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QUESTIONS

Residential Status and Scope of total income

1. "Income of a non-resident by way of fees for technical services, interest and royalty, from services utilized in India would not be deemed to accrue or arise to him in India unless the services are rendered in India" – Discuss the correctness or otherwise of the statement.

Charitable or religious trusts and institutions

2. The amendment by the Finance Act, 2010 to the definition of "charitable purpose" may have the effect of changing the "charitable status" of the trust/institution every year, though it is intended to provide relief, to some extent, to the genuine hardship faced by certain trusts/institutions" – Elucidate.

Profits and gains of business or profession / Tax deduction at source

3. Explain whether disallowance under section 40(a)(ia) is attracted in respect of the following payments made by ABC Ltd. during the P.Y.2010-11 –
 - (i) Rs.50,000 paid to Mr.A in December 2010, a resident contractor, for contract work. Tax deducted at source under section 194C was deposited on 15.6.2011.
 - (ii) Rs.40,000 paid to Mr.X, a resident, towards fees for technical services in March, 2011. Tax deducted at source under section 194J was deposited on 1.10.2011.
 - (iii) Rs.25,000 paid to Mr.P, a resident, towards fees for professional services in February, 2011. No tax has been deducted at source under section 194J. No other payment has been made to Mr.P during the year.

Profits and gains of business or profession

4. (a) The scope of "specified business" for provision of investment-linked tax incentives have been expanded – Elucidate. Can an assessee claim both investment-linked and profit linked tax incentives simultaneously in respect of such specified businesses?
 - (b) XYZ Inc., a foreign company engaged in the business of providing services in connection with extraction of mineral oils, entered into an agreement with A Ltd., an Indian company, for rendering technical services in relation to exploration of mineral oils. During the P.Y.2010-11, XYZ Inc. receives fees for technical services from A Ltd. XYZ Inc. has a permanent establishment in India and the income by way of fees for technical services is effectively connected with the permanent establishment set up in India.

XYZ Inc. contends that it can opt for presumptive tax provisions under section 44BB in respect of such income. Consequently, such income would be taxable @10% of the aggregate of the amounts specified in section 44BB(2) and there is no need to maintain books of accounts as per section 44AA. Explain the correctness of the contention of XYZ Inc.

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Would your answer be different if XYZ Inc. does not have a permanent establishment in India?

Assume that the agreement between A Ltd. and XYZ Inc. is approved by the Central Government.

Profits and gains of business or profession

5. Mr.A, a resident individual, has two businesses, namely, retail trade and civil construction. The turnover of retail trade business and civil construction business for the P.Y.2010-11 are Rs.50 lakh and Rs.70 lakh, respectively. He wants to opt for presumptive taxation in respect of both the businesses. Is Mr.A eligible to do so? Discuss.

Would your answer be different if the above businesses were carried on by a limited liability partnership (LLP) instead of Mr.A?

Capital Gains and Income from other sources

6. Mr. Shyam, a dealer in shares, received the following without consideration during the P.Y.2010-11 from his friend Mr. Ram, -

- (i) Cash gift of Rs.51,000 on his birthday, 7th May, 2010.
- (ii) Bullion, the fair market value of which was Rs.85,000, on his anniversary, 6th July, 2010.
- (iii) A plot of land at Pune on 14th August, 2010, the stamp value of which is Rs.6 lakh on that date. Mr.Ram had purchased the land in September, 2004 for Rs.1 lakh.

Mr. Shyam purchased from his friend Mr.Anand, who is also a dealer in shares, 500 shares of Alpha Ltd. @ Rs.400 each on 21st June, 2010, the fair market value of which was Rs.700 each on that date. Mr. Shyam sold these shares in the course of his business on 27th June, 2010.

Further, on 15th December, 2010, Mr. Shyam took possession of property (building) booked by him two years back at Rs.18 lakh. The stamp duty value of the property as on 15th December, 2010 is Rs.28 lakh.

On 25th February, 2011, he sold the plot of land at Pune for Rs.8 lakh.

Compute the income of Mr. Shyam chargeable under the head "Income from other sources" and "Capital Gains" for A.Y.2011-12.

Set-off and carry forward of losses

7. (a) M/s. ABCD, a firm, consists of four partners namely, A, B, C and D. They shared profits and losses equally during the year ended 31.3.2010. The assessed business loss of the firm for the assessment year 2010-11 which it is entitled to carry forward amounts to Rs.5,40,000. A new deed of partnership was executed among A, B, C and D on 1.4.2010 in terms of which they agreed to share profits and losses in the ratio of 2:2:3:3, respectively. The business income of the firm for the assessment year 2011-12 is Rs.4,50,000.

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Compute the amount of business loss relating to the assessment year 2010-11, which the firm is entitled to set off against its business income for the assessment year 2011-12, giving reasons for the same.

- (b) Mr. Rajiv sustained a loss of Rs.3 lakh under the head "Income from house property" in the previous year relevant to the assessment year 2010-11, which could not be set off against income from any other head in that assessment year. Mr. Rajiv filed his return of income for A.Y.2010-11 on 5th October, 2010. Can Mr. Rajiv carry forward the loss of Rs.3 lakh for set-off against income from house property of the assessment year 2011-12?

Deductions from Gross Total Income

8. (a) Mr. Ganesh, aged 40 years, paid medical insurance premium of Rs.14,000 during the P.Y.2010-11 to insure his health as well as the health of his spouse and dependent children. He also paid medical insurance premium of Rs.30,000 during the year to insure the health of his mother, aged 65 years, who is not dependent on him. He contributed Rs.2,400 to Central Government Health Scheme (CGHS) during the year. Compute the deduction allowable to Mr. Ganesh under section 80D for the A.Y.2011-12.
- (b) The Finance Act, 2010 has relaxed the conditions for housing projects for the purpose of availing the benefit of deduction under section 80-IB(10) – Elucidate.

Deductions from Gross Total Income

9. Decide the following issues with the aid of recent case laws -
- (a) The Central Government framed a scheme whereby freight/transport subsidy was provided to industries set up in remote areas where rail facilities were not available and some percentage of the transport expenses incurred to transport raw material/finished goods to or from the factory was subsidized.
- Can such freight subsidy arising out of the scheme of Central Government be treated as a "profit derived from the business" for the purposes of claim of deduction under section 80-IA?
- (b) Can the Duty Entitlement Passbook Scheme (DEPB) benefits and Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?

