

MOCK TEST PAPER – 2
FINAL COURSE: GROUP – II
PAPER – 7: DIRECT TAX LAWS
SUGGESTED ANSWERS / HINTS

1. (a) Computation of total income of Star Ltd. for A.Y. 2013-14

Particulars	₹
Profits and gains of business or profession	45,00,000
Income from other sources (See Note below)	<u>1,59,000</u>
Total income	<u>46,59,000</u>

Note – Dividend income taxable under “Income from other sources”

Particulars	₹
From shares held in Jupiter Ltd. & Pluto Ltd, Indian companies of ₹ 1,02,000 – exempt under section 10(34) since dividend distribution tax would have been paid under section 115-O [As per section 14A, no deduction is allowable in respect of expenditure incurred to earn exempt income]	Nil
From shares held in Venus Inc. – net dividend (i.e., ₹ 64,000 – ₹ 3,000) is taxable at normal rates	61,000
From shares held in Sunrise Inc., a specified foreign company – gross dividend is taxable@15% under section 115BBD [No deduction is allowable in respect of any expenditure as per section 115BBD(2)]	<u>98,000</u>
	<u>1,59,000</u>

Computation of tax liability of Star Ltd. for A.Y. 2013-14

Particulars	₹
Tax@15% under section 115BBD on ₹ 98,000 (gross dividend)	14,700
Tax@30% on balance income of ₹ 45,61,000	<u>13,68,300</u>
	13,83,000
Add: Education cess@2% and Secondary and higher education cess@1%	<u>41,490</u>
Tax liability	<u>14,24,490</u>

Notes:

- (i) As per section 115BBD, if the total income of an Indian company, includes income by way of dividend declared, distributed or paid by a specified foreign company, the income tax payable would be the aggregate of –
- Income-tax @15% on gross dividend from such specified foreign company; and
 - Income-tax with which the assessee would have been chargeable had its total income been reduced by such dividend.
- (ii) Specified foreign company means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company. In this case, Sunrise Inc. is a specified foreign company since Star Ltd. holds more than 26% in nominal value of its equity share capital. Therefore, the gross dividend received by Star Ltd. from Sunrise Inc. would be subject to tax@15%.
- (b) Valuation of house property of Mr. Kamal on valuation date 31.3.2013

Particulars	₹
Actual Rent (₹ 66,000 × 6)	3,96,000
Add: (i) Municipal taxes borne by the tenant (50% of ₹ 48,000)	24,000
(ii) Repairs borne by the tenant - 1/9 th of actual rent received	44,000
(iii) 15% of amount of deposit of ₹ 5 lakh (15%× ₹ 5,00,000 × 6/12)	37,500
	5,01,500
Annual Rent (₹ 5,01,500 × 12/6)	10,03,000

The annual rent so worked out has to be compared with the municipal value and the higher of the two has to be adopted as the Gross Maintainable Rent. The municipal value is ₹ 10,00,000 and the annual rent works out to ₹ 10,03,000. Therefore, ₹ 10,03,000 shall be the Gross Maintainable Rent.

Computation of Net Maintainable Rent (NMR)	₹	₹
Gross Maintainable Rent, being the annual rent		10,03,000
Less: Municipal Tax (annual)	96,000	
15% of Gross Maintainable Rent	1,50,450	2,46,450
Net Maintainable Rent (NMR)		7,56,550
Capitalised value of NMR		
Capitalised value (₹ 7,56,550 × 8) [See Note below]	60,52,400	

Cost of acquisition	62,00,000	
Capitalised value is the higher of the above		62,00,000
Note : Where the unexpired lease period is less than 50 years, capitalisation value is $NMR \times 8$.		
Therefore, the value of house property chargeable to tax on valuation date 31.3.2013 is ` 62 lakh.		

- (c) The Allahabad High Court has, in the case of Ram Saran Das Tandon v. CWT (2007) 292 ITR 546, held that where an assessee is a member of a co-operative society to whom land was allotted under a house building scheme and he subsequently ceases to be a member of the society and transfers his membership to his spouse or others, he could not be assessed as owner of the property. The value of the property cannot be assessed to wealth tax in his hands subsequent to such transfer of membership. Therefore, in this case, the value of the property is not assessable in the hands of Mr. Sharma and will be assessed in the hands of Mrs. Sharma (assuming Mr. Sharma has received adequate consideration from his wife Mrs. Sharma for the aforesaid transfer of membership).

