

PAPER – 7 : DIRECT TAXES

QUESTIONS

1. Residential Status and Scope of total income

Mr. Rajiv, an employee of the Central Government, on deputation since the last two years, received salary of Rs.8 lakh for the P.Y.2009-10 for services rendered in USA. In addition, he was also paid Rs.4.50 lakh in USA by the Government towards allowances and perquisites. He came to India for one month vacation in June, 2009 during the said year. Discuss the taxability of the above income during the P.Y.2009-10 in the hands of Mr. Rajiv.

2. Incomes which do not form part of total income

- (i) Mr. Ganesh opted for the voluntary retirement scheme and received Rs.12 lakh as VRS compensation during the P.Y.2009-10. He claimed exemption of Rs.5 lakh under section 10(10C) and relief under section 89 in respect of the balance Rs.7 lakh. Discuss whether such tax treatment of VRS compensation is correct in law.
- (ii) What are the conditions to be satisfied by an electoral trust for claiming the benefit of exemption under section 13B? Is such benefit available in respect of all income earned by an electoral trust? Discuss.

3. Charitable or religious trusts and institutions

An institution, with the main object of preservation of wildlife, derives income of Rs.12 lakh from an activity in the nature of trade for the first time during the previous year 2009-10. It uses such income to promote its main object of preservation of wildlife. Explain whether the institution would continue to retain its “charitable” status. Would your answer be different if the main object of the institution was advancement of object of general public utility?

4. Charitable or religious trusts and institutions

A trust, established wholly for charitable purpose, received voluntary contributions of Rs.100 lakh during the P.Y.2009-10, out of which Rs.40 lakh were anonymous donations. It applied Rs.50 lakh for the purposes of the trust during the year. Compute the tax payable by the trust for the A.Y.2010-11.

5. Salaries

X Ltd. provided the following perquisites to its employee Mr.Y for the P.Y.2009-10 –

- (1) Accommodation taken on lease by X Ltd. for Rs.15,000 p.m. Rs.5,000 p.m. is recovered from the salary of Mr. Y.
- (2) Furniture, for which the hire charges paid by X Ltd. is Rs.3,000 p.m. No amount is recovered from the employee in respect of the same.
- (3) A Santro Car which is owned by X Ltd. and given to Mr.Y to be used both for official and personal purposes. All running and maintenance expenses are fully met by the employer. He is also provided with a chauffeur.

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(4) A gift voucher of Rs.10,000 on his birthday.

Compute the value of perquisites chargeable to tax for the A.Y.2010-11, assuming his salary for perquisite valuation to be Rs.10 lakh.

6. Income from house property

Mr. Albert has two houses, one is occupied by him for his residence in Delhi and the other is in Noida, occupied by his parents. The particulars of the houses for the P.Y.2009-10 are as under:

Particulars	House I (Delhi)	House II (Noida)
Municipal valuation p.a.	1,25,000	2,75,000
Fair rent p.a.	1,10,000	3,00,000
Standard rent p.a.	1,00,000	2,50,000
Municipal taxes paid during the year	10%	6%
Interest on money borrowed for repair of property during the current year	-	40,000

Compute Mr. Albert's income from house property for A.Y.2010-11 and suggest which house should be opted by him to be assessed as self-occupied so that his tax liability is minimum.

7. Profits and gains of business or profession & Set-off and Carry forward of losses

A Ltd., engaged in the business of trading agricultural products, earned income of Rs.50 lakh (net income after providing for all admissible deductions) from such business for the P.Y.2009-10.

It commenced operations of the business of operating warehousing facilities for storing agricultural produce on 1st April, 2009. The company incurred capital expenditure of Rs.25 lakh during the period January to March, 2009 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2009. Further, during the financial year 2009-10, it incurred capital expenditure of Rs.100 lakh (out of which Rs.70 lakh was for acquisition of land) exclusively for the above business. The net income from this business for the P.Y.2009-10 is Rs.40 lakh, before providing for deduction under section 35AD.

Compute the total income of A Ltd. for the A.Y.2010-11 and the loss, if any, to be carried forward.

8. Profits and gains of business or profession

Alpha Ltd. incurred expenditure of Rs.5 lakh in connection with the issue of rights shares and Rs.4 lakh in connection with the issue of bonus shares during the year ending 31.3.2010. The company claims the expenditure of Rs.9 lakh as deduction while computing its business income for the A.Y.2010-11. Is the claim of Alpha Ltd. tenable in law? Discuss.

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9. Profits and gains of business or profession

Explain, with the aid of recent case laws, whether the following expenditure are deductible while computing the income under the head “Profits and gains of business or profession” –

- (1) Commitment charges payable in connection with issue of debentures to meet the working capital needs of an existing business;
- (2) Advertisement expenditure for promoting ongoing products of the assessee; and
- (3) Expenditure on display of glow sign and neon signs incurred every year to facilitate business operations.

10. Capital Gains

- (i) Mr. Ashok subscribed to 1000 shares of X Ltd. (Face Value of Rs.100 each) by paying the application money of Rs.10,000 (Rs.10 per share). He was allotted 800 shares against the 1000 shares applied for. However, thereafter he failed to pay the allotment money of Rs.50 per share. The company therefore cancelled the allotment and forfeited the share application money. Can Mr. Ashok treat the loss on forfeiture as a loss under the head “Capital Gains”? Discuss with the aid of a recent case law. Would the forfeited share application money be subject to tax in the hands of X Ltd.?
- (ii) Mr. Anand converted the capital asset, acquired by him in the year 2000, into stock-in-trade on 3rd February, 2009. He sold the stock-in-trade so converted, on 12th March, 2010. What are the tax implications of the transactions of conversion and subsequent sale under the Income-tax Act, 1961? Discuss.

11. Capital Gains and Income from other sources

During the P.Y.2009-10, the following were received by Ms. Poorna -

- (1) Cash gift of Rs.51,000 on her birthday, 14th April, 2009 from her friend.
- (2) Vacant plot of land at Agra gifted by her fiancé on 28th August, 2009. The stamp duty value on that date was Rs.2,50,000.
- (3) Jewellery received as a gift from her fiancé on 5th October, 2009. As per the report of the registered valuer, the jewellery would fetch Rs.75,000 if sold in the open market on that date.
- (4) Cash gift of Rs.25,000 each from her four friends on the occasion of her wedding on 3rd December, 2009.
- (5) Jewellery received as gift from her husband on 4th December, 2009. As per the report of the registered valuer, the jewellery would fetch Rs.2,00,000 if sold in the open market on that date.

She purchased 1,000 shares of XYZ Ltd. @ Rs.300 each on 4th November, 2009 from her friend. The fair market value of each share on that date was Rs.400. She sold these shares on 3rd March, 2010 for Rs.450 each.

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Compute the income of Ms. Poorna chargeable under the head "Income from other sources" and "Capital Gains" for A.Y.2010-11.

12. Deductions from Gross Total Income

- (a) During the P.Y.2009-10, ABC Ltd., an Indian company,
- (1) contributed a sum of Rs.2 lakh to an electoral trust; and
 - (2) incurred expenditure of Rs.25,000 on advertisement in a brochure of a political party.
- Is the company eligible for deduction in respect of such contribution/expenditure? If so, what is the quantum of deduction?
- (b) "The scope of deduction under section 80-IB(11A) has been expanded by the Finance (No.2) Act, 2009" – Elucidate. Also, state the quantum of deduction and the period for which the same is available.

13. Assessment of Firms

ABC & Co., a partnership firm, having three partners A, B and C sharing profits equally, engaged in the approved business of running a hotel, provides the following information relating to the year ending on 31.3.2010:

Net profit as per profit and loss account is Rs.30 lakh, after charge of the following expenses:

- (i) Salary of Rs.5 lakh each to partners A, B and C, who are working partners, in accordance with the partnership deed.
- (ii) Interest@15% amounting to Rs.3 lakh on loan given by partner B. Such interest payment is authorized by the partnership deed.
- (iii) Depreciation on hotel building, having written down value of Rs.50 lakh on 1.4.2009, was charged by treating the same as plant and machinery.
- (iv) Depreciation amounting to Rs.15,000 on motor car bought and used exclusively for business purposes, but not registered in the name of the firm.
- (v) Expenses of Rs.2 lakh incurred for the purpose of promoting family planning among its employees.
- (vi) Payment of Rs.65,000 for an advertisement published in the brochure released by Congress Party.
- (vii) Liquor imported for Rs.15 lakh last year and available in the stock on 1.4.2009 were confiscated by the Government authority and therefore, were written off.
- (viii) Expenses of Rs.10 lakh incurred on replacement of carpets in the foyer and reception.
- (ix) An amount aggregating to Rs.2 lakh was paid in cash during the year (each individual payment exceeding Rs.25,000) to the supplier of marine products (fish, prawn, shrimp etc.), who is the head of fishermen. Further, an amount aggregating

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to Rs.5 lakh was paid in cash during the year (each individual payment exceeding Rs.30,000) to the supplier of marine products (fish, prawn, shrimp etc.), who is a trader.