Assessment of Companies

10. GMP Ltd. earned a net profit of Rs.13,60,000 after debit/credit of the following items to its profit and loss account for the year ended on 31.3.2011:

(a) Items debited to Profit and Loss Account	Rs.
Provision for income-tax	2,50,000
Interest on income-tax	18,000

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Dividend distribution tax	40,000
Provision for deferred tax	16,000
Securities Transaction Tax	18,000
Transfer to General Reserve	45,000
Provision for gratuity based on actuarial valuation	16,000
Provision for diminution in the value of investment	11,000
Proposed dividend	27,000
Preference dividend	20,000
Expenditure to earn agricultural income	7,000
Expenditure to earn LTCG exempt under section 10(38)	5,000
Expenditure to earn dividend income	3,000
Depreciation (including depreciation of Rs.17,000 on revaluation)	42,000
(b) Items credited to Profit and Loss Account	
Amount credited to P& L A/c from Special Reserve	12,000
Amount credited to P& L A/c from Revaluation Reserve	23,000
Agricultural income	36,000
LTCG exempt under section 10(38)	24,000
Dividend income	18,000

The company provides the following additional information:

Brought forward Business Loss/Unabsorbed Depreciation:

Assessment Year	Amount as per books	
	Loss	Depreciation
2008-09	55,000	60,000
2009-10	60,000	10,000
2010-11	40,000	Nil

You are required to examine the applicability of section 115JB of the Income-tax Act, 1961 and compute book profit and the tax credit, if any, to be carried forward, assuming that the total income computed as per the provisions of the Income-tax Act, 1961 is Rs.9,00,000.

Assessment of Limited Liability Partnerships (LLPs)

11. XYZ Pvt. Ltd. has converted into a LLP on 1.4.2010. The following are the particulars of XYZ Pvt. Ltd. as on 31.3.2010 –

- (1) Unadjusted MAT credit under section 115JAA Rs.10 lakh

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- (2) Business loss Rs.30 lakh

Unabsorbed depreciation Rs.25 lakh

- (3) VRS expenditure incurred by the company during the previous year 2008-09 is Rs.30 lakh. The company has been allowed deduction of Rs.6 lakh each for the P.Y.2008-09 and P.Y.2009-10 under section 35DDA.

- (4) **WDV of assets**

Plant & Machinery (15%) Rs.100 lakh

Building (10%) Rs.120 lakh

Furniture (10%) Rs.25 lakh

- (5) Cost of land (acquired in the year 2001) Rs.72 lakh

Assuming that the conversion fulfills all the conditions specified in section 47(xiiib), explain the tax treatment of the above in the hands of the LLP.

Income-tax Authorities

12. Section 131(3) stipulates that the Assessing Officer cannot retain in his custody, the books of account or other documents impounded, for a period exceeding 15 days without obtaining the approval of the Chief Commissioner or Director General or Commissioner or Director, as the case may be. Can these authorities approve extension of the period of retention of books of accounts and documents impounded by two years? Discuss.

Assessment Procedure

13. (a) Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion? Discuss with the aid of a recent case law.
- (b) A Ltd. filed an appeal against the order of the Assessing Officer (dated 1.3.2006) passed under section 143(3) to the Commissioner (Appeals). The appeal was decided by the Commissioner (Appeals) on 2.4.2007. Thereafter, on 5.4.2010, with a view to rectifying a mistake apparent from record, the Commissioner (Appeals) amended the said order under section 154, which resulted in increase in tax liability of A Ltd. by Rs.1,75,000. The Commissioner (Appeals) issued notice to A Ltd. of his intention to make the amendment under section 154 and also gave him an opportunity of being heard.

A Ltd., however, contended that as per section 154(7), no amendment shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed. Since the four year period has to be reckoned from 31.3.2006, the said expired on 31.3.2010, and thereafter, amendment under section 154 was not permissible. Discuss the correctness of the contention of A Ltd.

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Appeals and Revision

14. (a) Does the Appellate Tribunal have the power under section 254(2) to reappreciate the correctness of its earlier decision on merits? Discuss with the aid of a recent case law.
- (b) Under section 260A(2), an appeal against the order of the Appellate Tribunal can be filed before the High Court within a period of 120 days from the date of the receipt of the order by the assessee or the Commissioner. Is the High Court empowered to condone delay in filing the appeal? Discuss.

Settlement of Cases

15. (a) The definition of the term “case” which can be admitted by the Settlement Commission has been expanded. Is this statement correct? Discuss.
- (b) What is the threshold limit for “additional amount of income-tax payable on income disclosed in the application” for admission of a case before the Settlement Commission?

Collection and Recovery of tax

16. (a) Ace Cellular Ltd., a company engaged in providing cellular telephone facilities to its subscribers, had been granted licences by the Department of Telecommunication for operating in specified circles. The licences stipulated that the Department of Telecommunication/MTNL/BSNL would continue to operate in the service areas in respect of which licences were issued. Where calls were to be made by subscribers of one network to another network, such calls were to be routed through MTNL/BSNL through interconnection points known as ports. For providing interconnection, Ace Cellular Ltd. entered into agreements with MTNL/BSNL, which were regulated by the Telecom Regulatory Authority of India. Under the agreement, Ace Cellular Ltd. had to pay interconnection, access charges and port charges to the interconnection providers.

The Department is of the view that interconnect/port access charges were liable for tax deduction at source under section 194J since these charges were in the nature of fee for technical services. Is the contention of the Department correct? Discuss.

- (b) The obligation to deduct tax at source under section 195 arises in respect of all payments (other than salaries) made to non-residents – Discuss the correctness or otherwise of this statement.

Collection and Recovery of tax

17. Gamma Ltd. makes the following payments to Mr. Arjun, a contractor, for contract work during the P.Y.2010-11 –
- (i) Rs.17,000 on 28.4.2010
 - (ii) Rs.23,000 on 10.9.2010
 - (iii) Rs.30,000 on 1.11.2010

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On 15.3.2011, a payment of Rs.10,000 is due to Mr.Arjun on account of a contract work.

Discuss whether Gamma Ltd. is liable to deduct tax at source under section 194C from payments made to Mr.Arjun.

Transfer Pricing / Double Taxation Relief

18. (a) In the context of transfer pricing provisions, what are the factors to be considered while selecting the most appropriate method?
- (b) Can an assessee claim relief in respect of the income arising to him in a country with which India does not have any double taxation avoidance agreement? If so, what are the conditions to be fulfilled to claim such relief?

Wealth-tax

19. Mr. Ganesh has a house property at Mumbai, which he has rented out to Mr. Sridhar from 1st October, 2010. The cost of acquisition of the property (acquired in the year 1998) is Rs.45 lakh. Determine the value of his property chargeable to wealth-tax as on the valuation date 31.3.2011, from the following particulars –
- (i) The annual value of the property as per municipal records is Rs.8 lakh.
 - (ii) The monthly rent which the property fetches is Rs.54,000.
 - (iii) Half yearly municipal tax is Rs. 40,000, paid partly by Mr. Sridhar (25%) and partly by Mr. Ganesh (75%).
 - (iv) The cost of repairs of the house property is entirely borne by Mr. Sridhar.
 - (v) Mr. Sridhar has given an interest-free deposit of Rs.4 lakh to Mr. Ganesh.
 - (vi) The unexpired period of lease on the valuation date is 25 years.

Wealth-tax

20. Mr. Vallish, an individual, furnishes the following particulars of his assets and liabilities as on 31.3.2011:

Assets	Rs. in lakhs
Residential house at Mumbai	40
Residential house at Chennai	25
Plot of land comprising an area of 325 square meters at New Delhi	90
House at Calcutta exclusively used for carrying on his business	22
Commercial complex at Chennai	30
Residential house at Bangalore let out for 310 days during the relevant previous year	15
Motor cars used in business of running them on hire	12
Shares in private limited companies	7
Cash in hand	2
Gold jewellery	8

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Liabilities:

Loan borrowed for purchase of land at New Delhi	30
Loan borrowed for purchase of shares in private limited companies	5
Loan borrowed for purchase of gold jewellery	4

The amounts stated against assets, except cash in hand, are the values determined as per section 7 of the Wealth-tax Act, 1957 read with Schedule III thereto.

