion of her marriage	-	
(iv) Gift from her father's sister is exempt as the donor is covered in the definition of relative	-	
(vi) Gift from her husband's friend is taxable	21,000	
(vii) Gift from her family friend is taxable	25,000	
(viii) Gift from her brother's mother-in-law is taxable as the donor is not covered in the definition of relative	11,000	
(ix) Gift from her sister-in-law (husband's sister) is exempt as the donor is covered in the definition of relative	-	
		<u>2,07,000</u>
Gross Total Income		<u>3,51,000</u>

12. (a) In the given case, Mr. Harsh has paid Rs.16,000 in aggregate towards self and spouse's mediclaim premium, deduction in respect of which shall be restricted to Rs.15,000. Mediclaim premium of Rs.21,000 paid for insuring the health of his father, who is a senior citizen, is eligible for additional deduction of up to Rs.20,000 even though his father is not dependent on him. Therefore, total deduction of Rs.35,000 [i.e., Rs.15,000 + Rs.20,000] shall be allowed to Mr. Harsh under section 80D. It may be noted that, Rs.11,000 paid for dependent mother-in-law is not allowable, since the definition of the term 'family' does not include mother-in-law. Section 80D requires payment of premium on health insurance by any mode other than cash. In case the payment is made by cash, the amount paid cannot be availed as deduction.

(b) Computation of total income of Mr. Ravi for the A.Y. 2009-10

Particulars	Rs.	Rs.
Professional income		2,12,000
Income from other sources		<u>21,000</u>
Gross Total Income		2,33,000

Less: Deductions under Chapter VI A

1. Medical insurance premium paid under section 80D – 35,000
(15,000 + 20,000) [See Note 1]

2.	Expenditure for dependant mentally retarded - section 80DD [See Note 2]	75,000	
3.	Rent paid under 80GG [See Note 3]– least of the following is eligible for deduction -		
(i)	Excess of rent paid over 10% of total income (48,000 - 12,300) = 35,700		
(ii)	25% of total income = 30,750		
(iii)	Ceiling limit Rs.2,000 p.m. = 24,000	<u>24,000</u>	<u>1,34,000</u>
	Total income		<u>99,000</u>

Notes -

- (1) Medical insurance premium paid for self and spouse would qualify for deduction under section 80D subject to a maximum of Rs.15,000.

Mediclaim insurance premium paid for parents shall qualify for additional deduction under section 80D, subject to a maximum of Rs.20,000 (since they are senior citizens), irrespective of whether they are dependent or non-dependent on Mr. Ravi.

Medical insurance premium paid for insuring the health of sister does not qualify for deduction under section 80D, since sister does not fall within the definition of "family".

- (2) Deduction under section 80DD is a flat amount of Rs.75,000, irrespective of the actual expenditure incurred in respect of a dependent, who is a person with severe disability. It is assumed that Mr.Ravi has furnished a copy of the certificate issued by the medical authority, in the prescribed form and manner, along with the return of income under section 139 in respect of A.Y.2009-10.

- (3) Total income for the purpose of section 80GG would be -

Gross Total Income	2,33,000
Less : Deduction under sections 80D & 80DD	<u>1,10,000</u>
Total income	<u>1,23,000</u>

It is presumed that all the conditions for claim of deduction under section 80GG have been fulfilled by Mr. Ravi.

13. Computation of tax payable by Mr. Hari for the A.Y 2009-10

Particulars	Incl. arrears of salary	Excl. arrears of salary
Current year salary	6,20,000	6,20,000
Add: Arrears of salary	<u>80,000</u>	<u> </u>
Taxable Salary	<u>7,00,000</u>	<u>6,20,000</u>

Income-tax thereon	1,15,000	91,000
Add : Education cess @ 2% plus secondary and higher education cess @1%	<u>3,450</u>	<u>2,730</u>
Total payable	<u>1,18,450</u>	<u>93,730</u>

Computation of tax payable on arrears of salary if charged to tax in the respective assessment years

Particulars	A.Y. 2001-02		A.Y. 2002-03		A.Y. 2003-04	
	Incl. arrears	Excl. arrears	Incl. arrears	Excl. arrears	Incl. arrears	Excl. arrears
Taxable salary	75,000	75,000	80,000	80,000	90,000	90,000
Add: Arrears of salary	<u>15,000</u>	<u>---</u>	<u>25,000</u>	<u>---</u>	<u>40,000</u>	<u>---</u>
Taxable salary	<u>90,000</u>	<u>75,000</u>	<u>1,05,000</u>	<u>80,000</u>	<u>1,30,000</u>	<u>90,000</u>
Tax on the above	7,000	4,000	10,000	5,000	15,000	7,000
Add: Surcharge	<u>840</u>	<u>480</u>	<u>200</u>	<u>100</u>	<u>750</u>	<u>350</u>
Tax payable	<u>7,840</u>	<u>4,480</u>	<u>10,200</u>	<u>5,100</u>	<u>15,750</u>	<u>7,350</u>