Compute the income chargeable to tax for A.Y. 2010-11 and give reasons in brief for treatment given to each of the items.

14. Assessment of Companies

The accounts of a public company have been prepared in accordance with provisions of Parts II and III of Schedule VI to the Companies Act and its Profit and Loss Account laid before the Annual General Meeting for the previous year ending 31st March, 2010 shows a net profit of Rs.40 lakh. The following information relevant for the purpose of computing its assessable income has been extracted from a scrutiny of the profit and loss account:

Credits in Profit and Loss A/c

(1)	Profit from an undertaking qualifying for deduction under section 80-IB (net)	25,00,000
(2)	Profit from an undertaking qualifying for deduction under section 10B (gross)	21,00,000
(3)	Long-term capital gains (Rs.2 lakh represents gains from transfer of shares of a company listed in a recognized stock exchange, on which STT has been paid and Rs.3 lakh represents gains from transfer of other long-term capital assets).	5,00,000

Debits in Profit and Loss A/c

(1)	Expenditure relating to the undertaking qualifying for deduction under section 10B	12,00,000
(2)	Provision for doubtful debts	1,22,000
(3)	Provision for gratuity based on actuarial valuation	3,40,000
(4)	Proposed dividend	5,00,000
(5)	Preference dividend	6,00,000
(6)	Current year depreciation	8,00,000

Depreciation admissible under the Income-tax Act, 1961, for the previous year is Rs.12,00,000. The capital gain of Rs.3 lakh has been invested in bonds of National Highways Authority of India (NHAI) within six months from the date of transfer. The figures of unabsorbed depreciation and business loss as per books are Rs.10 lakh and Rs.12 lakh, respectively. There is no loss or unabsorbed depreciation to be carried forward and adjusted as per income-tax assessment.

You are required to compute the total tax liability of the company for the A.Y. 2010-11.

15. Income-tax Authorities

An Assessing Officer entered the business premises of a person, in respect of whom he exercises jurisdiction, at 7 p.m. for the purpose of collecting information, which may be

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useful for the purposes of the Act. The business premises are kept open for business every day between 10 a.m. and 8 p.m. The businessman claims that the Assessing Officer could not enter the business premises after sunset. Is his claim valid?

Can the Assessing Officer take away with him the books of account kept at the business premises? Discuss.

16. Assessment Procedure

Mr. Harish, carrying on the business of trading in spares, filed his return of income for the A.Y.2010-11 on 30th July, 2010. He had not claimed deduction under section 80D in respect of medical insurance premium of Rs.18,000 paid for his father, who is a senior citizen, in the said return on the belief that he was not entitled to the same since his father was not dependent on him. Later, he came to know of the amendment by the Finance Act, 2008, consequent to which he could claim deduction in respect of such premium paid for his father, even if his father was not dependent on him. Therefore, he claimed the said deduction through a letter addressed to the Assessing Officer. The Assessing Officer completed the assessment of Mr. Harish without allowing the deduction under section 80D. Discuss the correctness of the action of the Assessing Officer.

17. Appeals and Revision

Discuss the correctness or otherwise of the following propositions in the context of the Income-tax Act, 1961:

- (a) The Commissioner (Appeals) has wide powers to enhance the assessment.
- (b) The Appellate Tribunal can re-appreciate evidence at the time of hearing of rectification application.

18. Collection and Recovery of tax

- (a) What are the adjustments which can be made during the computerized processing of statements of tax deducted at source?
- (b) "There is no time limit for passing an order under section 201(1) holding a person to be an assessee in default" – Discuss the correctness or otherwise of this statement.

19. Collection and Recovery of tax

- (a) Is it mandatory for the deductee to furnish his permanent account number (PAN) to the deductor? If so, what are the consequences of non-furnishing of PAN in such cases?
- (b) "The definition of "work" under section 194C would include every case of manufacturing or supplying a product according to the requirement or specification of a customer" – Discuss the correctness or otherwise of this statement.

20. Penalties

Is penalty leviable under the provisions of the Income-tax Act, 1961 in the following cases? If so, state the quantum of penalty.

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- (i) Failure to furnish Annual Information Return within the time prescribed under the Act.
- (ii) Failure to keep and maintain books of accounts as required under section 44AA.
- (iii) Failure to comply with a notice issued under section 142(1).

21. Transfer Pricing

Examine the price which would be deemed as the arm's length price in the following cases –

(1) Case I

Price at which the international transaction was effected – Rs.10 lakh

Arm's length price determined by applying the arithmetical mean – Rs.11 lakh

(2) Case II

Price at which the international transaction was effected – Rs.40 lakh

Arm's length price determined by applying the arithmetical mean – Rs.41 lakh

22. Miscellaneous Provisions

Write short notes on the following –

- (1) Document Identification Number; and
- (2) Mode and manner of service of notice or requisition under the Income-tax Act, 1961.

23. Wealth-tax

In respect of defaults committed under Wealth-tax Act, 1957, penalty proceedings are initiated against the deceased prior to his death. Can the Assessing Officer continue the proceedings and levy penalty on the legal representative?

24. Wealth-tax

The net wealth of a firm consisting of three partners X, Y & Z, sharing profits in the ratio of 2:2:1 and having a capital contribution of Rs.20,00,000, Rs.15,00,000 and Rs.10,00,000, respectively, is as under:

	Rs.
(i) Value of assets located outside India	50,00,000
(ii) Value of assets located in India	70,00,000
(iii) Debts incurred in relation to assets in India	20,00,000

Determine the value of interest of the partners in the firm under the Wealth-tax Act, 1957.

25. Wealth-tax

ABC Limited is engaged in the construction of residential flats. For the valuation date 31.3.2010, it furnishes the following data and requests you to compute the taxable wealth:

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- (i) Land in urban area (Construction is not permitted as per the municipal laws in force) Rs.50,00,000
- (ii) Motor-cars (in use of the company) Rs.15,00,000
- (iii) Jewellery (Investment) Rs.22,00,000. Loan taken for purchasing the same Rs.12,00,000
- (iv) Cash Balance (as per books) Rs.3,40,000
- (v) Bank Balances Rs.3,75,000
- (vi) Guest House (situated in a rural area) Rs.8,00,000
- (vii) Residential flat occupied by the Managing Director Rs.14,00,000. The managing director is on whole time appointment, drawing remuneration of Rs.3,50,000 per month.
- (viii) Residential house let out on hire for 280 days Rs.13,00,000

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

SUGGESTED ANSWERS/HINTS

1. Mr. Rajiv is a non-resident for the P.Y.2009-10, since his stay in India is only for 30 days during the P.Y.2009-10. As per section 5(2), the scope of total income in the case of a non-resident would include the following -

- (i) income received or deemed to be received in India in the previous year; and
- (ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year.

As per section 9(1)(iii), income chargeable under the head 'Salaries' which is payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India. Therefore, salary of Rs.8 lakh would be taxable in the hands of Mr. Rajiv even if he is a non-resident, assuming that he is a citizen of India. However, allowances and perquisites paid outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7). Therefore, Rs.4.50 lakh would be exempt under section 10(7).

2. (i) An employee opting for voluntary retirement scheme receives a lump-sum amount in respect of his balance period of service. This amount is in the nature of advance salary. Under section 10(10C), an exemption of Rs.5 lakh is provided in respect of such amount to mitigate the hardship on account of the employee going into the higher tax bracket consequent to receipt of the amount in lump-sum upon voluntary retirement.

However, some tax payers have resorted to claiming both the exemption under section 10(10C) (upto Rs.5 lakh) and relief under section 89 (in respect of the amount received in excess of Rs.5 lakh). This tax treatment has been supported by many court judgements also, for example, the Madras High Court ruling in *CIT v.*

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G.V. Venugopal (2005) 273 ITR 0307 and CIT v. M. Abdul Kareem (2009) 311 ITR 162 and the Bombay High Court ruling in CIT v. Koodathil Kallyatan Ambujakshan (2009) 309 ITR 113 and CIT v. Nagesh Devidas Kulkarni (2007) 291 ITR 0407. However, this does not reflect the correct intention of the statute.

Therefore, in order to convey the true legislative intention, section 89 has been amended to provide that no relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or a scheme of voluntary separation (in the case of a public sector company), if exemption under section 10(10C) in respect of such compensation received on voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee in respect of the same assessment year or any other assessment year.

Correspondingly, section 10(10C) has been amended to provide that where any relief has been allowed to any assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under section 10(10C) shall be allowed to him in relation to that assessment year or any other assessment year.