Compute the net wealth of Mr. Vallish for the A.Y.2011-12.

State the reasons for inclusion or exclusion of the various items.

SUGGESTED ANSWERS/HINTS

1. The statement is not correct.

The Supreme Court had, in *Ishikawajima-Harima Heavy Industries Ltd. v. Director of Income-tax (2007) 288 ITR 408*, observed that in order to tax the income of a non-resident assessee under section 9(1)(vii), relating to fee for technical services, the income sought to be taxed must have sufficient territorial nexus with India i.e., the fees paid for technical services provided by a non-resident cannot be taxed in India unless the services were utilized in India and rendered in India. Since this observation was not in consonance with the source rule spelt out in the law and stand taken by India in the bilateral treaties with different countries, the Finance Act, 2007 had clarified, by insertion of an *Explanation* below section 9(2) with retrospective effect from 1.6.1976, that such income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of a non-resident, whether or not the non-resident has a residence or place of business or business connection in India.

However, even after insertion of the *Explanation* giving the clarification, the issue has not been resolved. Recently, the Karnataka High Court, in *Jindal Thermal Company Ltd. v. DCIT (TDS) 182 Taxman 252*, observed that the criteria of rendering services in India and utilizing the services in India, as laid down by the above Supreme Court judgment would continue to hold good even after insertion of the *Explanation*.

Therefore, the *Explanation* below section 9(2) has been substituted with retrospective effect from 1.6.1976 to clarify that income by way of fees for technical services, interest and royalty, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

2. The statement is true.

Section 2(15) defines "charitable purpose" to include relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility. However, the "advancement of any

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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.

Organisations existing for charitable purpose can obtain exemption under the Income-tax Act, 1961. However, the institutions which were engaged in charitable activities and having the object of general public utility were denied exemption, if they were engaged in any activity of trade, commerce or business or activity of rendering any service in relation to any trade, commerce or business for a cess or fees. This amendment denying the benefit of exemption was brought about by the Finance Act, 2008 w.e.f. 1.4.2009.

In order to provide relief to the genuine hardship faced by charitable organizations which receive marginal consideration from such activities, the Finance Act, 2010 has provided that such benefit of exemption will not be denied to the institutions having object of advancement of general public utility, even where they are engaged in the activity of trade, commerce or business or rendering any service for a cess or fee, provided the aggregate value of receipts from such activities does not exceed Rs.10 lakh in the year under consideration.

Therefore, in effect, "advancement of any other object of general public utility" would continue to be a "charitable purpose", if the total receipts from 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 does not exceed Rs.10 lakh in the previous year.

Consequently, this amendment may have the effect of changing the "charitable" status of the trust/institution every year depending on whether or not the total receipts from such activities exceed Rs.10 lakh in that year.

3. The scheme of disallowance under section 40(a)(ia) has been amended by the Finance Act, 2010, with effect from A.Y.2010-11, to extend the time limit for depositing tax deducted during the entire year up to the due date of filing return of income to ensure compliance with the statutory requirement to avoid disallowance of expenditure under section 40(a)(ia).

However, even under the new scheme, tax is required to be deducted during the relevant previous year, in cases where TDS provisions under Chapter XVII-B are attracted. The tax, so deducted, has to be deposited on or before the due date of filing of return to claim deduction of the expenditure in the relevant previous year to which it relates.

- (i) In this case, since the tax deducted under section 194C during the P.Y.2010-11 has been paid before the due date of filing of return i.e., before 30th September, 2011, disallowance under section 40(a)(ia) is not attracted.
- (ii) Since tax deducted under section 194J during the P.Y.2010-11 has been paid after the due date of filing of return i.e., after 30th September, 2011, the payment of Rs.40,000 towards fees for technical services would be disallowed under section 40(a)(ia) while computing income under the head "Profits and gains of business or profession".
- (iii) TDS provisions under section 194J are attracted only if the payment in nature of, *inter alia*, fees for professional services to a person exceeds Rs.30,000 in the

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previous year. The threshold limit was increased from Rs.20,000 to Rs.30,000 with effect from 1st July, 2010. In this case, since the fees for professional services paid to Mr. P in February, 2011 does not exceed Rs.30,000 and there is no other payment to Mr. P during the year, there is no requirement to deduct tax at source under section 194J. Therefore, disallowance under section 40(a)(ia) is not attracted in this case.

4. (a) Investment-linked tax incentives were introduced by insertion of section 35AD last year for specified businesses, namely, –
- (i) setting-up and operating 'cold chain' facilities for specified products;
 - (ii) setting-up and operating warehousing facilities for storing agricultural produce; and
 - (iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

The Finance Act, 2010 has expanded the scope of "specified business" to include the following businesses -

- (1) building and operating a new hotel of two-star or above category, anywhere in India;
- (2) building and operating a new hospital, anywhere in India, with at least 100 beds for patients;
- (3) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the CBDT in accordance with the prescribed guidelines.

In respect of these three businesses, the deduction under this section would apply if the operations are commenced on or after 1st April, 2010.

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.

Section 35AD(3) provides that where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction under the provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" is permissible in relation to such specified business for the same or any other assessment year.

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Correspondingly, section 80A has been amended to provide that where a deduction under any provision of this Chapter under the heading "C – Deductions in respect of certain incomes" is claimed and allowed in respect of the profits of such specified business for any assessment year, no deduction under section 35AD is permissible in relation to such specified business for the same or any other assessment year.

In short, once the assessee has claimed the benefit of deduction under section 35AD for a particular year in respect of a specified business, he cannot claim benefit under Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" for the same or any other year and vice versa.

(b) The contention of XYZ Inc. is not correct.

As per section 44BB(1), the income of a non-resident who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils is computed at 10% of the aggregate of the amounts specified in section 44BB(2).

Under section 44DA, the procedure is prescribed for computing income of a non-resident, including a foreign company, by way of royalty or fee for technical services, in case the right, property or contract giving rise to such income are effectively connected with the permanent establishment of the said non-resident. This income is computed as per the books of account maintained by the assessee in accordance with section 44AA.

There have been legal decisions which have expressed contradictory views regarding the scope and applicability of section 44BB vis-à-vis section 44DA on the issue of taxability of fee for technical services relating to the exploration sector.

In order to reflect the correct legislative intention regarding taxation of income by way of fee for technical services, section 44BB has been amended to exclude the applicability of section 44BB to the income which is covered under section 44DA. A similar amendment has been made in section 44DA to provide that provisions of section 44BB would not be applicable in respect of the income covered under section 44DA.

Therefore, if the income of a non-resident or a foreign company, having a permanent establishment in India, is in the nature of fees for technical services, it shall be taxable under the provisions of section 44DA irrespective of the business to which it relates. Section 44BB would apply only in a case where consideration is for services and other facilities relating to exploration activity which are not in the nature of technical services.