2.

Computation of Book Profit under section 115JB

Particulars	` (in Lacs)	` (in Lacs)
Net Profit as per Profit & Loss Account		91
Add: Transfer to General Reserve	7	
Proposed dividend	4	
Provision for taxation	3	
Provision for unascertained liabilities	3	
Depreciation as per Companies Act, 1956	<u>34</u>	<u>51</u>
		142
Less: Depreciation as per Companies Act, 1956	34	
Net Agricultural Income [exempt under section 10(1)]	22	
Share of Profit from a firm [exempt under section 10(2A)]	25	
Business loss brought forward or unabsorbed depreciation, whichever is lower (Note 1)	<u>Nil</u>	81
Book Profit (A)		61

Computation of Total Income as per the Income-tax Act, 1961

Particulars	` (in Lacs)	` (in Lacs)
Net Profit as per Profit & Loss Account		91

Add: Transfer to General Reserve	7	
Proposed Dividend	4	
Provision for taxation	3	
Provision for unascertained liabilities	3	
Depreciation as per books of account	34	
Interest to financial institutions disallowed under section 43B, since it is not paid within the due date of filing return of income	8	
Penalty for infraction of law	2	61
		152
Less: Net agricultural Income [Exempt under section 10(1)]	22	
Share of profit from a firm [Exempt under section 10(2A)]	25	
Depreciation as per Income-tax Rules, 1962	<u>42</u>	<u>89</u>
Profits from business for the year		63
Less: Brought forward loss under section 72	11	
Unabsorbed Depreciation under section 32(2)	<u>14</u>	<u>25</u>
Gross Total Income		38
Less: Deduction under section 80-IC		<u>1</u>
Total Income (B)		<u>37</u>

Computation of tax liability for the assessment year 2013-14

Particulars	`	`
1. Book profit as per (A)	61,00,000	
Tax thereon @ 18.50%		11,28,500
2. Total income as per (B)	37,00,000	
Tax on total income @ 30%		11,10,000

Since the income-tax payable on the total income of the company computed under the Income-tax Act, 1961 is less than 18.50% of its book profit, section 115JB will apply for A.Y.2013-14. So, the company's book profit of ` 61 lacs would be deemed as its total income and tax would be payable @ 18.5% (plus education cess @ 2% and secondary and higher education cess @ 1%). The total tax liability therefore works out to be ` 11,62,355.

Notes:

1. As per section 115JB, the amount of loss brought forward or unabsorbed depreciation as per books, whichever is less, has to be reduced from net profit. As only brought forward loss is indicated at ` 17 lacs in the question, it has been assumed that there is no unabsorbed depreciation as per books of account. Therefore, no adjustment has been made in this respect for computing the "Book Profit".
2. Section 115JB does not provide for the increase of net profit by the amount of expenditure relatable to any income to which section 80-IC applies. Accordingly, no adjustment in respect of both expenditure and income pertaining to an undertaking covered under section 80-IC has been made while computing book profit.
3. (a) Computation of deduction under section 35 for the A.Y.2013-14

Particulars	`	Section	% of weighted deduction	Amount of deduction (`)
Expenditure incurred on in-house research and development facility				
Revenue expenditure	1,50,000	35(2AB)	200%	3,00,000
Capital expenditure (excluding cost of acquisition of land ` 9,50,000)	3,00,000	35(2AB)	200%	6,00,000
Payment for scientific research				
National Laboratory	3,50,000	35(2AA)	200%	7,00,000
Sigma Ltd.	2,00,000	35(1)(iia)	125%	<u>2,50,000</u>
Deduction allowable under section 35				<u>18,50,000</u>

Note- Expenditure incurred on acquisition of land is not allowable as deduction under section 35.