Computation of relief under section 89

Particulars	Rs.	Rs.
i) Tax payable in A.Y. 2009-10 on arrears :		
Tax on income including arrears	1,18,450	
Less : Tax on income excluding arrears	<u>93,730</u>	24,720
ii) Tax payable in respective years on arrears :		
Tax on income including arrears (Rs.7,840+Rs.10,200+Rs.15,750)	33,790	
Less : Tax on income excluding arrears (Rs.4,480+Rs.5,100+Rs.7,350)	<u>16,930</u>	<u>16,860</u>
Relief under section 89 - difference between tax on arrears in A.Y 2009-10 and tax on arrears in the respective years		<u>7,860</u>

Tax payable for A.Y 2009-10 after relief under section 89

Particulars	Rs.
Income-tax payable on total income including arrears of salary	1,18,450
Less : Relief under section 89 as computed above	<u>7,860</u>
Tax payable after claiming relief	<u>1,10,590</u>

14. Computation of business income of M/s. Harilal Industries for the A.Y 2009-10

Particulars	Rs.	Rs.
Net Profit as per Profit & Loss Account		87,700
Add : Remuneration to partners (considered separately)		<u>2,50,000</u>
		3,37,700
Add: Inadmissible expenses :		
Interest [54,000 – 36,000 (calculated@12%)]	18,000	
Provident fund payment outstanding as on due date of filing of return - disallowed under section 43B	10,000	
Cash purchases [disallowed under section 40A(3)]	<u>80,000</u>	<u>1,08,000</u>
		4,45,700
Less : Amount credited but exempt		
Dividend from UTI [exempt under section 10(35)]		<u>8,000</u>
Book Profit		4,37,700
Less : Remuneration to partners deductible (see note below)		<u>2,27,580</u>
Taxable business income		<u>2,10,120</u>

Note - Computation of remuneration allowable as deduction as per 40(b)(v)

Particulars	Percentage allowable	Rs.
On first 75,000 of book profit	90%	67,500
On next 75,000 of book profit	60%	45,000
On the balance book profit of Rs.2,87,700	40%	<u>1,15,080</u>
Remuneration allowable as per 40(b)(v)		<u>2,27,580</u>

Since the actual remuneration of Rs.2,50,000 is more than the allowable limit of Rs.2,27,580, only Rs.2,27,580 is deductible. It is presumed that the remuneration paid is as per the terms of the partnership deed.

15. (i) Expenditure on gifts to employee on the occasion of his marriage – Yes, such expenditure is liable to FBT, whether the gift is on the occasion of marriage or otherwise.
- (ii) Payment of club membership fee – Yes, since it is a fixed levy for use of some basic club facilities (like the lounge facilities).
- (iii) Expenditure on use of telephones installed in office – Yes, expenditure on use of telephones installed in the office is liable to FBT, irrespective of whether the telephone is in the name of the company or not, or whether the payment for its use is made directly or indirectly by the company.
- (iv) Expenditure on Group Medical Insurance – Yes, since it is for the purposes of employee welfare. However, if there is a statutory obligation, such expenditure would not be liable to FBT.

- (v) Subsidy provided to a school not meant exclusively for employees' children –
Yes, since the proximate purpose is promotion of employee welfare.

16. Computation of Book Profit under section 115JB

Particulars	Rs.	Rs.
Net Profit as per Profit & Loss Account		4,25,000
Add: Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB		
Income-tax paid or payable or provision therefor		
Provision for income-tax	80,000	
Interest on income-tax	4,000	
Education cess on income-tax	1,600	
Secondary and higher education cess on income-tax	800	
Dividend distribution tax	10,000	96,400
Provision for deferred tax		7,000
Transfer to General Reserve		15,000
Provision for losses of subsidiary company		14,000
Dividend paid or proposed		
Proposed dividend	16,000	
Preference dividend	13,000	29,000
Expenditure to earn income exempt u/s 10 [except section 10(38)]		
Expenditure to earn agricultural income [exempt u/s 10(1)]	5,000	
Expenditure to earn dividend income [exempt u/s 10(34)]	2,000	7,000
Depreciation		35,000
		2,03,400
		6,28,400
Less: Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB		
Amount credited to P& L A/c from Special Reserve	10,000	
Depreciation (excluding depreciation on account of revaluation of fixed assets) (i.e. Rs.35,000 – Rs.15,000)	20,000	
Amount credited to P& L A/c from Revaluation Reserve (to the extent of depreciation on revaluation)	15,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less taken on cumulative basis	65,000	

Income exempt u/s 10 [except section 10(38)]		
Agricultural Income [since it is exempt under section 10(1)]	25,000	
Dividend income [since it is an income exempt under section 10(34)]	12,000	1,47,000
Book Profit		<u>4,81,400</u>
10% of book profit		48,140
Add: Education cess @ 2%	963	
Secondary and higher education cess @ 1%	481	1,444
Tax liability under section 115JB		<u>49,584</u>
Total income computed as per the provisions of the Income-tax Act	1,20,000	
Tax payable @ 30%		36,000
Add: Education cess @ 2%	720	
Secondary and higher education cess @ 1%	360	1,080
Tax Payable as per the Income-tax Act		<u>37,080</u>

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 10% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 10% thereof plus education cess @2% and secondary and higher education cess @ 1%. Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 10% of book profit, the book profit of Rs.4,81,400 is deemed to be the total income and income-tax is payable @ 10% thereof plus education cess @2% and secondary and higher education cess @1%. The tax liability, therefore, works out to Rs.49,584.