Therefore, in view of the above amendment, Mr. Ganesh's tax treatment is incorrect. He has to either opt for exemption of upto Rs.5 lakh under section 10(10C) or relief under section 89(1), but not both.

- (ii) An electoral trust approved by the CBDT in accordance with the scheme to be made by the Central Government is eligible for exemption under new section 13B in respect of voluntary contribution received by it.

The voluntary contribution received by such electoral trust shall be treated as its income under section 2(24), but shall be exempt under new section 13B, if the trust distributes to a registered political party during the year, 95% of the aggregate donations received by it during the year along with the surplus, if any, brought forward from any earlier previous year.

Another condition for availing the benefit under this section is that the electoral trust should function in accordance with the rules made by the Central Government.

The benefit under section 13B is available only in respect of voluntary contribution received by an electoral trust and not in respect of its other income.

3. Section 2(15) defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. However, the "advancement of any other object of general public utility" shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or 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.

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Section 2(15) has been amended by the Finance (No.2) Act, 2009 to specifically include within its ambit, the preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest. Prior to the amendment, these would have been included under "advancement of any other object of general public utility" and hence, would have been subject to the restriction mentioned above. However, now, they would not be subject to the restrictions which are applicable to the "advancement of any other object of general public utility".

Therefore, an institution with the main object of preservation of wild life would continue to retain its "charitable status", even if it derives income from an activity in the nature of trade.

However, if an institution having as its main object "advancement of any other object of general public utility", derives income of Rs.12 lakh from an activity in the nature of trade during a financial year, it would lose its "charitable status" for that year.

4. Computation of tax payable by the charitable trust for the A.Y.2010-11

Particulars	Rs. in lakh
(1) Voluntary contributions	100
Less: Anonymous donations	40
	<u>60</u>
Less: 15% exempt without being spent	9
	<u>51</u>
Less: Amount spent for the objects of the trust	50
	<u>1</u>
Tax on Rs.1 lakh (which is less than the basic exemption limit)	Nil
 (2) Anonymous donations taxable under section 115BBC	
Anonymous donations	40
Less: Exemption limit	
(i) Rs.5 lakh i.e., 5% of total donations of Rs.100 lakh	
(ii) Rs.1 lakh	
Higher of (i) and (ii) would be exempted	5
	<u>35</u>
Tax on Rs.35 lakh @ 30%	10.50
	<u>10.50</u>
Add: Education cess @ 2%	0.21
Secondary and higher education cess@1%	0.11
Total tax liability	<u>10.82</u>

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5. Computation of the value of perquisites chargeable to tax in the hands of Mr. Y for the A.Y.2010-11

Particulars	Amount in Rs.
(1) Value of concessional accommodation	
Actual amount of lease rental paid by X Ltd.	1,80,000
15% of salary i.e., 15% of Rs.10,00,000	1,50,000
Lower of the above	1,50,000
Less: Rent paid by Mr.Y (5,000 × 12)	60,000
	90,000
Add: Hire charges paid by X Ltd. for furniture provided for the use of Mr.Y	36,000
	1,26,000
 (2) Perquisite value of santro car owned by X Ltd. and provided to Mr.Y for his personal and official use [(1,800+900) × 12]	32,400
 (3) Value of gift voucher	10,000
Value of perquisites chargeable to tax	1,68,400

6. Computation of income from house property of Mr. Albert for A.Y. 2010-11

Let us first calculate the income from each house property assuming that they are deemed to be let out.

Particulars	Amount in Rs.
	HOUSE I (DELHI)
	HOUSE II (NOIDA)
Gross Annual Value (GAV)	
Annual Letting Value (ALV) is the GAV of house property	
ALV = Higher of municipal value and fair rent, but restricted to standard rent	1,00,000
	2,50,000
Less: Municipal taxes (paid by the owner during the previous year)	12,500
	16,500
Net Annual Value (NAV)	87,500
Less: Deductions under section 24	2,33,500
(a) 30% of NAV	26,250
(b) Interest on borrowed capital	70,050
	- 40,000
Income from house property	61,250
	1,23,450

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OPTION 1 (House I – self-occupied and House II – deemed to be let out)

If House I is opted to be self-occupied, the income from house property shall be –

Particulars	Amount in Rs.
House I (Self-occupied)	Nil
House II (Deemed to be let-out)	1,23,450
Income from house property	<u>1,23,450</u>

OPTION 2 (House I – deemed to be let out and House II – self-occupied)

If House II is opted to be self-occupied, the income from house property shall be –

Particulars	Amount in Rs.
House I (Deemed to be let-out)	61,250
House II (Self-occupied) (interest deduction restricted to Rs.30,000)	-30,000
Income from house property	<u>31,250</u>

Since Option 2 is more beneficial, Mr. Albert should opt to treat House II (House at Noida) as self-occupied and House I (House at Delhi) as deemed to be let out. His income from house property would be Rs.31,250 for the A.Y. 2010-11.

7. The Finance (No.2) Act, 2009 has introduced investment-linked tax incentives for specified businesses, which includes setting-up and operating warehousing facilities for storing agricultural produce, by insertion of new section 35AD.

100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income. However, expenditure incurred on acquisition of any land, goodwill or financial instrument would not be eligible for deduction.

Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business. A condition has been inserted that such amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

Therefore, the amount of deduction allowable under section 35AD for A.Y.2010-11 would be –

Particulars	Rs.
Capital expenditure incurred during the P.Y.2009-10 (excluding the expenditure incurred on acquisition of land) = Rs.100 lakh – Rs.70 lakh	30 lakh
Capital expenditure incurred prior to 1.4.2009 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2009	<u>25 lakh</u>
Total deduction under section 35AD for A.Y.2010-11	<u>55 lakh</u>

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Computation of total income of A Ltd. for the A.Y.2010-11

Particulars	Rs.	Rs.
Income from the business of trading agricultural products		50,00,000
Income from the specified business of operating warehousing facilities for storing agricultural produce	40,00,000	
Less: Deduction under section 35AD (as calculated above)	55,00,000	
Loss from specified business to be carried forward	(15,00,000)	
Total Income		<u>50,00,000</u>

As per section 73A(1), any loss computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business. Therefore, in view of the provisions of section 73A(1), the loss of Rs.15 lakh from the specified business cannot be set-off against income of Rs.50 lakh from other businesses. Such loss has to be carried forward to be set-off against profit from any specified business referred to in section 35AD in the next assessment year.

8. The issue as to whether the expenditure in connection with the issue of shares would be allowable as a business expenditure was decided by the Supreme Court in the case of *Brooke Bond India Ltd. v. CIT* (1997) 225 ITR 798, where it was held that expenditure in connection with issue of shares, with a view to increase its share capital, is directly related to the expansion of the capital base of the company and is a capital expenditure. Hence, expenditure in connection with the issue of rights shares is not allowable as a business expenditure.

However, the same is not true in respect of expenditure in connection with the issue of bonus shares. The Supreme Court, in *CIT v. General Insurance Corporation* (2006) 286 ITR 232, observed that there is no inflow of fresh funds or increase in capital employed on account of issue of bonus shares. There is merely a reallocation of company's fund on account of issue of bonus shares by capitalization of reserves. Therefore, the company has not acquired a benefit or advantage of enduring nature. The total funds available with the company will remain the same and there is no change in the capital structure of the company consequent to the bonus issue. Thus, issue of bonus shares does not result in the expansion of capital base of the company. Therefore, the expenditure incurred by the company on account of stamp duty and registration fees for the issue of bonus shares is allowable as revenue expenditure.

Therefore, in this case, the claim of Alpha Ltd. is not tenable in law, since the expenditure of Rs.5 lakh in connection with the issue of rights shares is not allowable while computing business income. However, the expenditure of Rs.4 lakh incurred in connection with the issue of bonus shares is allowable as deduction while computing business income for the A.Y.2010-11.

9. (1) In *CIT v. Mihir Textiles Ltd.* (2009) 316 ITR 403, the Gujarat High Court held that commitment charges payable in connection with issue of debentures for the purposes of financing the working capital needs of its existing business have been

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incurred wholly and exclusively for the purposes of the business of the assessee, and is, hence, allowable as deduction.

- (2) In *CIT v. Geoffrey Manners and Co. Ltd.* (2009) 315 ITR 134, the Bombay High Court observed that the advertisement expenditure cannot be disallowed where it is incurred for the purpose of promoting on-going products of the assessee and there is no enduring benefit. In such a case, the same shall be treated as revenue expenditure.
- (3) In *CIT v. Liberty Group Marketing Division* (2009) 315 ITR 125 (P&H), the High Court observed that the expenditure on display of glow sign and neon signs does not bring into existence an asset or advantage for the enduring benefit of the business. The expenditure is incurred to facilitate business operation and not with an object to acquire an asset of enduring nature. Therefore, such expenditure is revenue in nature and is, hence, deductible.
10. (i) This issue was considered by the Karnataka High Court in *DCIT v. BPL Sanyo Finance Ltd.* (2009) 312 ITR 63. The High Court held that when an assessee commits a default in payment of allotment money and consequently the share application money is forfeited by the company, it would be extinguishment of a right and consequently, result in short-term capital loss.