If the non-resident does not have a permanent establishment in India, then section 115A prescribes the rate of taxation in respect of income of a non-resident, including a foreign company, in the nature of fee for technical services, other than the income referred to in section 44DA i.e., income in the nature of fee for technical services which is not connected with the permanent establishment of the non-resident. The rate is 10% if such fees for technical services are received in pursuance of an agreement made on or after 1st June, 2005.

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5. The presumptive tax scheme under section 44AD includes within its scope, small businesses with total turnover of up to Rs.60 lakh. In order to determine whether an eligible assessee who is engaged in multiple businesses can opt for section 44AD, the limit of Rs.60 lakh should be applied business-wise and not by aggregating the turnover of all businesses of the assessee.

Therefore, in this case, Mr.A, a resident individual, can opt for presumptive taxation under section 44AD in respect of his retail trade business but not in respect of civil construction business (since the turnover of this business exceeds Rs.60 lakh). If Mr.A opts for presumptive taxation scheme, then his income from retail trade business would be Rs.4 lakh (i.e., 8% of Rs.50 lakh). He is not required to maintain books of account for retail trade. However, since he cannot avail presumptive taxation scheme in respect of civil construction business, he has to maintain books of account under section 44AA and get them audited under section 44AB.

The definition of “eligible assessee” in the *Explanation* to section 44AD, includes only an individual, HUF or a partnership firm resident in India. It specifically excludes a limited liability partnership. Therefore, if the assessee is a limited liability partnership, then it cannot avail presumptive taxation scheme under section 44AD in respect of any business.

6. **Computation of “Income from other sources” of Mr.Shyam for the A.Y.2011-12**

Particulars	Rs.
(1) Cash gift is taxable under section 56(2)(vii), since it exceeds Rs.50,000	51,000
(2) Bullion has been included in the definition of property w.e.f. 1.6.2010. Therefore, when bullion is received without consideration after 1.6.2010, the same is taxable, since the aggregate fair market value exceeds Rs.50,000	85,000
(3) Stamp value of plot of land at Pune, received without consideration, is taxable under section 56(2)(vii)	6,00,000
(4) Difference in the value of shares of Alpha Ltd. purchased from Mr. Anand, a dealer in shares, is not taxable as it represents the stock-in-trade of Mr. Shyam. Since Mr. Shyam is a dealer in shares and it has been mentioned that the shares were subsequently sold in the course of his business, such shares represent the stock-in-trade of Mr. Shyam.	-
(5) Appreciation in the value of immovable property between the time of its booking and its actual registration is outside the scope of section 56(2)(vii).	-
Income from other sources	7,36,000

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Computation of “Capital Gains” of Mr. Shyam for the A.Y.2011-12

Sale Consideration	8,00,000
Less: Cost of acquisition [deemed to be the stamp value charged to tax under section 56(2)(vii) as per section 49(4)]	6,00,000
Short-term capital gains	<u>2,00,000</u>

Note – The resultant capital gains will be short-term capital gains since for calculating the period of holding, the period of holding of previous owner is not to be considered.

7. (a) The firm is entitled to set off its brought forward business loss amounting to Rs.5,40,000 relating to the assessment year 2010-11 to the extent of Rs.4,50,000 against its business income of Rs.4,50,000 for the assessment year 2011-12 as per the provisions of section 72(1).

Section 78(1) which deals with carry forward and set-off of losses in the case of change of constitution of firm is applicable only where there is retirement or death of a partner. It is not applicable to a case where there is a change in the ratio of sharing profits and losses amongst the existing partners. Therefore, section 78(1) is not applicable to the case of M/s. ABCD. The unabsorbed business loss of Rs.90,000 (Rs.5,40,000 – Rs.4,50,000) relating to the assessment year 2010-11 can be carried forward further for set-off against the business income of the assessment year 2012-13.

- (b) Mr. Rajiv has not filed his return of income for A.Y.2010-11 within the time prescribed under section 139(1). However, he has filed a belated return within the time prescribed under section 139(4).

Section 139(3) stipulates that an assessee claiming carry forward of loss under the heads “Profits and gains of business or profession” or “Capital gains” should furnish the return of loss within the time stipulated under section 139(1). There is no requirement of filing return of loss within the time stipulated under section 139(1) for carry forward of loss under the head “Income from house property”. Mr. Rajiv, in the instant case, has filed the return showing loss from property within the time prescribed under section 139(4). He is, therefore, entitled to carry forward such loss for set off against the income from house property of the subsequent assessment year.

8. (a) **Deduction allowable under section 80D for the A.Y.2011-12**

Particulars	Rs.
(i) Medical insurance premium paid for self, spouse and dependent children	14,000
(ii) Contribution to CGHS	<u>2,400</u>
	<u>16,400</u>
Deduction under (i) and (ii) above restricted to Rs.15,000	15,000

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- (iii) Medici claim premium paid for mother, who is 65 years of age 20,000
(Rs.30,000 but restricted to Rs.20,000, being the maximum allowable in case of a senior citizen)

35,000

Note – The total deduction under (i) and (ii) above should not exceed Rs.15,000. The medical insurance premium paid for self, spouse and children (i.e., Rs.14,000) and contribution to CGHS (i.e., Rs.2,400) totaling to Rs.16,400 (i.e., Rs.14,000 + Rs.2,400) under (i) and (ii) above has to be restricted to Rs.15,000. Further, the maximum deduction allowable in respect of medical insurance premium paid in respect of a parent who is a senior citizen is Rs.20,000. The deduction is allowable even if the parent is not dependent on Mr. Ganesh. Therefore, the total deduction allowable under section 80D would be Rs.35,000 [i.e., Rs.15,000 [(i) & (ii)] + Rs.20,000 (iii)].

- (b) An undertaking developing and building housing projects approved by a local authority before 31.3.2008 is eligible for deduction of 100% of the profits from such project under section 80-IB(10), if it fulfills certain conditions. One of the conditions is that the project has to be completed within 4 years from the end of the financial year in which the project is approved by the local authority. Further, the built-up area of the shops and other commercial establishments included in the housing project should not exceed 5% of the total built-up area of the housing project or 2,000 sq.ft., whichever is less.

On account of the large scale widespread downturn and the consequent slump in the housing sector, the period for completion of housing projects to qualify for tax benefit under section 80-IB has been extended from 4 years to 5 years from the end of the financial year in which the housing project is approved by the local authority, in case of housing projects approved on or after 1.4.2005.

Further, the present restrictions regarding built-up area of shops and other commercial establishments have been relaxed in respect of housing projects approved on or after 1.4.2005. The permissible built-up area of shops and other commercial establishments included in the housing project has been increased from 5% of the aggregate built-up area or 2,000 sq. feet, whichever is lower, to 3% of the aggregate built-up area of the housing project or 5,000 sq. ft., whichever is higher.

However, these benefits are not available in respect of a housing project approved by the local authority before 1st April, 2005.