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income-tax Act, will be allowed as tax credit in the subsequent years. The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the other provisions of the Act. This tax credit is allowed to be carried forward for seven assessment years succeeding the assessment year in which the credit became allowable. Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act, other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

Particulars	Rs.
Tax on book profit under section 115JB	49,584
Less: Tax on total income computed as per the other provisions of the Act	37,080
Tax credit to be carried forward	<u>12,504</u>

Notes:

1. Wealth-tax, securities transaction tax and fringe benefit tax do not form part of income-tax and hence, should not be added back to net profit for computing book profit.
2. Provision for gratuity based on actuarial valuation is a provision for meeting an ascertained liability. Therefore, it should not be added back for computing book profit.
3. Long-term capital gains on sale of equity shares through a recognized stock exchange on which securities transaction tax (STT) is paid is exempt under section 10(38). One of the adjustments to the book profit is that exempt income under section 10, which is credited to profit and loss account, would be deducted in arriving at the book profit. However, deduction of such long-term capital gains is not allowed for computing book profit. Consequently, expenditure to earn such income should not be added back to arrive at the book profit. Section 10(38) also provides that such long term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

17. (a) Scheme for submission of returns through tax return preparers

- (1) Section 139B provides that, for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income, the CBDT may notify a Scheme to provide that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.
- (2) The Tax Return Preparer shall assist the persons furnishing the return in a manner that will be specified in the Scheme, and shall also affix his signature on such return.
- (3) A Tax Return Preparer can be an individual, other than
 - (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.
 - (ii) any legal practitioner who is entitled to practice in any civil court in India.
 - (iii) a chartered accountant.
 - (iv) an employee of the 'specified class or classes of persons'.
- (4) The "specified class or classes of persons" for this purpose means any person other than a company or a person whose accounts are required to be audited under section 44AB (tax audit) or under any other existing law, who is required to furnish a return of income under the Act.

- (5) The Scheme notified under the said section may provide for the following -
 - (i) the manner in which and the period for which the Tax Return Preparers shall be authorised,
 - (ii) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer,
 - (iii) the code of conduct for the Tax Return Preparers,
 - (iv) the duties and obligations of the Tax Return Preparers,
 - (v) the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn, and
 - (vi) any other relevant matter as may be specified by the Scheme.
- (6) Every Scheme framed by the CBDT under this section shall be laid before each House of Parliament while it is in session to make the same effective.
- (7) If both the houses decide in making any modification of Scheme, then the Scheme will have effect only in such modified form.
- (8) Similarly, if both the Houses decide that any Scheme should not be framed, then such Scheme will thereafter be of no effect.
- (9) However, such modification or annulment should be without prejudice to the validity of anything previously done under that scheme.
- (b) The Assessing Officer can reopen a case under section 148 if he has reason to believe that any income has escaped assessment. In order to ensure that such power is used rationally and objectively by the Assessing Officers, sufficient measures have been provided in the Act. However, there have been contentions between the department and the assesseees on the issue of valid reopening of assessment.

In *Metro Auto Corporation v. ITO* (2006) 286 ITR 618, the Bombay High Court held that reassessment was not permissible when an assessment was pending in appeal before the Tribunal. In view of such interpretation, it may not be possible to issue notice under section 148 in any case which is pending before the Appellate Tribunals or Courts. Further, by the time the Tribunal or the Court judgment is received, reopening of the case may be barred by limitation. Such a situation is not in accordance with the legislative intent.

The true legislative intent was correctly reflected in the Bombay High Court judgment in *CIT v. Sakseria Cotton Mills Ltd.* (1980) 124 ITR 570, where it was held that in a case where an assessment is made the subject of an appeal, only that part of the Assessing Officer's order merges with the appellate authority's order in respect of which the appellate authority has exercised the appellate jurisdiction. Hence, notice under section 148 can be issued for assessment/reassessment of income which has

escaped assessment and which has not been made the subject matter of an appeal, reference or revision.

Hence, in order to clarify the true legislative intent, a second proviso has been inserted in section 147 with effect from 1.4.2008 to provide that the Assessing Officer may assess or reassess an income which is chargeable to tax and has escaped assessment other than the income involving matters which are the subject matter of any appeal, reference or revision.

18. This statement is not correct.

Section 254(2A) provides that the Appellate Tribunal, where it is possible, may hear and decide an appeal within a period of four years from the end of the financial year in which such appeal is filed. The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order. The Appellate Tribunal has to dispose of the appeal within this period of stay.

Where the appeal has not been disposed of within this period and the delay in disposing the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed on an application made by the assessee in this behalf. However, the aggregate of period originally allowed and the period so extended should not exceed 365 days. The Appellate Tribunal is required to dispose of the appeal within this extended period.