- (b) Computation of taxable income of Mr. Bharti for A.Y.2013-14

Particulars	`
Capital Gains	
(A) Long-term capital gain derived from transfer of land on Yamuna Express highway acquired by NHAI in F.Y. 2008-09 for which award was paid in F.Y. 2012-13 is chargeable to tax in A.Y.2013-14 [See Note (i) below]	
Sale consideration i.e. compensation paid	38,00,000

Less: Indexed cost of acquisition [See Note (ii) below] (25,000 x 582/100)	<u>1,45,500</u>
	<u>36,54,500</u>
(B) Sale of land at Hyderabad in August 2012 [See Note (iii) below]	
Full value of consideration as per section 50C [See Note (iv) below]	1,00,00,000
Less: Indexed cost of acquisition (` 62,00,000 x 852)/463	1,14,09,071
	(14,09,071)

Total income chargeable to tax arising as a result of these transactions in the A.Y.2013-14 is equal to ` 22,45,429 (i.e. ` 36,54,500 - ` 14,09,071). Long term capital loss can be set-off from the long term capital gain.

Notes:

- (i) The capital gains arising on compulsory acquisition shall be charged to tax in the year in which the compensation is first received as per section 45(5)(a). However, the indexation benefit would be available only upto the year in which the property was compulsorily acquired i.e F.Y. 2008-09.
- (ii) The option of fair market value as on 1.4.81 is not exercised by the assessee since the fair market value is lower than the cost.
- (iii) The execution of sale deed is not compulsory for the purpose of charge of capital gain because the transfer of right enabling enjoyment of immovable property gives rise to charge of capital gains as held by the Kerala High Court in the case of CIT v. C.F. Thomas (2006) 284 ITR 557.
- (iv) As per section 50C, the value applied by the stamp valuation authority is deemed to be the full value of consideration received or accruing as a result of such transfer, since such value is higher than the sale consideration of ` 88 lacs. 852 is the cost inflation index of F.Y.2012-13 i.e. the year in which the property at Hyderabad was sold.
- (c) Mr. Shivam, an employee of a telecom company, has received a car as a gift from a distributor of the company. Since there is no employer-employee relationship in this case between the distributor and Mr. Shivam, the value of gift is not a perquisite chargeable to tax under the head "Salaries".

Section 56(2)(vii), brings within its scope the value of any property received by an individual or Hindu Undivided Family without consideration. For this purpose, "property" means immovable property being land or building or both, shares and

securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

Therefore, for the purpose of attracting the provisions of section 56(2)(vii) for chargeability under the head "Income from Other Sources", an individual should be in receipt of property as defined therein. Since, car is not included in the definition of "property", the provisions of section 56(2)(vii) would not be attracted in the hands of Mr. Shivam.

4. (a) The issue under consideration is whether the expenditure incurred on demolition and re-erection of a cell room, representing a part of a building used for business purposes, is capital or revenue in nature. On this issue, the Delhi High Court, in CIT v. Modi Industries Ltd. (2011) 339 ITR 467, referred to the Supreme Court ruling in CIT v. Saravana Spinning Mills P. Ltd. (2007) 293 ITR 201, wherein it was observed that "current repairs" under section 31 refer to expenditure effected to preserve and maintain an already existing asset and the object of expenditure must not be to bring a new asset into existence or to obtain a new advantage.

Applying the rationale of the Apex Court ruling, the Delhi High Court observed that if a part of a structure becomes dilapidated and repairs/reinforcement of some parts of the structure is required, it would be treated as "current repairs". However, on the other hand, if a part of a building is demolished and a new structure is erected on that place, it has to be treated as capital expenditure, as in that case, a totally new asset is created even if it may be a part of the building.

If after completely demolishing the old cell room, an entire new cell room was erected, the money spent was not merely on repairs of the cell room, but for constructing a new cell room. Such expenditure incurred on the cell room is a capital expenditure.

The Explanation to section 31 clarifies that the amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.

Therefore, expenditure on demolition and re-erection of a cell room, being in the nature of capital expenditure, cannot be treated as current repairs. Hence, such expenditure is not allowable as deduction under section 31.

- (b) This issue came up before the Calcutta High Court in Indcom v. Commissioner of Income-tax (TDS) (2011) 335 ITR 485 (Calcutta). The Calcutta High Court observed that, in order to attract the provisions of the section 194E, the person should be a non-resident sportsperson or non-resident sports association or institution whose income is taxable as per the provisions of section 115BBA.

The Court observed that though umpires and match referees can be described as professionals or technical persons who render professional or technical services, they cannot be said to be either non-resident sportsmen (including an athlete) or non-resident sports association or institution so as to attract the provisions of

section 115BBA. Consequently, the provisions of tax deduction at source under section 194E would not be attracted in this case. Though for the purpose of section 194J, match referees and umpires are considered as professionals, the tax deduction provisions thereunder are attracted only in case where the deductee/payee is a resident individual, which is not so in the present case.