9. (a) The issue under consideration is whether such freight subsidy arising out of the scheme of Central Government can be treated as a “profit derived from the business” for the purposes of section 80-IA. This issue was dealt with in *CIT v. Kiran Enterprises (2010) 327 ITR 520 (HP)*. The High Court held that the transport subsidy received by the assessee was not a profit derived from business since it was not an operational profit. The source was not the business of the assessee but the scheme of Central Government. The words “derived from” are narrower in

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connotation as compared to the words "attributable to". Therefore, the freight subsidy cannot be treated as profits derived from the business for the purposes of section 80-IA.

- (b) This issue was decided by the Supreme Court in *Liberty India v. CIT (2009) 317 ITR 218*. On this issue, the Supreme Court observed that DEPB / Duty drawback are incentives which flow from the schemes framed by the Central Government or from section 75 of the Customs Act, 1962. Section 80-IB provides for the allowing of deduction in respect of profits and gains derived from eligible business. However, incentive profits are not profits derived from eligible business under section 80-IB. They belong to the category of ancillary profits of such undertaking. Profits derived by way of incentives such as DEPB/Duty drawback cannot be credited against the cost of manufacture of goods debited in the profit and loss account and they do not fall within the expression "profits derived from industrial undertaking" under section 80-IB. Hence, duty drawback receipts and DEPB benefits do not form part of the profits derived from the eligible business for the purpose of the deduction under section 80-IB.

10. Computation of Book Profit under section 115JB

Particulars	Rs.	Rs.
Net Profit as per Profit & Loss Account		13,60,000
Add: Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB		
Income-tax paid or payable or provision therefor		
Provision for income-tax	2,50,000	
Interest on income-tax	18,000	
Dividend distribution tax	40,000	3,08,000
Provision for deferred tax		16,000
Transfer to General Reserve		45,000
Provision for diminution in the value of investment		11,000
Dividend paid or proposed		
Proposed dividend	27,000	
Preference dividend	20,000	47,000
Expenditure to earn income exempt u/s 10 [except section 10(38)]		
Expenditure to earn agricultural income [exempt u/s 10(1)]	7,000	
Expenditure to earn dividend income [exempt u/s 10(34)]	3,000	10,000
Depreciation	42,000	4,79,000
		18,39,000

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Less: Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB

Amount credited to P& L A/c from Special Reserve	12,000	
Depreciation (excluding depreciation on account of revaluation of fixed assets) (i.e. Rs.42,000 – Rs.17,000)	25,000	
Amount credited to P& L A/c from Revaluation Reserve (to the extent of depreciation on revaluation)	17,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less taken on cumulative basis	70,000	

Income exempt u/s 10 [except section 10(38)]

Agricultural Income [since it is exempt under section 10(1)]	36,000	
Dividend income [since it is an income exempt under section 10(34)]	18,000	1,78,000

Book Profit	16,61,000	
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18% of book profit		2,98,980
Add: Education cess @ 2%	5,980	
Secondary and higher education cess @ 1%	2,990	8,970
Tax liability under section 115JB		3,07,950

Total income computed as per the provisions of the Income-tax Act, 1961

Tax payable @ 30%		2,70,000
Add: Education cess @ 2%	5,400	
Secondary and higher education cess @ 1%	2,700	8,100

Tax Payable as per the Income-tax Act, 1961	2,78,100	
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In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 18% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 18% thereof plus education cess @2% and secondary and higher education cess @ 1%. Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 18% of book profit, the book profit of Rs.16,61,000 is deemed to be the total income and income-tax is payable @ 18% thereof plus education cess @2% and secondary and higher education cess @1%. The tax liability, therefore, works out to Rs.3,07,950.

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income-tax Act, will be allowed as tax credit in the

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subsequent years. The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the other provisions of the Act. This tax credit is allowed to be carried forward for ten assessment years succeeding the assessment year in which the credit became allowable. Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act, other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

Particulars	Rs.
Tax on book profit under section 115JB	3,07,950
Less: Tax on total income computed as per the other provisions of the Act	2,78,100
Tax credit to be carried forward	29,850

Notes:

1. Securities transaction tax does not form part of income-tax and hence, should not be added back to net profit for computing book profit.
 2. Provision for gratuity based on actuarial valuation is a provision for meeting an ascertained liability. Therefore, it should not be added back for computing book profit.
 3. Long-term capital gains on sale of equity shares through a recognized stock exchange on which securities transaction tax (STT) is paid is exempt under section 10(38). One of the adjustments to the book profit is that exempt income under section 10, which is credited to profit and loss account, would be deducted in arriving at the book profit. However, deduction of such long-term capital gains is not allowed for computing book profit. Consequently, expenditure to earn such income should not be added back to arrive at the book profit. Section 10(38) also provides that such long term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.
11. (1) As per section 115JAA(7), the credit for MAT paid by XYZ Pvt. Ltd. cannot be availed by the successor LLP.
- (2) As per section 72A(6A), the LLP would be able to carry forward and set-off the unabsorbed depreciation and business loss of XYZ Pvt. Ltd. as on 31.3.2010. However, if in any subsequent year, say previous year 2011-12, the LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set-off of loss or depreciation so made in the previous year 2010-11 would be deemed to be the income chargeable to tax of P.Y.2011-12.
- (3) The LLP would be eligible for deduction of Rs.6 lakh each for the P.Y.2010-11, P.Y.2011-12 and P.Y.2012-13 under section 35DDA.

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- (4) The aggregate depreciation for the P.Y.2010-11 would be –

Plant & Machinery	Rs.15 lakh (15% of Rs.100 lakh)
Building	Rs.12 lakh (10% of Rs.120 lakh)
Furniture	Rs.2.50 lakh (10% of Rs.25 lakh)

In this case, since the conversion took place on 1.4.2010, the entire depreciation is allowable in the hands of the LLP. Had the conversion taken place on any other date, the depreciation shall be apportioned between the company and the LLP in proportion to the number of days the assets were used by them.

- (5) The cost of acquisition of land in the hands of the LLP would be the cost for which XYZ Pvt. Ltd. acquired it, i.e., Rs.72 lakh.

12. This issue came up before the Karnataka High Court in *Subha and Prabha Builders (P) Ltd. vs. ITO (2009) 318 ITR 29*. On this issue, the High Court observed that section 131 confers on the income-tax authorities the power to impound and retain books of account or other documents for a maximum period of 15 days, after recording of reason for doing so. Extension can be granted with the prior approval of the higher authority for a reasonable period and not for an indefinite period.

The High Court held that the extension can only be a one time exercise and supplementing the outer limit of 15 days for few more days depending on the circumstances. Since the outer limit is specified in days, the period can be extended only in days and not in months or years.

Therefore, in this case, the authorities cannot approve extension of the period by two years.

13. (a) The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The existence of tangible material is essential to safeguard against an arbitrary exercise of this power.

In *Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 0570*, the Bombay High Court observed that where there was no tangible material before the Assessing Officer to hold that income had escaped assessment within the meaning of section 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion, the reassessment was not valid.

- (b) The issue under consideration is whether the time limit of 4 years as per section 154(7) would apply from the date of original assessment order or the order of the Appellate Authority.