The objective of these provisions is unambiguous that the Appellate Tribunal cannot grant stay either under the original order or under any subsequent order, beyond the period of 365 days in aggregate. However, the Bombay High Court in *Narang Overseas (P.) Ltd. v. ITAT* (2007) 295 ITR 22 observed that this limit would not apply where there is a delay beyond this period and the same is not attributable to the assessee. However, this decision does not reflect the true legal intention.

Therefore, section 254(2A) has been amended to clarify the correct intention. It has now been provided that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days, even if the delay in disposing of the appeal is not attributable to the assessee. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

Accordingly, even if an appeal is not heard by the bench, say, due to the bench not functioning or due to the department seeking adjournment, the stay granted by the Appellate Tribunal shall stand vacated after the period of 365 days, inspite of the assessee having taken all steps to ensure speedy disposal of the appeal and having a good prima facie case.

19. This statement is correct.

Section 194C provides for deduction of tax at source from payments to contractors and sub-contractors. Sub-section (1) of this section lists the persons who are liable to deduct

tax at source from payments to a resident contractor. So far, Association of Persons and Body of Individuals were not included in this list and were therefore, not liable to deduct tax at source under section 194C(1).

The Finance Act, 2008 has now included within the scope of section 194C(1), Association of Persons and Body of Individuals, whether incorporated or not, whose total sales/gross receipts/turnover from the business or profession exceed the monetary limits specified in section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor.

Thus, such Association of Persons and Body of Individuals subject to tax audit in the immediately preceding financial year are now liable to deduct tax at source from payments to resident contractors.

20. (a) This statement is not correct.

The Apex Court, in its ruling in Dilip N. Shroff v. Joint CIT (2007) 291 ITR 519, required the presence of 'mens rea' for imposition of penalty under section 271(1)(c). "Mens rea" means a guilty mind. However, the Larger Bench of the Supreme Court, in the case of Union of India v. Dharmendra Textile Processors (2007) 295 ITR 244, observed that the conceptual and contextual difference between section 271(1)(c) and section 276C was lost sight of in Dilip B. Shroff's case. The object behind the enactment of section 271(1)(c) read with the Explanations is to provide a remedy for loss of revenue. The penalty under that provision is a civil liability. The Larger Bench held that in cases related to imposition of penalty under section 271(1)(c), willful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C. The Larger Bench, therefore, overruled the decision in Dilip N. Shroff v. Joint CIT requiring the presence of 'mens rea' in cases of penalty imposed under section 271(1)(c). Therefore, while considering an appeal against an order made under section 271(1)(c), what is required to be examined is the record which the officer imposing penalty had before him and if that record can sustain the finding that there has been concealment, that would be sufficient to sustain the penalty. Hence, there is no need for the revenue to prove that concealment was done by the assessee 'wilfully' in order to impose penalty under section 271(1)(c).

- (b) Yes, the Commissioner of Income-tax has the power to grant immunity from penalty and prosecution in respect of a person whose case has been abated under section 245HA. The power to grant immunity from penalty is conferred by section 273AA and the power to grant immunity from prosecution is conferred by section 278AB.

Section 273AA empowers the Commissioner to grant immunity from penalty.

- (1) The application for the immunity has to be made by the assessee (person whose case has been abated under section 245HA) to the Commissioner of Income-tax.
- (2) The Commissioner can grant immunity, subject to such conditions as he may think fit to impose, on being satisfied that the assessee has –

- (i) co-operated in the proceedings after abatement; and
 - (ii) made a full and true disclosure of his income and the manner in which such income has been derived.
- (3) The immunity granted shall stand withdrawn, if such assessee fails to comply with any condition subject to which the immunity was granted.
- (4) The immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, -
- (i) concealed any particulars material to the assessment from the income-tax authority; or
 - (ii) given false evidence.

Consequently, such person would become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Section 278AB empowers the Commissioner to grant immunity from prosecution.

- (1) The application for the immunity must be made by the assessee (person whose case has been abated under section 245HA) to the Commissioner of Income-tax before institution of the prosecution proceedings after abatement.
- (2) The Commissioner can grant immunity, subject to such conditions as he may think fit to impose, on being satisfied that the assessee has –
 - (i) co-operated in the proceedings after abatement; and
 - (ii) made a full and true disclosure of his income and the manner in which such income has been derived.
- (3) Where the application for settlement under section 245C had been made before 1st June, 2007, the Commissioner can also grant immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act.
- (4) If the assessee fails to comply with any condition subject to which the immunity was granted, the same would be withdrawn.
- (5) The immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, -
 - (i) concealed any particulars material to the assessment from the income-tax authority; or
 - (ii) given false evidence.

Consequently, the person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.

21. (i) 33 months from the end of the assessment year in which the income was first assessable i.e. by 31.12.2012.
 - (ii) 21 months from the end of the financial year in which notice under section 148 is served i.e. by 31.12.2010.
 - (iii) 33 months from the end of the financial year in which the last of the authorizations for search under section 132 was executed i.e. by 31.12.2011.
22. According to section 5(1), a resident is chargeable to tax in respect of his global income. In this case, Gautam is a resident both in India and Malaysia.