Consequent to Mr. Ashok's default in not paying the allotment money, his right in the shares stood extinguished on forfeiture by the company. The loss suffered by Mr. Ashok, i.e., the non-recovery of share application money, was consequent to the forfeiture of his right in the shares and has to be understood to be within the scope and ambit of transfer.

Therefore, the loss on forfeiture would be treated as a capital loss in the hands of Mr. Ashok.

Further, the share application money forfeited and credited to capital reserve shall not be taxable in the hands of X Ltd.

- (ii) Conversion of a capital asset into stock-in-trade falls within the definition of transfer under section 2(47). Therefore, in this case, transfer has taken place during the previous year 2008-09. However, as per section 45(2), the capital gains liability arises only in the year in which the stock-in-trade is sold i.e. previous year 2009-10 in this case. It is a long-term capital gain since the asset was acquired in 2000. The fair market value (FMV) on the date of conversion i.e. on 3.2.2009 is deemed to be the full value of consideration accruing as a result of transfer of the capital asset.

Therefore, in the year of sale of stock-in-trade (i.e. P.Y. 2009-10), both business income and capital gains would arise.

Business income = Sale consideration of stock-in-trade – FMV on the date of conversion

Capital gains = FMV on the date of conversion – Indexed cost of acquisition / improvement

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11. Computation of “Income from other sources” of Ms. Poorna for the A.Y. 2010-11

Particulars	Rs.
(1) Cash gift received before 1.10.2009 from a friend is taxable under section 56(2)(vi) since it exceeds Rs.50,000	51,000
(2) Value of land at Agra gifted by her fiancé on 28 th August, 2009 is not taxable since only gift of property after 1 st October, 2009 is chargeable to tax under section 56(2)(vii).	-
(3) Jewellery gifted by her fiancé on 5 th October, 2009 is taxable since the gift was made after 1 st October, 2009 and the aggregate fair market value exceeds Rs.50,000. Fiancé is not included in the definition of relative.	75,000
(4) Cash gift aggregating to Rs.1 lakh received from her friends is exempt as it is received on the occasion of her marriage.	-
(5) Jewellery gifted by her husband on 4 th December, 2009 is not taxable since it is a gift from her relative.	-
(6) Shares of XYZ Ltd. purchased on 4 th November, 2009. The provisions of section 56(2)(vii) are attracted since the transfer of shares is for inadequate consideration and the difference exceeds Rs.50,000.	
Fair Market Value	4,00,000
Less: Consideration	3,00,000
	1,00,000
Income from Other Sources	2,26,000

Computation of “Capital Gains” of Ms. Poorna for the A.Y. 2010-11

Sale Consideration of shares of XYZ Ltd.	[1,000 × 450]	4,50,000
Less: Cost of acquisition [deemed to be the fair market value considered for the purpose of levy of tax under section 56(2)(vii) [1,000 × 400]		4,00,000
		50,000

Short-term capital gains

12. (a) An Indian company is eligible for deduction under section 80GGB in respect of any sum contributed by it in the previous year to any political party or an electoral trust. Further, the word “contribute” in section 80GGB has the meaning assigned to it in section 293A of the Companies Act, 1956, and accordingly, it includes the amount of expenditure incurred on advertisement in a brochure of a political party.

Therefore, ABC Ltd. is eligible for a deduction of Rs.2,25,000 under section 80GGB in respect of sum of Rs.2 lakh contributed to an electoral trust and Rs.25,000 incurred by it on advertisement in a brochure of a political party.

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It may be noted that there is a specific disallowance under section 37(2B) in respect of expenditure incurred on advertisement in a brochure of a political party. Therefore, the expenditure of Rs.25,000 would be disallowed while computing business income/gross total income. However, the said expenditure incurred by an Indian company is allowable as a deduction from gross total income under section 80GGB.

- (b) An undertaking deriving profit from the business of processing, preservation and packaging of fruits and vegetables or from the integrated business of handling, storage and transportation of foodgrains is eligible for deduction under section 80-IB(11A).

The benefit of deduction under section 80-IB(11A) has now been extended to an undertaking deriving profit from the business of processing, preservation and packaging of meat and meat products or poultry or marine or dairy products, if it begins to operate such business on or after 1.4.2009

The amount of deduction shall be 100% of the profits and gains derived from such business for 5 assessment years beginning with the initial assessment year i.e. the assessment year relevant to the previous year in which the undertaking begins such business. Thereafter, the deduction allowable is 25% (30% in the case of a company). The total period of deduction should not exceed 10 consecutive assessment years.

13. Computation of taxable income of M/s.ABC & Co. for the A.Y.2010-11

Particulars	Amount in Rs.
Income from business and profession	
Net profit as per profit and loss account	30,00,000
Add : Items charged in profit and loss account which are not allowable	
Salary to working partners (to be considered separately)	15,00,000
Interest in excess of 12% paid to partner B ($3,00,000 \times 3/15$)	60,000
Excess depreciation on building @ 5%(i.e. 15% - 10%) on Rs.50 lakh	2,50,000
Expenses on promoting family planning amongst the employees	2,00,000
Advertisement in brochure of a political party	65,000
Amount paid to a trader of marine products in cash	5,00,000
	25,75,000
Book profits	55,75,000
Less : Salary to working partners is subject to the limits specified in section 40(b)(v)	15,00,000
On the first 3 lakh of book profit [$3,00,000 \times 90\%$]	2,70,000
On the balance Rs.52.75 lakh [$52,75,000 \times 60\%$]	31,65,000
	34,35,000
Total Income	40,75,000

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Reasons for treatment given to each of the items specified:-

- (i) Salary to working partners in accordance with the partnership deed is subject to the limits specified in section 40(b)(v) i.e., on the first Rs.3 lakh of book profit or in case of loss, the limit would be the higher of Rs.1,50,000 or 90% of book profit and on the balance of book profit, the limit would be 60%. In this case, since the salary paid is within the limits specified in section 40(b)(v), the entire salary of Rs.15 lakh is allowable as deduction.
- (ii) Interest payment to a partner exceeding 12% p.a. is to be disallowed as per section 40(b)(iv), even if the same is authorized by the partnership deed.
- (iii) Hotel building does not constitute plant and machinery and therefore, depreciation chargeable thereon is 10%. However, depreciation has been charged in the profit and loss account at the rate applicable to plant and machinery i.e. @ 15%. Accordingly, the excess depreciation charged in the profit and loss account @ 5% (15%-10%) has to be added to income.
- (iv) Depreciation on motor car bought and used exclusively for the purposes of business is allowable though not registered in the name of the firm in view of the ratio of the decision of the Supreme Court in *Mysore Minerals Ltd. v. CIT* (1999) 239 ITR 775.
- (v) Expenses on promoting family planning amongst employees is allowable under section 36(1)(ix) *only to a company assessee*. In this case, since the assessee is a firm, such expenses are not allowable and therefore, the same has to be added back.
- (vi) Advertisement of any nature given in a brochure published by a political party is not allowable as per section 37(2B).
- (vii) The Apex Court in case of *Dr. T.A. Quereshi vs CIT* (2006) 287 ITR 0547 observed that loss of stock-in-trade has to be considered as a trading loss. Explanation to section 37(1) is not relevant here since it is not a case of business expenditure but one of business loss. Business loss is allowable on ordinary commercial principles.
Therefore, since liquor forms part of stock-in-trade of the firm, confiscation of the same has to be allowed as a business loss.
- (viii) The expenditure incurred on replacement of carpets by a hotel are in the nature of expenses incurred for the purposes of business and are allowable as revenue expenses under section 37(1).
- (ix) The amount of Rs.2 lakh paid in cash to the head of fishermen for supply of marine products would be covered under the exception contained in Rule 6DD(e)(iii), which refers to payment made to the producer for the purchase of fish or fish products. Hence, this amount would not attract disallowance under section 40A(3), even though each individual cash payment exceeds Rs.20,000.

However, the amount of Rs.5 lakh paid in cash to a trader of marine products would not be covered under the above exception, and would attract disallowance under section 40A(3), since each individual cash payment exceeds Rs.20,000.

This clarification has been given by the CBDT in its Circular No.10/2008 dated 5.12.2008.