On this issue, the Delhi High Court, in *CIT v. Tony Electronics Ltd. (2010) 320 ITR 378*, held that once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the Assessing Officer merges with the order of the appellate authority. After merger, the order of the original authority ceases to exist and the order of the appellate authority prevails. Thus, the period of limitation of 4 years for the purpose of section 154(7) has to be counted from the date of the order of the Appellate Authority.

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The Delhi High Court had followed the decision of the Supreme Court in the case of *Hind Wire Industries v. CIT* (1995) 212 ITR 639.

The contention of A Ltd. in this case is, therefore, not correct, since the four year period expires only on 31.3.2012.

14. (a) This issue came up before the Bombay High Court in *CIT v. Earnest Exports Ltd.* (2010) 323 ITR 577. The High Court observed that the power under section 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters. Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection.

In that case, the High Court observed that the Tribunal, while dealing with the application under section 245(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a reappraisal of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred under section 254(2).

- (b) As per section 260A(7), the provisions of Code of Civil Procedure, 1908 relating to appeals to the High Court, shall, as far as may be, apply in the case of an appeal filed under this section before the High Court. The power to condone the delay is contained in the Code of Civil Procedure, 1908 and therefore, by virtue of section 260A(7), it is implied that the High Court has the power to condone the delay on sufficient cause being shown.

However, the High Courts, while considering this issue, have expressed divergent views on their power to condone delay in filing of an appeal.

Therefore, in order to clarify the true legislative intent, sub-section (2A) has been inserted in section 260A with retrospective effect from 1.10.1998 to specifically provide that the High Court has and always had the power to condone the delay and admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within that period.

15. (a) The statement is correct.

Section 245A(b) defines the term "case" as any proceeding for assessment, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application is made to the Settlement Commission. However, proceedings for assessment or reassessment resulting from a search or as a result of requisition of books of account or other documents or any assets were specifically excluded from the definition of case.

This section has been amended by the Finance Act, 2010 to provide that the proceedings for assessment or reassessment resulting from search/requisition will

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now fall within the definition of a “case” which can be admitted by the Settlement Commission.

In the case of a person whose income is being assessed or reassessed as a result of search or as a result of requisition of books of account or other documents or any assets, the proceedings for assessment or reassessment shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made.

- (b) Section 245A has been amended to provide that the proceedings for assessment or reassessment resulting from search/requisition would fall within the definition of a “case” which can be admitted by the Settlement Commission. Consequently, section 245C has been amended to provide that the additional amount of income-tax payable on income disclosed in the application should exceed Rs.50 lakh, for an application to be made before the Settlement Commission in such cases.

In other cases, the additional amount of income-tax payable on income disclosed in the application should exceed Rs.10 lakh, for an application to be made before the Settlement Commission.

Such tax and interest thereon, which would have been payable had such income been disclosed in the return of income before the Assessing Officer on the date of application, should be paid on or before the date of making the application. Further, proof of such payment should be attached with the application.

16. (a) The facts of this case are similar to the case decided by the Delhi High Court in *CIT v. Bharti Cellular Ltd. (2009) 319 ITR 139*. The Delhi High Court held that the services rendered relating to interconnection, port access did not involve any human interface and, therefore, the services could not be regarded as “technical services” as contemplated under section 194J. The interconnect/port access facility was only a facility to use the gateway and the network of MTNL/other companies. MTNL or other companies did not provide any assistance to the assessee in managing, operating, setting up their infrastructure and networks. Even though the facility of interconnection and port access provided by MTNL/other companies was “technical” in the sense that it involved sophisticated technology, the expression “technical service” is not to be construed in the abstract and general sense but in the narrower sense as circumscribed by the expressions “managerial service” and “consultancy service” under Explanation 2 to section 9(1)(vii). The expression “technical service” would have reference to only technical service rendered by a human. It would not include any service provided by machines or robots. The interconnect charges/port access charges could not, therefore, be regarded as fees for technical services, and hence TDS provisions under section 194J are not attracted.

Therefore, the contention of the Department, in this case, is not correct.

- (b) The statement is not correct.

The Apex Court, in *GE India Technology Centre P. Ltd. v. CIT (2010) 327 ITR 456*, observed that the expression “chargeable under the provisions of the Act” in section 195(1) shows that the remittance has got to be a trading receipt, the whole or a part

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of which is liable to tax in India. If the tax is not so assessable, there is no question of tax at source being deducted. A person paying interest or any other sum to a non-resident is not liable to deduct tax if such sum is not chargeable to tax under the Income-tax Act, 1961.

17. Upto 30th June, 2010, TDS provisions under section 194C were attracted if a single payment to a contractor exceeded Rs.20,000 or aggregate payments during the financial year exceeded Rs.50,000. With effect from 1st July, 2010, TDS provisions under section 194C would be attracted only if the individual contract payment exceeds Rs.30,000 or the aggregate amounts credited or paid to the contractor during the financial year exceeds Rs.75,000.

In this case, the individual contract payments made to Mr.Arjun up to 30.6.2010 does not exceed Rs.20,000 and after 1.7.2010 does not exceed Rs.30,000. However, since the aggregate amount paid to Mr.Arjun during the P.Y.2010-11 exceeds Rs.75,000 (on account of the last payment of Rs.10,000, due on 15.3.2011, taking the total from Rs.70,000 to Rs.80,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted@1% on the entire amount of 80,000 from the last payment of Rs.10,000 and the balance of Rs.9,200 (i.e. Rs.10,000 – 800) has to be paid to Mr. Arjun.

18. (a) Rule 10C deals with the determination of the most appropriate method. Under this Rule, the method which is best suited to the facts and circumstances of each particular international transaction, and which provides the most reliable measure of an arm's length price in relation to the international transaction will be considered as the most appropriate method.

For the purpose of selecting the most appropriate method, the following factors should be taken into account -

- (i) the nature and class of the international transaction;
 - (ii) the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises;
 - (iii) the availability, coverage and reliability of data necessary for application of the method;
 - (iv) the degree of comparability existing between the international transaction and the uncontrolled transaction and between the enterprises entering into such transactions;
 - (v) the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions;
 - (vi) the nature, extent and reliability of assumptions required to be made in application of a method.
- (b) Yes, an assessee can claim deduction under section 91 in respect of such income, provided the following conditions are satisfied :-

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- (i) He is a resident in India during the relevant previous year.
- (ii) Income accrues or arises to him outside India during the previous year.
- (iii) Such income is not deemed to accrue or arise in India during the previous year.
- (iv) The income in question has been subjected to income-tax outside India in the hands of the assessee and the assessee has paid tax on such income in a country outside India.
- (v) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country.

In such a case, the assessee would be entitled to deduction under section 91, from the Indian income-tax payable by him, of a sum, calculated on such doubly taxed income at the Indian rate of tax or at the rate of tax of the foreign country, whichever is lower or at the Indian rate of tax, if both the rates are equal.

19. Valuation of house property at Mumbai of Mr. Ganesh on valuation date 31.3.2011

Particulars	Rs.
Actual Rent (Rs.54,000 x 6)	3,24,000
Add: (i) Municipal taxes borne by the tenant (25% of Rs.40,000)	10,000
(ii) Repairs borne by the tenant - 1/9 th of actual rent received	36,000
(iii) 15% of amount of deposit of Rs.4 lakh (15%×Rs.4,00,000 × 6/12)	30,000
	4,00,000

Annual Rent (4,00,000 × 12/6) 8,00,000

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 Gross Maintainable Rent. The municipal value is Rs.8,00,000 and the annual rent also works out to Rs.8,00,000. Therefore, Rs.8,00,000 shall be the Gross Maintainable Rent.

