

Wealth Tax

Some Key Points

The threshold limit for net wealth chargeable to tax is ₹ 30 Lacs.

The time limit for passing an order by the settlement commission under section 22D(4A)(ii) is twelve months from the end of the month in which the application was made and this time limit would apply in respect of application made on or after 01.06.2007 but before 01.06.2010.

In respect of applications made for settlement of the case on or after 01.06.2010, the time limit for passing the order in settlement of the case is 18 months from the end of the month in which the application was made.

Entities not liable to wealth

According to section 45, no wealth tax shall be levied in respect of the following assesseees:

- (a) any company registered under section 25 of the Companies Act, 1956;
- (b) any co-operative society;
- (c) any social club
- (d) any political party
- (e) a Mutual Fund specified under section 10(23D) of the Income-tax Act, 1961.

Share in Partnership firm or an AOP

Section 4(1) provides that where the assessee is a partner in a firm or is a member of an association of persons, the value of his interest in the assets of the firm or association shall be determined in the manner laid down in Schedule III and is to be included in his net wealth.

The manner in which such value is to be computed has been prescribed in Rule 16 of Schedule III of the Wealth-tax Act, 1957.

Tax treatment of members of co-operative housing societies etc

Section 4(7) deals with tax treatment of members of co-operative society, company or other association of persons. Where the assessee is a member of a co-operative society, company or other association of persons and a building or part thereof is allotted or leased to him under a house building scheme of the society, company or association, as the case may be, the assessee shall be deemed to be the owner of such building or part and the value of such building or part, shall be included in computing the net wealth of the

assessee; and in determining the value of such building or part, the value of any outstanding installments of the amount payable under such scheme by the assessee to the society, company or association towards the cost of such building or part and the land appurtenant thereto shall, whether the amount so payable is described as such or in any other manner in such scheme, be deducted as a debt owed by him in relation to such building or part thereof.

Recent Amendment

Settlement Commission specifically empowered to amend any order to rectify a mistake apparent from record within six months from date the of its order [Section 22D(6B)]

The Settlement Commission may amend any order passed by it under section 22D(4) to rectify any mistake apparent from the record within a period of six months from the date of the order. However, the Settlement Commission should not make a rectification which has the effect of modifying the liability of the applicant, without –

- (1) giving a notice to the applicant and the Commissioner of its intention to do so; and
- (2) allowing the applicant and the Commissioner an opportunity of being heard.

Question 1

- (A) *How shall the assets retained pursuant to an order passed as per section 37A(5A) of the Wealth-tax Act, 1957 be dealt with?*
- (B) *Can summons enforcing attendance and to take evidence on oath be issued by a Valuation Officer to the seller of the building for which a reference under section 16A has been made by the Wealth-tax Officer?*
- (C) *Mr. 'W' gifted a gold chain worth ₹ 1,00,000 to the adopted minor child of his son. On 31st March, 2012, the net wealth of Mr. 'W' is worth ₹ 50 lacs whereas the net wealth of W's wife is ₹ 60 lacs. Besides, the net wealth of W's son is worth ₹ 30 lacs while the net wealth of his daughter-in-law is worth ₹ 40 lacs. State with reason, in whose net wealth the value of gifted chain will be included.*

Will it make any change in your answer if the marriage of the parents of adopted minor child does not subsist and the child is maintained by his father?

Answer

- (A) The assets retained pursuant to an order passed under section 37A(5A) of Wealth-tax Act, 1957 may be dealt with in the manner as specified under section 37C as under: -
 - (i) the amount of the existing liability and the amount of liability determined on completion of the regular assessment or reassessment including the amount of any

penalty or interest in respect of which the assessee is in default or is deemed to be in default may be recovered out of such assets.

- (ii) where the assets consist solely of money or partly of money and partly of other assets, the money may be applied in discharge of such liabilities and the assessee shall be treated as discharged to the same extent.
 - (iii) assets other than money may also be applied for discharge of such liabilities as remains undischarged. The Assessing Officer may recover the amount of such liabilities by sale of such assets effected in the manner laid down in Third Schedule to the Income-tax Act, 1961 as made applicable to the Wealth-tax Act, 1957 by section 32.
- (B)** Section 38A(1) empowers the Valuation Officer to enter any land, building or other place belonging to or occupied by any person in connection with whose assessment a reference has been made under section 16A or inspect any asset in respect of which a reference under that section has been made and require any person in charge of or in occupation or possession of such land, building to afford him necessary facility to survey or inspect the building or estimate its value or inspect any books of account etc. which may be relevant for valuation of such building or gather other particulars relating to such building. If any person who is required to afford any facility to the Valuation Officer, either refuses or evades to afford such facility, the Valuation Officer, by virtue of section 38A(2), is empowered to invoke powers under section 37(1) and issue summons enforcing the attendance of any person and examining him on oath.
- (C)** As per section 4(1)(a)(ii), the assets held by a minor child (including step child/adopted child, not being a married daughter) will be included in the net wealth of that parent whose net wealth [excluding the assets of minor child so includible under section 4(1)] is greater.