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14. Computation of total income for the A.Y.2010-11

Particulars	Rs.	Rs.
Net Profit as per Profit and Loss account		40,00,000
<i>Add :</i> Expenses not allowable:		
Proposed dividend	5,00,000	
Preference dividend	6,00,000	
Provision for gratuity [not allowable as per section 40A(7), assuming that it is not falling under the exceptions stated therein]	3,40,000	
Provision for doubtful debts [allowable only in case of specified banks and financial institutions]	1,22,000	
		15,62,000
		55,62,000
<i>Less :</i> Expenses deductible :		
Depreciation for the year additionally allowable (Rs.12,00,000 – 8,00,000)		4,00,000
		51,62,000
<i>Less :</i> LTCG to be considered under the respective head		5,00,000
		46,62,000
<i>Less :</i> Exemption under section 10B (21,00,000 – 12,00,000)		9,00,000
Profit and Gains from business		37,62,000
 Capital Gains	5,00,000	
Less: Exempt under section 10(38)	2,00,000	
		3,00,000
<i>Less :</i> Exemption under section 54EC for investment in bonds of NHAI within six months	3,00,000	Nil
		37,62,000
<i>Less :</i> Deduction under section 80-IB (assuming 100% deduction is allowable)		25,00,000
Total Income		12,62,000

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Computation of book profit under section 115JB

Particulars	Rs.	Rs.
Net Profit as per Profit & Loss Account		40,00,000
Add: Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB		
Provision for doubtful debts	1,22,000	
Dividend paid or proposed		
Proposed dividend	5,00,000	
Preference dividend	6,00,000	11,00,000
Depreciation	8,00,000	20,22,000
		60,22,000
Less: Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB		
Depreciation (excluding depreciation on account of revaluation of fixed assets)	8,00,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less	10,00,000	18,00,000
Book Profit		42,22,000
15% of book profit		6,33,300
Add: Education cess @ 2%	12,666	
Secondary and higher education cess @ 1%	6,333	18,999
Tax liability under section 115JB		6,52,299
Total income computed as per the provisions of the Income-tax Act, 1961	12,62,000	
Tax payable @ 30%		3,78,600
Add: Education cess @ 2%	7,572	
Secondary and higher education cess @ 1%	3,786	11,358
Tax Payable as per the Income-tax Act, 1961		3,89,958

Since tax payable on income computed as per the provisions of the Income-tax Act, 1961 is less than 15% of the book profit, the book profit of Rs.42,22,000 would be deemed to

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be the total income and tax is payable @15% thereon plus 2% education cess and 1% secondary and higher education. The total tax liability would be Rs.6,52,300.

Notes:

- (i) Income from new industrial undertaking qualifying for deduction under section 80-IB will not be reduced in computing book profit under section 115JB.
 - (ii) Capital gains should not be excluded for the purposes of computing book profit [*CIT v. Veekaylal Investment Co. (P) Ltd (2001) 249 ITR 597(Bom.)*].
 - (iii) Brought forward depreciation or business loss, whichever is less is deductible while computing book profit under section 115JB.
 - (iv) Income from the units eligible for deduction under section 10B is not to be excluded while computing book profit.
 - (v) 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.
 - (vi) The Finance (No.2) Act, 2009 has now provided that the net profit should also be increased by the amount set aside as provision for diminution in the value of any asset, if the same has been debited to profit and loss account, for computing the book profit. Therefore, provision for doubtful debts has to be added back to net profit for computing book profit.
 - (vii) 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. 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.
- 15.** Section 133B(2) empowers an income-tax authority to enter any place of business during the hours at which such place is open for the conduct of business. The business premises is open from 10.00 a.m. to 8.00 p.m. for the conduct of business. The Assessing Officer entered the business premises at 7 p.m. which falls within the working hours. The claim made by the businessman to the effect that the Assessing Officer could not enter the business premises after sunset is not in accordance with law.
- Section 133B(3) provides that an income tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account. In view of this clear prohibition in section 133B(3), the proposed action of the Assessing Officer to take away with him the books of account kept at the business premises is not valid in law.
- 16.** A return of income filed within the due date may be revised by filing a revised return under section 139(5) where the assessee finds any omission or wrong statement in the

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original return subject to satisfying other conditions. There is no provision in the Income-tax Act, 1961 to make changes or modification in the return of income by filing a letter. In a case where a return of income has been filed within the due date, the only option available to the assessee to make an amendment to such return is by way of filing a revised return under section 139(5). Therefore, a fresh claim can be made before the Assessing Officer only by filing a revised return and not otherwise. The Supreme Court in *Goetze (India) Ltd. vs. CIT* (2006) 284 ITR 323 has held that there was no provision in the Income-tax Act, 1961 to allow an amendment in the return of income filed except by way of filing a revised return.

Therefore, the action of the Assessing Officer in this case is correct.

17. (a) The proposition is correct in law. The Supreme Court has, in *CIT vs. McMillan & Co.* (1958) 33 ITR 182 and *CIT vs. Kanpur Coal Syndicate* (1964) 53 ITR 225, held that in disposing of an appeal before him, the appellate authority can travel over a whole range of the assessment order. The scope of his powers is co-terminus with that of the Assessing Officer. He can do what the Assessing Officer can do and can also direct him to do what he has failed to do. He can assess income from sources which have been considered by the Assessing Officer but not brought to tax. He can consider every aspect of the assessment order and give appropriate reliefs.

Further, the Apex Court has, in the case of *Jute Corporation of India Ltd. vs. CIT* (1991) 187 ITR 688, held that the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. He also has the jurisdiction to permit the appellant to raise an additional ground, if the ground became available subsequently because of change in law or because of change in circumstances and such ground could not have been raised at the time of filing the return or at the time of making an assessment. He must be satisfied that the ground raised is *bona fide* and that the same could not have been raised earlier for good reasons.

Thus, the powers of the appellate authority in enhancing the assessment are very wide and plenary.

- (b) The proposition is not correct as per law. This is because section 254(2) specifically empowers the Appellate Tribunal to amend any order passed by it, on an application made by the assessee or Assessing Officer, with a view to rectifying any mistake apparent from record, at any time within 4 years from the date of the order sought to be amended.

The powers of the tribunal under section 254(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the record. The mistake has to be such that for which no elaborate reasons or inquiry is necessary. Accordingly, the re-appreciation of evidence placed before the Tribunal during the course of the appeal hearing is not permitted. It cannot re-adjudicate the issue afresh under the garb of rectification. This issue came up for consideration before the Punjab & Haryana High Court in the case of *CIT vs. Vardhman Spinning* (1997) 226 ITR 296. The Court observed that the jurisdiction to

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review or modify orders passed by the authorities under the Act cannot be inferred on the basis of a supposed inherent right.

- 18. (a)** The following adjustments can be made during the computerized processing of statements of tax deducted at source –

- (i) any arithmetical error in the statement; or
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the statement.

The term “an incorrect claim apparent from any information in the statement” shall mean such claim on the basis of an entry, in the statement, –

- (a) of an item, which is inconsistent with another entry of the same or some other item in such statement;
- (b) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of the Act.

- (b)** This statement is partly correct.

Section 201(3) provides that an order under section 201(1) deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India has to be passed within two years from the end of the financial year in which the statement of TDS is filed by the deductor. Where no such statement is filed, such order can be passed up till four years from the end of the financial year in which the payment is made or credit is given.

However, the time limit for passing an order deeming a person to be an assessee-in-default in respect of financial year 2007-08 and earlier years is 31st March, 2011.

Section 201(1) deems a person to be an assessee-in-default if he –

- (1) does not deduct tax; or
- (2) does not pay; or
- (3) after so deducting fails to pay

the whole or any part of the tax, as required by or under this Act.

The time limit has now been specified only for passing of orders relating to default contemplated in (1) above. There is no time limit specified in respect of the other defaults.

Therefore, no time-limits have been prescribed for the order under section 201(1) where –

- (1) the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,
- (2) the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perquisites,

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- (3) the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

19. (a) With a view to strengthening the PAN mechanism, new section 206AA has been inserted to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates –

- (1) the rate prescribed in the Act;
- (2) at the rate in force i.e., the rate mentioned in the Finance Act; or
- (3) at the rate of 20%.

Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.

If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the rate specified above.

These provisions will also apply to non-residents where tax is deductible on payments or credits made to them.

(b) This statement is not correct.

The definition of “work” under section 194C has been amended to resolve the issue as to whether outsourcing constitutes work or not. Accordingly, as per the new definition, the term “work” would include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.

However, “work” shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a contract for ‘sale’.

20. Yes, penalty is leviable under the provisions of the Income-tax Act, 1961 in all the three cases.

- (i) Penalty is leviable under section 271FA for failure to furnish Annual Information Return within the prescribed time. The penalty would be Rs.100 for every day during which the default continues.
- (ii) Penalty of Rs.25,000 is leviable under section 271A for failure to keep and maintain books of account as required under section 44AA.
- (iii) For failure to comply with a notice issued under section 142(1), penalty of Rs.10,000 is leviable under section 271(1)(b), in addition to tax, if any, payable.