Computation of Net Maintainable Rent (NMR)	Rs.
Gross Maintainable Rent, being the annual rent	8,00,000
Less: Corporation Tax (annual)	80,000
15% of Gross Maintainable Rent	1,20,000
Net Maintainable Rent (NMR)	6,00,000

Capitalised value of NMR

Capitalised value (Rs.6,00,000 × 8) [See Note below]	48,00,000
Cost of acquisition	45,00,000
Capitalised value is the higher of the above	48,00,000

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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 31.3.2011 is Rs.48 lakh.

20. Computation of net wealth of Mr. Vallish for the A.Y. 2011-12

Particulars	Amount in Rs.
(a) Residential house at Mumbai	40,00,000
(b) Residential house at Chennai	25,00,000
(c) Plot of land comprising an area of 325 square meters at New Delhi is an asset but exempt under section 5(vi)	Nil
(d) House at Calcutta exclusively used for carrying on his business is not an asset	Nil
(e) Commercial complex at Chennai is not an asset	Nil
(f) Residential house at Bangalore let out for 310 days during the relevant previous year is not an asset	Nil
(g) Motor cars used in the business of running them on hire is not an asset	Nil
(h) Shares in private limited companies is not an asset	Nil
(i) Cash in hand in excess of Rs.50,000 is includible in net wealth	1,50,000
(j) Gold jewellery is an asset	8,00,000
	74,50,000
Less: Debts incurred in relation to assets	
(k) Loan borrowed for purchase of land at New Delhi (not deductible since exemption under section 5(vi) has been claimed in respect of the said land)	Nil
(l) Loan borrowed for purchase of shares in private limited companies (not deductible since shares are not included in net wealth)	Nil
(m) Loan borrowed for purchase of gold jewellery	4,00,000
Net Wealth	70,50,000

Reasons for inclusion or exclusion of the various items are furnished below:

- (a) Residential house at Mumbai is included, as residential house is an "asset" within the meaning of section 2(ea) of the Wealth-tax Act, 1957. Exemption under section 5(vi) is not claimed in respect of this house as it is more beneficial for the assessee to claim exemption in respect of plot of land at New Delhi, whose value is higher.

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- (b) Residential house at Chennai is an asset under section 2(ea) and, therefore, included in the net wealth.
- (c) Plot of land measuring 325 square metres at New Delhi is exempt under section 5(vi) and, therefore, does not form part of net wealth. One house or part thereof or a plot of land, not exceeding 500 square metres, belonging to an individual or a Hindu Undivided Family is exempt under section 5(vi) without any monetary ceiling.
- (d) House at Calcutta, occupied for own business purposes, is excluded from net wealth as it is not an asset.
- (e) Commercial complex at Chennai is excluded as it is not an asset.
- (f) Any residential property let out for a minimum period of 300 days in the previous year is not considered as an asset. Residential house at Bangalore let out for more than 300 days is, therefore, excluded from net wealth.
- (g) Motor cars used in business of running them on hire are not assets as per section 2(ea)(ii) and, therefore, excluded from net wealth.
- (h) Shares in private limited companies are not assets and, therefore, excluded from net wealth.
- (i) Cash in hand, in excess of Rs.50,000, of individuals constitutes an asset. Therefore, Rs.1,50,000, being cash in hand in excess of Rs.50,000, is included in net wealth.
- (j) Gold jewellery constitutes an asset as per section 2(ea) and is includible in net wealth.
- (k) Debts incurred in relation to an exempted asset are not deductible in computing net wealth. Loan borrowed for purchase of land at New Delhi is not deductible as exemption under section 5(vi) has been claimed in respect of the said land.
- (l) Loan borrowed for purchase of shares in private limited companies is not deductible while computing net wealth as shares are not included in net wealth.
- (m) Gold jewellery, being an asset, has been included in the net wealth. Therefore, loan borrowed for purchase thereof is deductible in computing the net wealth.

SIGNIFICANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.2010 AND 31.10.2010

Students may note that the Study Material for Final Group II Paper 7: Direct Tax Laws (A.Y. 2011-12) has been updated with the law as amended by the Finance Act, 2010 and notifications and circulars issued upto 30.04.2010. The following are the amendments which have been made between 1.05.2010 and 31.10.2010. It may be noted that for the students appearing in May 2011 examination, the amendments made by Notifications & Circulars up to 31.10.2010 are relevant.

I CIRCULARS

1. Circular No. 4/2010 dated 18.5.2010

Clarification regarding definition of new infrastructure facility for the purpose of section 80-IA(4)

The CBDT has, vide this Circular, 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.

2. Circular No. 6/2010 dated 20.9.2010

Regional Rural Banks not eligible for deduction under section 80P

The CBDT has, through this circular, reiterated that Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards. It has also been clarified that the Circular No. 319 dated 11-1-1982 deeming any Regional Rural Bank to be cooperative society stands withdrawn for application with effect from A.Y.2007-08.

This is consequent to the amendment in section 80P by the Finance Act, 2006, providing specifically that w.e.f. 1-4-2007, the provisions of section 80P will not apply to any co-operative bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. The same has been further clarified by this circular.

3. Circular No. 7/2010 dated 27.10.2010

Clarification regarding period of validity of approvals issued under section 10(23C)(iv), (v), (vi) or (via) and section 80G(5)

For the removal of doubts about the period of validity of various approvals granted by the Chief Commissioners of Income-tax or Directors General of Income-tax under sub-clauses (iv), (v), (vi) and (via) of section 10(23C) and by the Commissioners of Income-tax or Directors of Income-tax under section 80G(5) of the Income-tax Act, 1961, the CBDT has, through, this circular clarified the following:-

- (1) For the purposes of sub-clauses (iv) and (v) of section 10(23C), any notification issued by the Central Government under the said sub-clauses, on or after 13-7-2006 will be valid until withdrawn and there will be no requirement on the part of the assessee to seek renewal of the same after three years.
- (2) For the purposes of sub-clauses (vi) and (via) of section 10(23C), any approval issued on or after 1-12-2006 under the said sub-clauses would be a one time approval and would be valid till it is withdrawn.
- (3) For the purposes of section 80G(5), existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. Further, any approval under section 80G(5) on or after 1-10-2009 would be a one time approval which would be valid till it is withdrawn.

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II NOTIFICATIONS

1. Notification Nos. 48/2010 dated 9.7.2010 & 77/2010 dated 11.10.2010

Notification of long-term infrastructure bonds by the Central Government, subscription to which would qualify for deduction under section 80CCF

Section 80CCF provides that an assessee, being an individual or a Hindu Undivided Family, shall get a deduction of up to rupees twenty thousand in computing his total income if he subscribes to long-term infrastructure bonds as may be notified by the Central Government for this purpose.