Therefore, although the payments made to non-resident umpires and the match referees are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA and thus, the payer is not liable to deduct tax under section 194E.

Note - It may be noted that since income has accrued and arisen in India to the non-resident umpires and match referees, the TDS provisions under section 195 would be attracted and tax would be deductible at the rates in force.

- (c) This issue came up before the Kerala High Court in CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala).

On the above issue, the Kerala High Court observed that winnings from lottery is included in the definition of income by virtue of section 2(24)(ix). Further, in practice, all prizes from unsold tickets of the lotteries shall be the property of the distributor. Similarly, all unclaimed prizes shall also be the property of the distributor and would be refunded to the distributor.

The High Court contended that the receipt of winnings from lottery by the distributor was not on account of any physical or intellectual effort made by him and therefore, cannot be said to be "income earned" by him in business. The said view was taken on the basis that the unsold lottery tickets cease to be stock-in-trade of the distributor because, after the draw, those tickets are not saleable and have no value except waste paper value. The distributor will get nothing on sale of the tickets except any prize winning ticket if held by him, which, if produced will entitle him for the prize money. Hence, the prize money is not received by him in the capacity of a lottery distributor but as a holder of the lottery ticket which won the prize. The Lottery Department also does not treat it as business income received by the distributor but instead treats it as prize money paid on which tax is deducted at source.

Further, winnings from lotteries are assessable under the special provisions of section 115BB, irrespective of the head under which such income falls. Therefore, the High Court held that the winnings from lottery received by the distributor is taxable at the rate of 30% prescribed under section 115BB and not at the normal rates of tax.

- (d) One of the conditions to be fulfilled by an industrial undertaking engaged in manufacturing or producing articles or things to qualify for claim of deduction under section 80-IB is that it should employ ten or more workers in a manufacturing

process carried on with the aid of power. The issue as to whether the persons employed by such industrial undertaking through agency (including contractors) can be treated as "workers" for fulfillment of the above condition was considered by the Bombay High Court in CIT v. Jyoti Plastic Works Private Limited (2011) 339 ITR 491.

In that case, the Assessing Officer rejected the assessee's claim for deduction under section 80-IB, inter alia, on the ground that the total number of permanent employees employed in the factory being less than ten, the assessee had not fulfilled the condition stipulated in section 80-IB(2)(iv).

The High Court observed that though the workers employed by the assessee directly were less than ten, it was not in dispute that the total number of workers employed by the assessee directly or hired through a contractor for carrying on the manufacturing activity exceeded ten. The expression "worker" is neither defined under section 2 nor under section 80-IB(2)(iv) of the Income-tax Act, 1961. Therefore, it would be reasonable to hold that the expression "worker" in section 80-IB(2)(iv) is referable to the persons employed by the assessee directly or by or through any agency (including a contractor) in the manufacturing activity carried on by the assessee. The employment of ten or more workers is what is relevant and not the mode and the manner in which the workers are employed by the assessee. The High Court, therefore, held that the condition mentioned under section 80-IB(2)(iv) has been fulfilled in this case and hence, the deduction under section 80-IB is allowable.

5. (a) (i)

Gross salary, allowances and monetary perquisites	5,60,000
Non-Monetary perquisites	<u>2,40,000</u>
Total Salary	<u>8,00,000</u>
Tax Liability	92,700
Average rate of tax ($\frac{92,700}{8,00,000} \times 100$)	11.5875%

The company can deduct ₹ 92,700 at source from the salary of the Finance Manager. Alternatively, the company can pay tax on non-monetary perquisites as under –

Tax on non-monetary perquisites = 11.5875% of ₹ 2,40,000 = ₹ 27,810

Balance to be deducted from salary = ₹ 64,890

If the company pays tax of ₹ 27,810 on non-monetary perquisites, the same is not a deductible expenditure as per section 40(a). It is not chargeable to tax in the hands of the employee under section 10(10CC).