21. Section 92C(2) has been amended to provide that where more than one price is determined by the most appropriate method, the arm’s length price shall be taken to be the arithmetical mean of such price. However, if the variation between the transfer price

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and arithmetical mean, so determined, is within 5% of the transfer price, then the transfer price shall be deemed to be the arm's length price and no adjustment is required to be made.

(1)	(2)	(3)	(4)	(5)
Case	Transfer Price (TP)	ALP determined by applying the arithmetical mean	TP plus 5% of TP	ALP for the Transfer Pricing Adjustment [If (3) > (4), then ALP = (3); If (4) > (3), then ALP = (2)]
I	Rs. 10 lakh	Rs.11 lakh	Rs.10.5 lakh	Rs.11 lakh
II	Rs. 40 lakh	Rs. 41 lakh	Rs.42 lakh	Rs.40 lakh

22. (a) Document Identification Number [Section 282B]

- (i) In order to improve the standards of service and transparency in the functioning of the Income-tax Department, a computer based system of allotment and quoting of Document Identification Number (DIN) in each correspondence sent or received by the Income-tax Department has been introduced to facilitate tracking of documents and alleviate the taxpayers grievances.
 - (ii) Accordingly, a new section 282B has been inserted with effect from 1st October, 2010, to provide that every income tax authority shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.
 - (iii) Where the notice, order, letter or any correspondence issued by any income-tax authority does not bear a Document Identification Number, such notice, order, letter or any correspondence shall be treated as invalid and shall be deemed never to have been issued.
 - (iv) Further, every document, letter or any correspondence, received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number.
 - (v) Where the document, letter or any correspondence received by any income-tax authority or on behalf of such authority does not bear the Document Identification Number, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.
- (b) Mode and manner of service of notice or requisition under the Income-tax Act, 1961
- Section 282 has been substituted w.e.f. 1.10.2009 to provide that the service of notice or summon or requisition or order or any other communication under the Income-tax Act, 1961 may be made by delivering or transmitting a copy thereof to the person named therein -

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- (1) by post or such courier services as approved by the CBDT; or
- (2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or
- (3) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
- (4) by any other means of transmission as may be provided by rules made by the CBDT in this behalf.

The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

- 23.** Section 19 of the Wealth-tax Act, 1957 determines the liability of legal representative for the defaults committed by the deceased assessee. According to section 19(3), the provisions of sections 14, 15 and 17 shall apply to legal representative as they apply to any person referred to in those sections, whereas section 18 dealing with penalty does not form part of section 19(3). In view of the legal position, penalty under section 18 of Wealth-tax Act, 1957, can neither be levied nor penalty proceedings already initiated be continued on the legal representative for the defaults committed by deceased against whom penalty proceedings have been initiated prior to his death.

The Delhi High Court has, in *CWT v. H.S. Chauhan (2000) 245 ITR 704*, held that penalty proceedings initiated against an assessee cannot be continued on the legal heirs on the demise of such assessee.

- 24. Value of assets of the firm:**

Particulars	Rs.
Value of assets located outside India	50,00,000
Value of assets located in India (Rs.70 lakh – Rs.20 lakh)	50,00,000
Net wealth of the firm	1,00,00,000

Allocation of the net wealth among the partners:

Particulars	X	Y	Z
Net wealth to the extent of share capital i.e., up to Rs.45,00,000 – to be distributed in capital ratio	20,00,000	15,00,000	10,00,000
Balance Rs.55,00,000 in profit sharing ratio (2:2:1)	22,00,000	22,00,000	11,00,000
Shares of partners in the net wealth of the firm	42,00,000	37,00,000	21,00,000

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25. Computation of net wealth of ABC Ltd. on valuation date 31.3.2010

Particulars	Rs.in lakh
(a) Land in urban area (not taxable as the construction is not permitted as per the municipal laws in force, hence it is not an asset)	Nil
(b) Motor cars (used by the company). This asset is includible as per clause (ii) of section 2(ea), since it is not used in the business of running them on hire or as stock-in-trade.	15
(c) Jewellery This is includible as it is an asset under clause (iii) of section 2(ea) and not stock-in-trade of the business. The assessee is engaged in construction of flats and the jewellery may be kept as an investment and not as stock-in-trade of business.	22
(d) Cash balance recorded in the books is not taxable as per clause (vi) of section 2(ea) and bank balance is not an asset within the meaning of "asset" defined in section 2(ea).	Nil
(e) Guest house [This is an asset under section 2(ea)(i), irrespective of its location]	8
(f) Residential flat occupied by Managing Director (This is falling outside the exceptions of section 2(ea)(i), since his gross annual salary exceeds Rs.5 lakh and hence, is an asset)	14
(g) Residential house let out for 280 days [this is includible, as it falls outside the exception to section 2(ea)(i). Only a residential house property let out for a minimum period of 300 days in a year is not an asset]	13
	72
Less: Debts incurred in relation to assets (jewellery)	12
Net Wealth	60

SIGNIFICANT CIRCULARS/NOTIFICATIONS ISSUED BETWEEN 1.5.2009 AND 30.4.2010

I CIRCULARS

1. Circular No. 7/2009 dated 22.10.2009

The CBDT has, through this circular, withdrawn the following circulars:

- (a) Circular No. 23 issued on 23rd July 1969 regarding taxability of income accruing or arising through, or from, business connection in India to a non-resident, under section 9 of the Income-tax Act, 1961.
- (b) Circulars No. 163 dated 29th May, 1975 and No.786 dated 7th February, 2000 which provided clarification in respect of certain provisions of Circular No.23 dated 23rd July, 1969.

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2. Circular No. 8/2009, dated 24.11.2009

The CBDT has, through this circular, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc. This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.

Consequently, all such past transactions between TPAs and hospitals would fall within the provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee in default in respect of such tax and also liable for charging of interest under section 201(1A) and penalty under section 271C.

However, no proceedings under section 201 may be initiated after the expiry of six years from the end of the financial year in which payments have been made without deducting tax at source etc. by the TPA's. Further, the tax demand arising out of section 201(1) in situations arising above, may not be enforced if the deductor (TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee-assessee (hospitals etc.). A certificate from the auditor of the deductee-assessee stating that the tax and interest due from deductee-assessee has been paid for the assessment year concerned would be sufficient compliance for the above purpose. However, this will not alter the liability to charge interest under section 201(1A) till payment of taxes by the deductee-assessee or liability for penalty under section 271C, as the case may be.

3. Circular No. 3/2010, dated 2.3.2010

The CBDT has, vide this circular, given a clarification regarding deduction of tax at source on payment of interest on time deposits under section 194A by banks following Core-branch Banking Solutions (CBS) software. It has been clarified that *Explanation* to section 194A (See Note below) is not meant to apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software. It has been further clarified that since no constructive credit to the depositor's / payee's account takes place while calculating interest on time deposits on daily or monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only. In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank or as per the depositor's / payee's requirement or on maturity or on encashment of time deposits, whichever event takes place earlier, whenever the aggregate of amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

Note – The Explanation to section 194A provides that, for the purposes of this section, where any income by way of interest other than interest on securities is credited to any account, whether called 'Interest payable account' or 'Suspense Account' or by any other

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name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly”.

II NOTIFICATIONS

1. Notification No. 67/2009 dated 9.9.2009

The Central Government has, vide notification no.67/2009 dated 9.9.2009, specified the cost inflation index (CII) for the financial year 2009-10. The CII for F.Y. 2009-10 is 632.

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

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27.	2007-08	551
28.	2008-09	582
29.	2009-10	632

2. Notification No. 70/2009, dated 22.9.2009

The CBDT has, in exercise of the powers conferred by section 139(1B), made an amendment in the notification of the Government of India relating to qualifications of an e-Return intermediary. The qualifications of an e-Return Intermediary, as amended, are detailed hereunder -

- (1) An e-Return Intermediary shall have the following qualifications, namely:-
 - (a) it must be a public sector company as defined in section 2(36A) of the Act or any other company in which public are substantially interested within the meaning of section 2(18) of the Act and any subsidiary of those companies; or
 - (b) a company incorporated in India, including a bank, having a net worth of rupees one crore or more; or
 - (c) a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or
 - (d) a Chartered Accountants or Company Secretaries or Advocates or Tax Return Preparers, if he has been allotted a permanent account number; or
 - (e) a Drawing or Disbursing Officer (DDO) of a Government Department.
- (2) The e-intermediary shall have at least class II digital signature certificate from any of the Certifying authorities authorized to issue such certificates by the Controller of Certifying authorities appointed under section 17 of the Information Technology Act, 2002.
- (3) The e-intermediary shall have in place security procedure to the satisfaction of e-Return Administrator to ensure that confidentiality of the assessee's information is properly secured.
- (4) The e-intermediary shall have necessary archival, retrieval and, security policy for the e>Returns which will be filed through him, as decided by e-Return Administrator from time to time.
- (5) The e-intermediary or its Principal Officer must not have been convicted for any professional misconduct, fraud, embezzlement or any criminal offence.