Section 90(1) empowers the Central Government to enter into an agreement with the Government of any country outside India for avoidance of double taxation of income under the Indian law and the corresponding law of that country. Section 90(2) provides that where the Central Government has entered into an agreement with the Government of any other country for granting relief of tax or for avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to that assessee.

Gautam has a residential house both in Malaysia and India. Thus, he has a permanent home in both the countries. However, he has no permanent establishment of business in India. The Double Taxation Avoidance Agreement (DTAA) with Malaysia provides that where an individual is a resident of both the countries, he shall be deemed to be resident of that country in which he has a permanent home and if he has a permanent home in both the countries, he is deemed to be resident of that country, which is the centre of his vital interests i.e. the country with which he has closer personal and economic relations. Gautam owns a rubber estate in Malaysia from which he derives business income. However, Gautam has no permanent establishment of his business in India. Therefore his personal and economic relations with Malaysia are closer, since Malaysia is the place where –

- (a) the property is located and
- (b) the permanent establishment (PE) has been set-up

Therefore, he shall be deemed to be resident of Malaysia for A.Y. 2009-10.

The facts of the case and issues arising therefrom are similar to that of CIT vs. P.V.A.L. Kulandagan Chettiar (2004) 137 Taxman 460, where the Supreme Court held that –

- (1) If an assessee is deemed to be a resident of a contracting State where his personal and economic relations are closer, then in such a case, the fact that he is a resident in India to be taxed in terms of sections 4 and 5 would become irrelevant, since the DTAA prevails over sections 4 and 5.

- (2) The treaty has application as well to capital gains derived from immovable property situated at Malaysia.

Therefore, in this case, Gautam is not liable to income-tax in India for assessment year 2009-10 in respect of business income and capital gains arising in Malaysia.

23. As per section 3 of the Wealth-tax Act, 1957, wealth-tax is leviable only on individuals, HUFs and companies. Therefore, wealth-tax is not leviable on a firm, association of persons, local authority, artificial juridical person, public charitable or religious trust other than those covered under section 21A.

Further, section 45 specifically provides that no tax shall be levied under the Wealth-tax Act in respect of the net wealth of –

- (i) any company registered under section 25 of the Companies Act;
- (ii) any co-operative society;
- (iii) any social club;
- (iv) any political party as per section 13A of the Income-tax Act;
- (v) a mutual fund specified under section 10(23D) of the Income-tax Act.

24. Computation of net wealth of Gamma Ltd. as on valuation date 31.3.2009

Particulars	Notes	Rs. in lakh
(i) Land in urban area	1	Nil
(ii) Motor-cars	2	Nil
(iii) Jewellery	3	25
(iv) Cash balance	4	Nil
(v) Bank Balance	5	Nil
(vi) Guest House	6	15
(vii) Residential flat occupied by Managing Director	7	12
(viii) Residential house let out for 150 days	8	<u>6</u>
		58
Less : Debts - Loan obtained for purchase of jewellery	9	<u>14</u>
Taxable wealth as on 31.03.2009		<u>44</u>

Notes:

- (1) Land in urban area on which the construction is not permitted as per municipal laws in force does not fall within the meaning of 'asset' defined under section 2(ea) and is therefore, not taxable.
- (2) Motor cars used for running on hire is not an asset as per section 2(ea) and is, therefore, not taxable.

- (3) Jewellery is always taxable unless the same is held as stock-in-trade.
 - (4) In the case of assesseees, other than individuals and HUFs, cash in hand is not taxable to the extent reflected in the books of account. In this case, since the entire cash balance of Rs.3 lakh is reflected in the books of account, it is not taxable.
 - (5) Bank balance is not as asset within the meaning of 'asset' defined under section 2(ea)
 - (6) Guest House situated in rural area is an asset and is, therefore, taxable. Only in the case of farm house, if it is situated beyond 25 kms from the local limits of any municipality, taxability does not arise.
 - (7) Residential flat which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having gross annual salary of less than Rs.5 lakh is not an asset within the meaning of asset defined under section 2(ea). In the given case, the residential flat is a taxable asset since it is occupied by the Managing Director whose gross annual remuneration exceeds Rs.5 lakh.
 - (8) Any residential property which is let out for a minimum period of 300 days in the previous year is not an asset. In the given case, the residential house is taxable since it has been let out for less than 300 days during the previous year.
 - (9) Debts incurred in relation to assets chargeable to tax shall be allowed as deduction in the computation of net wealth. Accordingly, loan obtained for purchase of jewellery shall be allowed as deduction since jewellery is assessable to wealth tax.
25. (i) Farm house situated within 25 kilometers from the local limits of municipality
- Section 2(ea) of the Wealth-tax Act defines the term "asset". According to the said definition, buildings including farm house situated within 25 kilometers from the local limits of a municipality shall be considered as an asset. Therefore, the farmhouse situated within 18 kilometers from Niwai Municipal Corporation shall be an asset chargeable to wealth-tax.
- (ii) Factory building and godowns leased out on rent
- Section 2(ea) provides for exceptions to the chargeability of building or land appurtenant thereto to wealth-tax. One such exception is the property in the nature of commercial establishments or complexes. Therefore, factory buildings and godowns are not assets within the meaning of section 2(ea) of the Wealth-tax Act and are accordingly not chargeable to wealth-tax.
- (iii) Silver and gold used in the jewellers' shop
- Jewellery is considered as an asset within the meaning of section 2(ea) of the Wealth-tax Act. However, if jewellery is used as stock in trade, the same shall be excluded from the assets chargeable to wealth-tax. Therefore, silver and gold used in the jewellers' shop represent his stock-in-trade and would, therefore, not be chargeable to wealth-tax.