- (ii) An individual who is liable for tax audit under section 44AB in the immediately preceding financial year is liable to deduct tax at source under section 194C for the financial year 2012-13 in respect of the payment made to contractor exceeding ₹ 30,000 in a single payment and ₹ 75,000 in aggregate during the financial year. Turnover of the individual I exceeded ₹ 60 lacs in the financial year 2011-12. Therefore, I is liable to get his accounts audited for the F.Y. 2011-12 under section 44AB. As the payment during financial year 2012-13 to the contractor had exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The rate of tax deduction is 1% as the contractor is an individual.

- (iii) If the cameraman is an employee of the T.V. Company, the provisions of section 192 will apply and tax has to be deducted at the time of payment. However, if he is a professional, the provisions under section 194J will apply and hence tax at 10% will have to be deducted at the time of credit of ₹ 1,50,000 or on its payment, whichever is earlier.
- (b) Section 80-IA(1) provides for 100% deduction of profits derived by an undertaking or an enterprise from an eligible business referred to in sub-section (4) for ten consecutive assessment years. Clause (i) of sub-section (4) provides that the deduction under section 80-IA(1) would be applicable to any enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility fulfilling the conditions mentioned therein. The Explanation to this clause defines "infrastructure facility" to include, inter alia, -
- (a) a road, including a toll road, a bridge or a rail system and
- (b) a highway project including housing or other activities being an integral part of the highway project.

The CBDT has, vide Circular No.4/2010 dated 18.5.2010, clarified that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of section 80-IA(4)(i). However, simply relaying of an existing road would not be classifiable as a new infrastructure facility for this purpose.

Therefore, Infratech Pvt. Ltd. would be eligible for deduction under section 80-IA in respect of the profits from highway project, since it involves expansion of existing roads by constructing additional lanes as a part of the highway project. However, it would not be eligible for deduction under section 80-IA in respect of profits from the roadway project, which involves only relaying of existing roads.

- (c) As per section 271AAB, inserted by the Finance Act, 2012, penalty leviable on undisclosed income found during the course of a search, which has been initiated on or after 1st July, 2012, which relates to specified previous year, i.e. -
- (1) the previous year which has ended before the date of search, but the due date

of filing return of income for the same has not expired before the date of search and the return has not yet been furnished;

(2) the previous year in which search is conducted,

shall be:

- (1) penalty@10%, if undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 153A expires, as the case may be) and furnishes the return of income for the specified previous year declaring such undisclosed income.
- (2) penalty@ 20%, if undisclosed income relating to the specified previous year is not admitted during the course of search in the statement furnished under section 132(4) but the same is disclosed in the return of income filed after the date of search and the tax along with the interest, if any, is paid before the specified date
- (3) in all other cases, penalty is leviable ranging from 30% to 90% of undisclosed income would be attracted.

Therefore, even if the assessee furnishes the statement under section 132(4), then also penalty @10% under section 271AAB would be attracted. Therefore, the assessee cannot escape the levy of penalty.

6. (a) Determination of net worth of Unit Y of Axel Ltd.

Particulars	₹ (in lacs)
Written down value of depreciable assets under section 43(6)	112
Book value of non-depreciable assets:	
Debtors	56
Stock in trade	<u>19</u>
	187
Less : Liabilities	<u>38</u>
Net worth	<u>149</u>

Comparative calculation of chargeable capital gains

	Sale before 31.3.2013	Sale after 31.03.2013
Sale consideration	1,70,00,000	1,70,00,000
Less: Discount	<u>3,40,000</u>	<u>Nil</u>

Net sale consideration	1,66,60,000	1,70,00,000
Less: Net worth	<u>1,49,00,000</u>	<u>1,49,00,000</u>
Short term capital gain	17,60,000	N.A.
Long term capital gain	N.A.	21,00,000
Tax rate	30.9%	20.6%
Tax thereon	5,43,840	4,32,600

We also have to see the cash flow from both the options to find out which one is more beneficial.

	Sale before 31.3.2013	Sale after 31.03.2013
Cash Inflow	1,70,00,000	1,70,00,000
Less: Discount	<u>3,40,000</u>	<u>Nil</u>
	1,66,60,000	1,70,00,000
Less: Tax	<u>5,43,840</u>	<u>4,32,600</u>
Net Cash Inflow	1,61,16,160	1,65,67,400

Note: The assessee is advised to effect slump sale after 31.03.2013 as the tax liability arising out of long term capital gains is less than the tax liability arising on short term capital gains which would arise if Unit Y is transferred before 31.03.2013. The net cash flows are also higher if the sale is effected after 31.03.2013.