3. Notification No. 94/2009, dated 18.12.2009

In exercise of the powers conferred by section 295 read with section 17(2), the CBDT has, consequent to removal of fringe benefit tax, substituted Rule 3 of the Income-tax Rules, 1962. The new perquisite valuation rules shall be deemed to have come into force on 1st April, 2009.

For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the employee or to

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any member of his household by reason of his employment shall be determined in accordance with new Rule 3.

Valuation of residential accommodation [Sub-rule (1)]

The value of residential accommodation provided by the employer during the previous year shall be determined in the following manner -

Sl. No.	Circumstances	In case of unfurnished accommodation	In case of furnished accommodation
(1)	(2)	(3)	(4)
(1)	Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State.	License fee determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment). If such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year should be added to the value of the perquisite determined under column (3).
(2)	Where the accommodation is provided by any other employer (a) where the accommodation is owned by the employer	(i) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census;	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets,

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		(ii) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census; (iii) 7.5% of salary in other areas, in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.	refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets). If such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year, should be added to the value of perquisite determined under column (3).
	(b) where the accommodation is taken on lease or rent by the employer.	Actual amount of lease rental paid or payable by the employer or 15% of salary, whichever is lower, as reduced by the rent, if any, actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets). If such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year should be added to the value of perquisite determined under column (3).
(3)	Where the accommodation is	Not applicable	24% of salary paid or payable for the previous

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	provided by any employer, whether Government or any other employer, in a hotel.		year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by the rent, if any, actually paid or payable by the employee. However, where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another, there would be no perquisite.
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Notes:

- (1) If an employee is provided with accommodation, on account of his transfer from one place to another, at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower perquisite value, as calculated above, for a period not exceeding 90 days and thereafter, the value of perquisite shall be charged for both such accommodations.
- (2) Any accommodation provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site would not be treated as a perquisite, provided it satisfies either of the following conditions -
 - (i) the accommodation is of temporary nature, has plinth area not exceeding 800 square feet and is located not less than eight kilometers away from the local limits of any municipality or a cantonment board; or
 - (ii) the accommodation is located in a remote area i.e. an area that is located at least 40 kms away from a town having a population not exceeding 20,000 based on latest published all-India census.
- (3) Where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with any body or undertaking under the control of such Government,-
 - (i) the employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation; and

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- (ii) the value of perquisite of such an accommodation shall be the amount calculated in accordance with Sl. No.(2)(a) of the above table, as if the accommodation is owned by the employer.
- (4) “Accommodation” includes a house, flat, farm house or part thereof, or accommodation in a hotel, motel, service apartment, guest house, caravan, mobile home, ship or other floating structure.
- (5) “Hotel” includes licensed accommodation in the nature of motel, service apartment or guest house.

Motor Car [Sub-rule (2)]

The value of perquisite by way of use of motor car to an employee by an employer shall be determined in the following manner -

VALUE OF PERQUISITE PER CALENDAR MONTH

Sl. No.	Circumstances	Where cubic capacity of engine does not exceed 1.6 litres	Where cubic capacity of engine exceeds 1.6 litres
(1)	(2)	(3)	(4)
(1) (a)	Where the motor car is owned or hired by the employer and – is used wholly and exclusively in the performance of his official duties	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.
(b)	is used exclusively for the private or personal purposes of the employee or any member of his household and the running and maintenance expenses are met or reimbursed by the employer;	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.

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(c)	is used partly in the performance of duties and partly for private or personal purposes of his own or any member of his household and- (i) the expenses on maintenance and running are met or reimbursed by the employer	Rs.1,800 (plus Rs.900, if chauffeur is also provided to run the motor car)	Rs.2,400 (plus Rs.900, if chauffeur is also provided to run the motor car)
	(ii) the expenses on running and maintenance for private or personal use are fully met by the assessee.	Rs.600 (plus Rs.900, if chauffeur is also provided by the employer to run the motor car)	Rs.900 (plus Rs.900, if chauffeur is also provided by the employer to run the motor car)
(2)	Where the employee owns a motor car but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and –		
(i)	such reimbursement is for the use of the vehicle wholly and exclusively for official purposes	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.

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(ii)	such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.	The actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(c)(i) above (Also see note (2) below this table).	The actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(c)(i) above (Also see note (2) below this table).
(3)	Where the employee owns any other automotive conveyance but the actual running and maintenance charges are met or reimbursed to him by the employer and		
(i)	such reimbursement is for the use of the vehicle wholly and exclusively for official purposes	Not a perquisite, provided the documents specified in the note (2) below the table are maintained by the employer.	Not applicable.
(ii)	such reimbursement is for the use of vehicle partly for official purposes and partly for personal or private purposes of the employee	The actual amount of expenditure incurred by the employer as reduced by the amount of Rs.900. (Also see note (2) below the table)	

Notes:

- (1) Where one or more motor-cars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor-car or all of any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car as if the employee had been provided one motor-car for use partly in the performance of his duties and partly for his private or personal purposes and the amount calculated in respect of the other car or cars as if he had been provided with such car or cars exclusively for his private or personal purposes.
- (2) Where the employer or the employee claims that the motor-car is used wholly and exclusively in the performance of official duty or that the actual expenses on the running and maintenance of the motor-car owned by the employee for official purposes is more than the amounts deductible in Sl. No. 2(ii) or 3(ii) of the above

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table, he may claim a higher amount attributable to such official use and the value of perquisite in such a case shall be the actual amount of charges met or reimbursed by the employer as reduced by such higher amount attributable to official use of the vehicle provided that the following conditions are fulfilled :-

- (a) the employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon;
- (b) the employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.
- (3) For computing the perquisite value of motor car, the normal wear and tear of a motor-car shall be taken at 10% p.a. of the actual cost of the motor-car or cars.

Valuation of benefit of provision of domestic servants [Sub-rule (3) of Rule 3]

- (i) The value of benefit to the employee or any member of his household resulting from the provision by the employer of the services of a sweeper, a gardener, a watchman or a personal attendant, shall be the actual cost to the employer.
- (ii) The actual cost in such a case shall be the total amount of salary paid or payable by the employer or any other person on his behalf for such services as reduced by any amount paid by the employee for such services.

Valuation of gas, electricity or water supplied by employer [Sub-rule (4) of Rule 3]

- (i) The value of the benefit to the employee resulting from the supply of gas, electric energy or water for his household consumption shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water.
- (ii) Where such supply is made from resources owned by the employer, without purchasing them from any other outside agency, the value of perquisite would be the manufacturing cost per unit incurred by the employer.
- (iii) Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value so arrived at.

Valuation of free or concessional educational facilities [Sub-rule (5) of Rule 3]

- (i) The value of benefit to the employee resulting from the provision of free or concessional educational facilities for any member of his household shall be determined as the sum equal to the amount of expenditure incurred by the employer in that behalf or where the educational institution is itself maintained and owned by the employer or where free educational facilities for such member of employees' household are allowed in any other educational institution by reason of his being in employment of that employer, the value of the perquisite to the employee shall be determined with reference to the cost of such education in a similar institution in or near the locality.

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- (ii) Where any amount is paid or recovered from the employee on that account, the value of benefit shall be reduced by the amount so paid or recovered.
- (iii) However, where the educational institution itself is maintained and owned by the employer and free educational facilities are provided to the children of the employee or where such free educational facilities are provided in any institution by reason of his being in employment of that employer, there would be no perquisite if the cost of such education or the value of such benefit per child does not exceed Rs.1,000 p.m.

Free or concessional tickets [Sub-rule (6) of Rule 3]

The value of any benefit or amenity resulting from the provision by an employer who is engaged in the carriage of passengers or goods, to any employee or to any member of his household for personal or private journey free of cost or at concessional fare, in any conveyance owned, leased or made available by any other arrangement by such employer for the purpose of transport of passengers or goods shall be taken to be the value at which such benefit or amenity is offered by such employer to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit or amenity.

However, there would be no such perquisite to the employees of an airline or the railways.

Valuation of other fringe benefits and amenities [Sub-rule (7) of Rule 3]

Section 17(2)(viii) provides that the value of any other fringe benefit or amenity as may be prescribed would be included in the definition of perquisite. Accordingly, the following other fringe benefits or amenities are prescribed and the value thereof shall be determined in the manner provided hereunder :-

(i) Interest-free or concessional loan [Sub-rule 7(i) of Rule 3]

- (a) The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the interest computed at the rate charged per annum by the State Bank of India, as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household. "Maximum outstanding monthly balance" means the aggregate outstanding balance for each loan as on the last day of each month.
- (b) However, no value would be charged if such loans are made available for medical treatment in respect of prescribed diseases (like cancer, tuberculosis, etc.) or where the amount of loans are petty not exceeding in the aggregate Rs.20,000.