(iv) Cash balance of Rs.4 lakh

Cash in hand in excess of Rs.50,000 is considered as an “asset” under section 2(ea) for individuals and HUF. In case of other persons, any amount not recorded in the books of account shall be considered as an asset. In the given case, if the assessee is an individual or HUF, the cash balance in excess of Rs.50,000 (i.e. Rs.3.50 lakh) shall be chargeable to wealth-tax. In any other case, if the entire cash balance is accounted for in the books of account, it would not be chargeable to wealth-tax. If the cash balance is not accounted for in the books of account, the same would be chargeable to wealth-tax.

IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.08 and 30.4.09

I. CIRCULARS

1. Circular No. 5/2008 dated 14.7.2008

The CBDT has, vide notification S.O. No. 493(E), dated 13.3.2008, notified the categories of taxpayers who are mandatorily required to electronically pay taxes on or after 1st April, 2008. The taxpayers who are required to pay taxes by the prescribed mode are - (i) a company; and (ii) a person (other than a company), to whom the provisions of section 44AB of the Income-tax Act, 1961 are applicable. Further, payment of tax electronically has been defined to mean payment of tax by way of - (i) internet banking facility of the authorised bank or (ii) credit or debit cards.

Consequent to issue of the notification, foreign assesseees have been facing difficulties in complying with the provisions with regard to mandatory e-payment of taxes. Since they do not have a presence in India, they are not able to meet the 'know your customer norms' of the banks. This has resulted in their inability to open bank accounts and make payment of taxes through the electronic mode. Also, the resident taxpayers have been facing difficulties in availing internet banking facilities of the authorized banks. A clarification has also been sought as to whether payment of tax deducted at source by a deductor will fall within the meaning of 'tax' for the purpose of the impugned notification.

Therefore, with a view to facilitating electronic payment of taxes by different categories of taxpayers, CBDT has issued Circular No.5/2008 dated 14.7.2008 to clarify that an assessee can make electronic payment of taxes also from the account of any other person. However, the challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made. It is not necessary for the assessee to make payment of taxes from his own account in an authorized bank. Further, it is also clarified that payment of any amount by a deductor by way of Tax Deducted at Source (TDS) or Tax Collected at Source (TCS) shall fall within the meaning of 'tax' for the purpose of Rule 125 of the Income-tax Rules, 1962.

2. Circular No.7/2008 dated 1.8.2008

Order under section 119(1) of the Income-tax Act, 1961 regarding exemption from the TDS provisions under section 197 read in conjunction with section 10(26BBB) of the Income-tax Act, 1961

The CBDT has, in exercise of the powers conferred under section 119(1) of the Income-tax Act, 1961, directed that corporations which are established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen and whose income qualifies for exemption from income-tax under section 10(26BBB) would also be exempt from tax deduction/collection at source on their receipts. This exemption shall be valid for 3 years from the date of issue of this order. However, this exemption shall not absolve such organisation from their statutory obligation of deducting TDS on all contractual payments made by them to other parties including sub-contractors etc.

3. Circular No.10/2008 dated 5.12.2008

Clarification regarding the meaning of the expression 'fish or fish products' used in Rule 6DD(e)(iii) of the Income-tax Rules, 1962

Under section 40A(3), disallowance is attracted in the computation of income in a case where a payment or aggregate of payments exceeding twenty thousand rupees is made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft. However, payment otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft exceeding twenty thousand rupees does not attract the aforesaid disallowance in certain circumstances as prescribed under Rule 6DD of the Income-tax Rules, 1962. Such exceptions, inter-alia, refer to payment made to the producer for the purchase of fish or fish products under sub-clause (iii) of clause (e) of rule 6DD.

In regard to this sub-clause, the following clarifications have been issued for proper implementation of Rule 6DD -

- (i) The expression 'fish or fish products' used in rule 6DD(e)(iii) would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.'.
- (ii) The 'producers' of fish or fish products for the purpose of rule 6DD(e) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

However, the above exception will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called.

4. Circular No.11/2008 dated 19.12.2008

Exemption under section 11 in case of an assessee claiming both to be a charitable institution as well as a mutual organisation

Section 2(15) defines charitable purpose to include the following:-

- (i) Relief of the poor
- (ii) Education
- (iii) Medical relief, and
- (iv) the advancement of any other object of general public utility.

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of charitable purpose. Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of -

- (a) any activity in the nature of trade, commerce or business; or
- (b) any activity of rendering any service in relation to any trade, commerce or business; for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

The following implications arise from this amendment -

- (1) The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose even if it incidentally involves the carrying on of commercial activities.
- (2) Relief of the poor encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that -
 - (i) the business should be incidental to the attainment of the objectives of the entity, and
 - (ii) separate books of account should be maintained in respect of such business.