In the given problem, the value of gold chain of adopted minor grandson of W, which was transferred to him by W, shall be included in the net wealth of the mother of the adopted minor child, because the net wealth of the mother of the minor child exceeds that of the father of the minor child.

Where, however, the marriage of parents does not subsist, the assets of the minor child shall be included in the net wealth of that parent who maintains the minor child during the previous year ending on the valuation date.

If the marriage of the parents of the adopted minor child does not subsist and the child is maintained by his father, then it will be included in the net wealth of his father.

Question 2

Chirag owns two residential flats, one in Mumbai and another in Chennai. Both the flats are meant to be used for residential purposes by Chirag and his family. The particulars of the flats are as follows:

29.4 Direct Tax Laws

- (i) *The flat at Mumbai was purchased by him in January, 1980 for ₹ 10 lacs. The flat was occupied by his friend, Suvalaxmi, without rent for three months from 1st April, 2011 to 30th June, 2011. The value of the flat as per Schedule III to the Wealth-tax Act, 1957 on 31st March, 2012 is ₹ 30 lacs. Its value on the same basis as on 31st March, 1980 was ₹ 12 lacs.*
- (ii) *The flat at Chennai was purchased in March, 2007 for ₹ 6 lacs. The values of the flat as per Schedule III to the Wealth-tax Act, 1957, on 31st March, 2007 and 31st March, 2012 are ₹ 3 lacs and ₹ 5 lacs, respectively.*

You are required to fix the value of each flat for the purpose of computation of net wealth of Chirag on the valuation date 31.03.2012.

Answer

In the given case, Chirag is the owner of two residential flats for self-occupation, one at Mumbai and another at Chennai.

The value of any one flat can be claimed as exempt under section 5(vi) of the Wealth-tax Act, 1957. The assessee should first determine the value to be adopted for wealth-tax purpose and then should select the flat with the higher value for availing such exemption.

As per section 7(2) of the Wealth-tax Act, 1957, the value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of 12 months immediately preceding the valuation date, may, at the option of the assessee, be taken to be the value determined in the manner laid down in Schedule III as on the valuation date next following the date on which he became the owner of the house or the valuation date relevant to the assessment year commencing on 1st April, 1971, whichever valuation date is later.

This benefit of pegging down of value is available only if the house is self-occupied by the assessee throughout the period of 12 months immediately preceding the valuation date. Therefore, such benefit of pegging down of value cannot be availed for the flat situated at Mumbai since the flat was occupied by the assessee's friend for a part of the year. The Schedule III value of the flat at Mumbai as on the valuation date 31st March, 2012, being ₹ 30 lacs, or the cost of acquisition of ₹ 10 lacs, whichever is higher, is to be adopted as the value for wealth-tax purpose. Therefore, ₹ 30 lacs is the value of the Mumbai flat for wealth-tax purpose.

The benefit of pegging down of value can be opted for the flat situated at Chennai, as it was self-occupied by the assessee throughout the 12 months immediately preceding the valuation date of 31st March, 2012 for his residential purposes. In case of the flat at Chennai, the Schedule III value as on 31st March, 2007, being the first valuation date after he became the

owner, i.e. ₹ 3 lacs can be adopted, since its cost of acquisition does not exceed ₹ 50 lacs. Therefore, ₹ 3 lacs is the value of the Chennai house for wealth-tax purposes.

It would be more beneficial for the assessee to claim exemption under section 5(vi) in respect of the Mumbai house since the value of the Mumbai house (₹ 30 lacs) is higher than the value of the Chennai house (₹ 3 lacs) as on the valuation date 31st March, 2012.