- (b) The interest income received by Ms. Hemali, a non-resident, from a notified infrastructure debt fund would be subject to a concessional tax rate of 5% under section 115A on the gross amount of such interest income. Therefore, the tax liability of Ms. Hemali in respect of such income would be ` 11,330 (being 5% of ` 2,20,000 plus education cess@2% and secondary and higher education cess@1%).

Under section 194LB, tax is deductible @5% on interest paid by such fund to a non-resident. However, since Ms. Hemali is a resident of a Notified Jurisdictional Area (NJA), tax would be deductible@30% as per section 94A, and not@ 5% specified under section 194LB. This is on account of the provisions of section 94A(5), which provides that "Notwithstanding anything contained in any other provision of this Act, where a person located in a NJA is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, the tax shall be deducted at the highest of the following rates, namely –

- at the rate or rates in force;
- at the rate specified in the relevant provision of the Act;
- at the rate of thirty per cent."

Ms. Hemali can, however, claim refund of excess tax deducted along with interest.

- (c) Under section 90(2), where the Central Government has entered into an agreement for avoidance of double taxation with the Government of any country outside India or specified territory outside India, as the case may be, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to the assessee. Thus, in view of paragraph 2 of the Article 24 (Non-Discrimination) of the Double Taxation Avoidance Agreement (DTAA), it appears that the Indian branch of Kyoto Ltd., incorporated in Mauritius, is liable to tax in India at the rate applicable to domestic company (30%), which is lower than the rate of tax applicable to a foreign company (40%).

However, Explanation 1 below sub-section (4) of section 90 clarifies that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company. Therefore, in view of this Explanation, the action of the Assessing Officer in levying tax@40% on the Indian branch of Kyoto Ltd. is in accordance with law.

7. (a) (i) A registered trade union is having income from property, which is exempt under section 10(24).

Section 139(4C) mandates filing of return only when the total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of section 10. Even without giving effect to section 10(24), the total income is below basic exemption limit and therefore, there is no mandatory requirement to file the return of income.

- (ii) Since the total income of the public trust hospital, without giving effect to the exemption under section 10(23C)(via), is less than the basic exemption limit of ₹ 2,00,000, the trust need not file its return of income.

- (b) Suresh is required to maintain books of account as per section 44AA and get them audited under section 44AB. However, he has not maintained books of account as required under section 44AA. Therefore, he would be liable to pay penalty under section 271A for not maintaining his books of account as per section 44AA. Accordingly, the action of the Assessing Officer in levying penalty under section 271A is correct. However, where books of account have not been maintained, there cannot be a question of getting them audited. Audit of books of account presupposes maintenance of books of account. When admittedly Suresh has not maintained books, he cannot obviously get the audit done.

In *Surajmal Parsuram Todi v. CIT* (1996) 222 ITR 691, the Gauhati High Court has held that when a person commits an offence by not maintaining books of accounts as contemplated by section 44AA, the offence is complete and after that there can

be no possibility of any offence as contemplated by section 44AB and, therefore, the imposition of penalty under section 271B is erroneous.

Therefore, in this case, the Assessing Officer is not justified in levying penalty under section 271B.

- (c) The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order. The Appellate Tribunal has to dispose off the appeal within this period of stay. Where the appeal has not been disposed off within this period and the delay in disposing the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. Section 254(2A) provides that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days, even if the delay in disposing of the appeal is not attributable to the assessee. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

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

In the present case, the period of 365 days has expired on 10.02.2013, after which date the order of stay stands vacated. Accordingly, the recovery of ` 30 lacs against the arrear demand of ` 50 lacs made by the Assessing Officer is in order.

- (d) As per section 245S(1), the advance ruling pronounced under section 245R by the Authority for Advance Ruling shall be binding only on the applicant who had sought it and in respect of the specific transaction in relation to which advance ruling was sought. It shall also be binding on the Commissioner and the income-tax authorities subordinate to him, in respect of the concerned applicant and the specific transaction.

In view of the above provision, Mr. Viren cannot use the advance ruling, obtained on an identical issue by his brother, for his assessment pertaining to the assessment year 2013-14.