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- (c) Further, where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.
- (ii) Travelling, touring and accommodation [Sub-rule 7(ii) of Rule 3]**
 - (a) The value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee or any member of his household, other than leave travel concession or assistance, shall be determined as the sum equal to the amount of the expenditure incurred by such employer in that behalf.
 - (b) Where such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public.
 - (c) Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity.
 - (d) However, where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.
- (iii) Free or concessional food and non-alcoholic beverages [Sub-rule 7(iii) of Rule 3]**
 - (a) The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity:
 - (b) However, the following would not be treated as a perquisite -
 - (1) free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints, to the extent the value thereof either case does not exceed fifty rupees per meal or
 - (2) tea or snacks provided during working hours or
 - (3) free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation.
- (iv) Value of gift, voucher or token in lieu of such gift [Sub-rule 7(iv) of Rule 3]**
 - (a) The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be determined as the sum equal to the amount of such gift:

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- (b) However, if the value of such gift, voucher or token, as the case may be, is below Rs.5,000 in the aggregate during the previous year, the value of perquisite shall be taken as 'nil'.

(v) Credit card expenses [Sub-rule 7(v) of Rule 3]

- (a) The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card) provided by the employer, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax as reduced by the amount, if any paid or recovered from the employee for such benefit or amenity:
- (b) However, such expenses incurred wholly and exclusively for official purposes would not be treated as a perquisite if the following conditions are fulfilled:
 - (1) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure and the nature of expenditure;
 - (2) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

(vi) Club expenditure [Sub-rule 7(vi) of Rule 3]

- (a) The value of benefit to the employee resulting from the payment or reimbursement by the employer of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by a member of his household shall be determined to be the actual amount of expenditure incurred or reimbursed by such employer on that account. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

However, where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

- (b) Further, if such expenditure is incurred wholly and exclusively for business purposes, it would not be treated as a perquisite provided the following conditions are fulfilled:-
 - (1) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure, the nature of expenditure and its business expediency;
 - (2) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

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- (c) There would be no perquisite for use of health club, sports and similar facilities provided uniformly to all employees by the employer.

(vii) Use of moveable assets [Sub-rule 7(vii) of Rule 3]

The value of benefit to the employee resulting from the use by the employee or any member of his household of any movable asset (other than assets already specified in this rule and other than laptops and computers) belonging to the employer or hired by him shall be determined at 10% per annum of the actual cost of such asset or the amount of rent or charge paid or payable by the employer, as the case may be, as reduced by the amount, if any, paid or recovered from the employee for such use.

(viii) Transfer of moveable assets [Sub-rule 7(viii) of Rule 3]

The value of benefit to the employee arising from the transfer of any movable asset belonging to the employer, directly or indirectly, to the employee or any member of his household shall be determined to be the amount representing the actual cost of such assets to the employer as reduced by the cost of normal wear and tear and as further reduced by the amount, if any, paid or recovered from the employee being the consideration for such transfer.

The cost of normal wear and tear has to be calculated at the rate of 10% of the actual cost for each completed year during which such asset was put to use by the employer. However, in the case of computers and electronic items, the normal wear and tear would be calculated at the rate of 50% and in the case of motor cars at the rate of 20% by the reducing balance method.

(ix) Other benefit or amenity [Sub-rule 7(ix) of Rule 3]

The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any. However, the expenses on telephones including a mobile phone actually incurred on behalf of the employee by the employer, would not be a taxable perquisite.

Valuation of specified security or sweat equity share for the purpose of section 17(2)(vi) [Sub-rule (8)]

The fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option is exercised by the employee, shall be determined in the following manner -

- (1) In a case where, on the date of the exercising of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange.

However, where, on the date of exercising of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the

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average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share.

Further, where on the date of exercising of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be—

- (a) the closing price of the share on any recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or
- (b) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

“Closing price” of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange. However, where the stock exchange quotes both “buy” and “sell” prices, the closing price shall be the “sell” price of the last settlement.

“Opening price” of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange. However, where the stock exchange quotes both “buy” and “sell” prices, the opening price shall be the “sell” price of the first settlement.

- (2) In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.

For this purpose, “specified date” means,—

- (i) the date of exercising of the option; or
- (ii) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

Valuation of specified security not being an equity share in a company for the purpose of section 17(2)(vi) [Sub-rule (9)]

The fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.

For this purpose, “specified date” means,—

- (i) the date of exercising of the option; or
- (ii) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

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Definitions for the purpose of perquisite rules

The following definitions are relevant for applying the perquisite valuation rules -

- (i) "member of household" shall include-
 - (a) spouse(s),
 - (b) children and their spouses,
 - (c) parents, and
 - (d) servants and dependants;
- (ii) "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called from one or more employers, as the case may be, but does not include the following, namely:-
 - (a) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;
 - (b) employer's contribution to the provident fund account of the employee;
 - (c) allowances which are exempted from payment of tax;
 - (d) the value of perquisites specified in clause (2) of section 17;
 - (e) any payment or expenditure specifically excluded under proviso to sub-clause (iii) of clause (2) or proviso to clause (2) of section 17;
 - (f) lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

4. Notification No. 07/2010, dated 3.2.2010

Section 10(15)(iv)(h) exempts interest on bonds/debentures issued by any public sector company and notified by the Central Government in the Official Gazette. Accordingly, the Central Government has notified the tax free secured, redeemable, non-convertible Railway Bonds issued by the Indian Railway Finance Corporation (IRFC), interest from which would be exempt under section 10(15)(iv)(h).

5. Notification No. 08/2010 dated 3.2.2010 & Notification No.24/2010 dated 8.4.2010

Section 2(48) defining zero coupon bonds requires that such bonds should be notified by the Central Government. Accordingly, the Central Government has specified the following bonds as zero coupon bonds for the purpose of section 2(48) –

- (i) Bhavishya Nirman Bond, a ten year zero coupon bond of National Bank of Agriculture and Rural Development (NABARD), to be issued on or before 31.3.2011
- (ii) ten year Deep Discount Bond (Zero Coupon Bond) of Rural Electrification Corporation Limited (REC) to be issued on or before 31.3.2011.

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6. Notification No 23/2010 dated 8.4.2010

The Finance (No. 2) Act, 2009 had inserted clause (vii) in section 56(2) to bring within its scope, the value of any property received without consideration or for inadequate consideration. The said clause provides that, if a property other than immovable property is received without consideration, the aggregate fair market value of such property on the date of receipt would be taxed as the income of the recipient if it exceeds Rs.50,000. In case the property other than immovable property is received for inadequate consideration, and the difference between the aggregate fair market value and such consideration exceeds Rs.50,000, such difference would be taxed as the income of the recipient. For this purpose, "fair market value" of a property, other than immovable property, means the value determined in accordance with the method as may be prescribed.

Accordingly, the CBDT has, vide this notification, made rules for determination of fair market value of the property other than immovable property, which would be effective from 1st October, 2009.

(a) Valuation of jewellery

- (i) the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;
- (ii) in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;
- (iii) In case the jewellery is received by any other mode and the value of the jewellery exceeds Rs.50,000, then, the assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date.

(b) Valuation of archeological collections, drawings, paintings, sculptures or any work of art

- (i) the fair market value of archeological collections, drawings, paintings, sculptures or any work of art (artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;
- (ii) in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;
- (iii) in case the artistic work is received by any other mode and the value of the artistic work exceeds Rs.50,000, then, the assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date.

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(c) Valuation of shares and securities

- (a) the fair market value of quoted shares and securities shall be determined in the following manner, namely;-
 - (i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;
 - (ii) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,-
 - (1) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and
 - (2) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date, there is no trading in such shares and securities on any recognized stock exchange.
- (b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner namely;-

$$\text{The fair market value of unquoted equity shares} = \frac{(A - L)}{PE} \times (PV)$$

Where,

A = Book value of the assets in Balance Sheet drawn up on the valuation date as reduced by any amount paid as advance tax under the Income-tax Act and any amount shown in the balance sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset.

L = Book value of liabilities shown in the Balance Sheet drawn up on the valuation date but not including the following amounts:-

- (i) the paid-up capital in respect of equity shares;
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
- (iii) reserves, by whatever name called, other than those set apart towards depreciation;
- (iv) credit balance of the profit and loss account;

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- (v) any amount representing provision for taxation, other than amount paid as advance tax under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- (vi) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vii) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

PE = Total amount of paid up equity share capital as shown in Balance Sheet drawn up on the valuation date.

PV = the paid up value of such equity shares.

- (c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.

Note – “Valuation date” means the date on which the respective property is received by the assessee.