Consequently, the Central Government has, vide these notifications, specified the long-term infrastructure bonds, subscription to which would qualify for deduction under section 80CCF. Accordingly, subscription to long-term infrastructure bonds of Industrial Finance Corporation of India, Life Insurance Corporation of India, Infrastructure Development Finance Company Limited and a non-banking Finance Company classified as an Infrastructure Finance Company by the Reserve Bank of India would qualify for deduction under section 80CCF. Further, subscription to long-term infrastructure bonds of India Infrastructure Finance Company Ltd. would also qualify for deduction under section 80CCF.

2. Notification No. 59/2010 dated 21.07.2010

Cost Inflation Index of financial year 2010-11 notified

The CBDT has notified the cost inflation index for the financial year 2010-11 as 711.

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

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18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551
28.	2008-09	582
29.	2009-10	632
30.	2010-11	711

3. Notification No. 69/2010 dated 26.08.2010

Notification of interest rate on RPF as 8.5% w.e.f. 1.9.2010, the interest in excess of which would be taxable as salary.

Rule 6 of Part A of the Fourth Schedule to the Income-tax Act, 1961, provides, *inter alia*, that interest credited on the balance to the credit of an employee participating in a recognized provident fund in so far as it is allowed at a rate exceeding such rate notified by the Central Government, shall be deemed to have been received by the employee in the relevant previous year and shall be included in his total income.

Accordingly, the Central Government has notified, w.e.f. 1st September, 2010, in exercise of the powers conferred by Rule 6, 8.5% as the rate of interest on Employer's annual contributions in a recognised provident fund. This implies that w.e.f. 1st September 2010 interest credited on the balance to the credit of the employee in excess of 8.5 percent shall be deemed to have been received by the employee in the previous year and shall be included in the total income of the employee. Prior to this date, the interest credited in excess of 9.5% was deemed to be the income of the employee.

Example : If interest @ 9.5% is credited in the provident fund account of the employee as on 31st March, 2011 for the year 2010-11, then, according to the above notification, the amount of interest credited upto 31.08.2010 (i.e. 9.5%) is exempt from tax and w.e.f. 01.09.2010 the interest credited @1% (i.e. 9.5% - 8.5%) is deemed to be the income of the employee for A.Y.2011-12.

4. Notification No. 80/2010 dated 19.10.2010

Notification of annuity plan for deduction under section 80C

Deduction under section 80C is available in respect of any sum paid or deposited to effect or to keep in force a contract for such annuity plan of the Life Insurance

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Corporation or any other insurer as the Central Government may, by notification in the Official Gazette specify in this behalf.

Accordingly, the Central Government, has, through this notification specified the Tata AIG Easy Retire Annuity plan of the Tata AIG Life Insurance Company Limited as the annuity plan of the ICICI Prudential Life Insurance Company Limited for the purposes deduction under section 80C.

5. Notification No.41/2010 dated 31.05.2010

Substitution of Rules 30, 31, 31A, 31AA, 37CA & 37D in the Income-tax Rules, 1962.

Rule 30 – Time and mode of payment to Government account of TDS or tax paid under section 192(1A)

- (a) All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income-tax challan and on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A) , where tax is paid accompanied by an income-tax challan.
- (b) All sums deducted in accordance with Chapter XVII-B by deductors other than a Government office shall be paid to the credit of the Central Government on or before 30th April, where the income or amount is credited or paid in the month of March. In any other case, the tax deducted should be paid on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A).
- (c) In special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192/ 194A/194D/194H on or before 7th of the month following the quarter, in respect of first three quarters in the financial year and 30th April in respect of the quarter ending on 31st March. The dates for quarterly payment would, therefore, be 7th July, 7th October, 7th January and 30th April, for the quarters ended 30th June, 30th September, 31st December and 31st March, respectively.

Rule 31 – Certificate of TDS to be furnished under section 203

- (a) The certificate of deduction of tax at source to be furnished under section 203 shall be in Form No.16 in respect of tax deducted or paid under section 192 and in any other case, Form No.16A.
- (b) Form No.16 shall be issued to the employee annually by 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted. Form No.16A shall be issued quarterly within 15 days from the due date for furnishing the statement of TDS under Rule 31A.

Rule 31A – Statement of deduction of tax under section 200(3)

- (a) Every person responsible for deduction of tax under Chapter XVII-B shall deliver, or cause to be delivered, the following quarterly statements to the DGIT (Systems) or

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any person authorized by him, in accordance with section 200(3):

- (1) Statement of TDS under section 192 in Form No.24Q;
 - (2) Statement of TDS under sections 193 to 196D in Form No.26Q in respect of all deductees other than a deductee being a non-resident not being a company or a foreign company or resident but not ordinarily resident in which case the relevant form would be Form No.27Q.
- (b) The time limit for furnishing such quarterly statements shall be 15th of the month following each quarter in respect of the first three quarters and 15th May for the last quarter ending on 31st March. The due dates would therefore be 15th July, 15th October, 15th January and 15th May for the quarters ending 30th June, 30th September, 31st December and 31st March, respectively.

Rule 31AA – Statement of collection of tax under proviso to section 206C(3)

Quarterly statement in Form No.27EQ shall be delivered, or cause to be delivered, to the DGIT (Systems) or any person authorized by him in accordance with the proviso to section 206C(3). The time limit for furnishing such quarterly statements shall be 15th of the month following each quarter in respect of the first three quarters and 15th May for the last quarter ending on 31st March. The due dates would therefore be 15th July, 15th October, 15th January and 15th May for the quarters ending 30th June, 30th September, 31st December and 31st March, respectively.

Rule 37CA – Time and mode of payment to Government account of tax collected at source under section 206C

- (a) All sums collected in accordance with section 206C(1)/(1C) by an office of the Government, shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income-tax challan and on or before 7 days from the end of the month in which the collection is made, where tax is paid accompanied by an income-tax challan; and
- (b) All sums collected in accordance with the provisions of section 206C(1)/(1C) by collectors other than an office of the Government, shall be paid to the credit of the Central Government within one week from the last day of the month in which the collection is made.

Rule 37D – Certificate of tax collected at source under section 206C(5)

Certificate of tax collected at source under section 206C(5) in Form No.27D shall be furnished by the collector within 15 days from the due date for furnishing the quarterly statement of TCS under Rule 31AA.

6. Ceiling for gratuity exemption raised to Rs.10 lakhs

Section 10(10)(ii) exempts any gratuity received under the Payment of Gratuity Act, 1972, to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act. The limit specified under sub-section (3) of section 4 has been increased from Rs.3,50,000 to Rs.10,00,000 by

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the Payment of Gratuity (Amendment) Act, 2010 dated 17th May, 2010.

Thereafter, the Central Government has enhanced the notified limit under section 10(10)(iii) from Rs.3,50,000 to Rs.10,00,000 in relation to employees who retire or become incapacitated prior to such retirement or die on or after 24th May, 2010 or whose employment is terminated on or after the said date. In effect, the ceiling for gratuity exemption under section 10(10)(iii), which is relevant for employees not covered under the Payment of Gratuity Act, 1972, has also been increased to Rs.10 lakh vide Central Government Notification No.43/2010 dated 11th June, 2010.