Similarly, entities whose object is education or medical relief would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

The newly inserted proviso to section 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e. the fourth limb of the

definition of charitable purpose contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under any other object of general public utility. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.

Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

In the final analysis, however, whether the assessee has for its object the advancement of any other object of general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible.

II NOTIFICATIONS

1. Notification No. 86/2008 dated 13.8.2008

The Central Government has, vide notification no.86/2008 dated 13.8.2008, specified the cost inflation index for the financial year 2008-09. The CII for F.Y. 2008-09 is 582.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125

5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161
9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223
13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551
28.	2008-09	582

2. Notification No. 88/2008/F.NO. 275/43/2008-IT(B), dated 21.8.2008

The CBDT has, in exercise of the powers conferred by clause (a) of the Explanation to section 194J, notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:

- a. Sports Persons,
- b. Umpires and Referees,
- c. Coaches and Trainers,
- d. Team Physicians and Physiotherapists,

- e. Event Managers,
 - f. Commentators,
 - g. Anchors and
 - h. Sports Columnists.
3. Notification No. 90/2008, dated 28.8.2008
- Section 90A(1) provides that an agreement may be entered into by any specified association in India with any specified association in the specified territory outside India which may be adopted by the Central Government by way of notification in the Official Gazette, for granting relief of tax or, as the case may be, for avoidance of double taxation. The Central Government has now notified that where such an agreement provides that any income of a resident of India may be taxed in the other country then, such income shall be included in his total income chargeable to tax in India in accordance with the provisions of the Income-tax Act, 1961, and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement.
4. Notification No. 91/2008, dated 28.8.2008
- Section 90(1) provides that the Central Government may enter into an agreement with the Government of any country outside India for granting relief of tax or, as the case may be, for avoidance of double taxation. The Central Government has now notified that where such an agreement provides that any income of a resident of India may be taxed in the other country then, such income shall be included in his total income chargeable to tax in India in accordance with the provisions of the Income-tax Act, 1961, and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement.
5. Notification No.97/2008 dated 10.10.2008
- Rule 6DD of the Income-tax Rules has been substituted. This Rule now provides for cases and circumstances in which a payment or aggregate of payments exceeding twenty thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft.
- As per this rule, no disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely:
- (a) where the payment is made to -
 - (i) the Reserve Bank of India or any banking company;

- (ii) the State Bank of India or any subsidiary bank;
- (iii) any co-operative bank or land mortgage bank;
- (iv) any primary agricultural credit society or any primary credit society;
- (v) the Life Insurance Corporation of India;
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by -
 - (i) any letter of credit arrangements through a bank;
 - (ii) a mail or telegraphic transfer through a bank;
 - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
 - (iv) a bill of exchange made payable only to a bank;
 - (v) the use of electronic clearing system through a bank account;
 - (vi) a credit card;
 - (vii) a debit card.
- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- (e) where the payment is made for the purchase of -
 - (i) agricultural or forest produce; or
 - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture,
 to the cultivator, grower or producer of such articles, produce or products;
- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation,

discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;

- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- (j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
- (k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
- (l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

6. Notification No.1/2009 dated 5.1.2009

The Finance Act, 2008 had amended section 115WB(2)(B)(iii) to provide that any expenditure on or payment through pre-paid electronic meal card shall be excluded from hospitality expenditure and hence, would not be included for valuation of fringe benefit chargeable to tax, provided such card is not transferable and usable only at eating joints or outlets and fulfills such other prescribed conditions.

Rule 40E has now been inserted to provide that, for the purposes of section 115WB(2)(B)(iii), the non-transferable pre-paid electronic meal card has to fulfil the following conditions, namely:

- (i) The card should be granted by the employer to its employees under a scheme framed by the employer specifying therein the circumstances under which the meal card can be used by the employee.
- (ii) Such card should be issued by the issuing bank i.e. a banking company which issues the card to the employees of an employer in pursuance of an agreement entered into with the employer and which has entered into a contract with the member establishment authorizing him to allow purchases against the said card.
- (iii) An employee should not be issued more than one card.
- (iv) The card should bear the name of the employer along with the name, photograph and signature of the employee to whom the card is issued.
- (v) The card should be used only by the employee to whom the card is issued.

- (vi) The card should be used by the employee only for the purpose of purchasing ready to eat food or non-alcoholic beverage from a member establishment.
 - (vii) The aggregate amount of ready to eat food or non-alcoholic beverage purchased during a day by an employee should not exceed one hundred rupees.
 - (viii) The details of each transaction of purchase made by the employee against the card should be maintained by the employer and the member establishment in such manner and for such period as is required under the Act for any other similar transaction. "Member establishment" means a restaurant, hotel, canteen or an outlet which sells ready to eat food or non-alcoholic beverage, but should not include a restaurant, hotel, canteen or an outlet selling alcoholic beverage.
7. Notification No. 3/2009 dated 5.1.2009
- Clause (xv) of section 80C(2) provides that the subscription to any such deposit scheme of the National Housing Bank as the Central Government may notify in this behalf would qualify for deduction under section 80C. Accordingly, in exercise of the powers conferred in section 80C(2)(xv), the Central Government has specified the National Housing Bank (Tax Saving) Term Deposit Scheme, 2008, the subscription to which would qualify for deduction under section 80C.
8. Notification No. 9/2009 dated 7.1.2009
- Section 10(15)(iv)(h) exempts interest payable by any public sector company in respect of such bonds or debentures specified by the Central Government by notification in the Official Gazette. The notification would also specify the conditions subject to which the exemption would be available. Accordingly, in exercise of the powers conferred in section 10(15)(iv)(h), the Central Government has specified the issue of tax free bonds by India Infrastructure Finance Company Limited during the financial year 2008-09, the interest on which would be exempt under the said section. Further, it has been provided that such benefit shall be admissible only if the holder of such bonds registers his or her name and the holding with the said Corporation.
9. Notification No.15/2009, dated 30.1.2009
- Rule 8C of the Wealth-tax Rules, 1957 has been substituted. New Rule 8C provides for the following scale of fees to be charged by a registered valuer.
- (1) The fees to be charged by a registered valuer for valuation of any asset should not exceed the amount calculated at the following rates, namely:
 - (a) On the first Rs.5 lakh of the asset as valued 1/2 per cent of the value;
 - (b) On the next Rs.10 lakh of the asset as valued 1/5 per cent of the value;
 - (c) On the next Rs.40 lakh of the asset as valued 1/10 per cent of the value;
 - (d) On the balance of the asset as valued 1/20 per cent of the value.

- (2) Where two or more assets are required to be valued by a registered valuer at the instance of an assessee all such assets shall be deemed to constitute a single asset for the purposes of calculating the fees payable to such registered valuer.
- (3) However, where the amount of fees calculated in accordance with (1) and (2) above is less than Rs.500, the registered valuer may charge Rs.500 as his fees.

10. Notification No. 28/2009, dated 16.3.2009

Rule 37BA providing for credit for tax deducted at source for the purposes of section 199 and Rule 37-I providing for credit for tax collected at source for the purposes of section 206C(4) have been inserted with effect from 1.4.2009.

Rule 37BA provides for credit for tax deducted at source for the purposes of section 199.

Sub-rule (1) provides that credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

Sub-rule (2) provides that if the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for tax deducted at source shall be given to the other person in cases where-

- (a) the income of the deductee is included in the total income of another person under the provisions of section 60, section 61, section 64, section 93 or section 94;
- (b) the income of a deductee being an association of persons or a trust is assessable in the hands of members of the association of persons, or in the hands of trustees, as the case may be;
- (c) the income from an asset held in the name of a deductee, being a partner of a firm or a karta of a Hindu undivided family, is assessable as the income of the firm, or Hindu undivided family, as the case may be;
- (d) the income from a property, deposit, security, unit or share held in the name of a deductee is owned jointly by the deductee and other persons and the income is assessable in their hands in the same proportion as their ownership of the asset:

However, in such cases, the deductee should file a declaration with the deductor. Such declaration filed by the deductee should contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

Also, the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1). The deductor should issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and should keep the declaration in his safe custody.

Sub-rule (3) provides that the credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

Sub-rule (4) provides that credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of -

- (i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority; and
- (ii) the information in the return of income in respect of the claim for the credit,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

Rule 37-I provides for credit for tax collected at source for the purposes of section 206C(4).

Sub-rule (1) provides that the credit for tax collected at source and paid to the Central Government in accordance with provisions of section 260C, shall be given to the person from whom the tax has been collected, on the basis of the information relating to collection of tax at source furnished by the collector to the income-tax authority or the person authorized by such authority.

Sub-rule (2) provides that where tax has been collected at source and paid to the Central Government, credit for such tax shall be given for the assessment year for which the income is assessable to tax. Where tax has been collected at source and paid to the Central Government and the lease or license is relatable to more than one year, credit for tax collected at source shall be allowed across those years to which the lease or license relates in the same proportion.

Sub-rule (3) provides that the credit for tax collected at source and paid to the account of the Central Government shall be granted on the basis of -

- (i) the information relating to collection of tax furnished by the collector to the income-tax authority or the person authorized by such authority; and
- (ii) the information in the return of income in respect of the claim for the credit,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

11. Notification No. 37/2009 dated 21.4.2009

The CBDT has, through Notification No.10/2009 dated 19.1.09, notified the Income-tax (Third Amendment) Rules, 2009 which came into force from 1.4.2009. This notification had inserted "new commercial vehicles acquired on or after 1.1.2009 but before 1.4.2009 and put to use before 1.4.2009 for the purposes of business or profession" under the

head MACHINERY AND PLANT, which would be eligible for depreciation at the rate of 50%.

Subsequently, the CBDT has, through this notification notified that the benefit of increased depreciation of 50% on commercial vehicles be extended to such vehicles acquired and put to use before 1st October 2009. Therefore, the commercial vehicles acquired on or after 1.1.2009 but before 1.10.2009 and put to use before 1.10.2009 will be eligible for depreciation at the rate of 50%.