Question 3

Mr. Ram, a resident individual following cash basis of accounting, has the following assets as on 31-03-2012. Compute his net wealth as on the valuation date 31.03.2012:

		Valuation as on 31-03-2012 (₹ in lacs)
(i)	Self-occupied residential house	60
(ii)	Owning of a guest house situated 26 kms from the municipality	30
(iii)	Property used for his business	50
(iv)	One residential complex consisting of 10 dwelling units. He intended to sell 5 units which are kept vacant for want of prospective buyers for the whole year. 2 units are vacant from 05-01-2012. 3 units are let out fully for the whole year.	500

Answer

Computation of net wealth of Mr. Ram on valuation date 31.03.2012

S. No.	Particulars	₹ (in lacs)
1	Self-occupied house property - Exempt under section 5(vi)	Nil
2	Guest house situated within 26 kms from municipality is an asset as per section 2(ea)(i)	30
3	Property used for business Not an asset as per section 2(ea)(i)(3)	Nil
4	Residential complex [Section 2(ea)(i)(4)]	
	5 units kept vacant are assets as they are not let out for a minimum period of 300 days in a year [₹ 50 lacs × 5]	250
	2 units let out for less than 300 days are assets [₹ 50 lacs × 2]	100
	3 units let out for more than 300 days are not assets	Nil
	Net Wealth	<u>380</u>

Question 4

Examine the taxability of the following assets held on valuation date in the context of provisions in Wealth-tax Act, 1957:

29.6 Direct Tax Laws

- (i) *A house property owned by Pankaj was transferred without consideration to Miss Geeta on 11-1-2011. Subsequently, Miss Geeta got married to his son on 18-4-2011. The value of house on 31-3-2012 is ₹ 75 lacs.*
- (iii) *The cash in hand on 31.3.2012 with the cashier of ABC Pvt. Ltd. was ₹ 2,00,000. The balance as per cash book on that day was ₹ 1,50,000.*

Answer

- (i) The house property owned by Mr. Pankaj was transferred, without consideration, on 11.1.2011 to Ms. Geeta, who subsequently got married to Mr. Pankaj's son on 18.4.2011. The asset in question was transferred to Ms. Geeta prior to her marriage with the son of the transferor and therefore she cannot be treated as the son's wife on the date when it was transferred. Therefore, the property so transferred to her by Mr. Pankaj cannot be clubbed with the net wealth of Mr. Pankaj by invoking provisions of section 4(1)(a). It shall be included in the net wealth of Ms. Geeta, who can opt to claim exemption under section 5(vi) in respect of the same.
- (ii) The cash recorded in the books of account of a company on the valuation date does not constitute an asset under section 2(ea) of the Wealth-tax Act, 1957. However, cash held in excess of what has been recorded in the books shall be treated as an asset. Accordingly, the cash balance of ₹ 50,000 shall be treated as an asset on the valuation date 31.3.2012.

Question 5

There is a private specific trust in which the shares of the beneficiaries are certain. Mr. L and Mr. M are the trustees. The beneficiaries are all minors and there are several items of assets as envisaged by section 2(ea). Mr. B, the father of the minor children also has taxable net wealth. In whose hands should the Assessing Officer complete the assessment of the trust?

Answer

Since an individual is an assessable entity as per section 3 of the Wealth-tax Act, 1957, and as per the General Clauses Act, "individual" includes "individuals" as well, the trustees of a trust (Mr. L and Mr. M, in this case) may be charged to wealth-tax, of course, with reference to only those assets which fall within the definition of section 2(ea) of the Wealth-tax Act, 1957.

Question 6

- (a) *NKP Limited engaged in industrial activity has furnished the following particulars of its assets as at the valuation date 31st March, 2012. Compute the net wealth and wealth-tax liability of the company on the valuation date 31.03.2012.*
 - (i) *One hectare of vacant land was allotted to the company at Ahmedabad by the State Government for industrial purpose in May, 2008 on permanent lease basis on payment of a non-refundable premium of ₹ 4 lacs. The terms of allotment includes*

that in the event the lessee transfers the lease, 50% of the unearned increase in the value should be made over to the lessor. The construction work for the proposed factory has not been started. The value of the land as on 31st March, 2012 is ₹ 50 lacs.

- (ii) The company is a partner of a firm with 30% share, whose net assets as on 31st March, 2012 is ₹ 150 lacs. Its capital as on that date is ₹ 20 lacs out of total capital of ₹ 70 lacs.
- (iii) It has let out a building with effect from 1st October, 2011 at a monthly rent of ₹ 1 lac for a period of 10 years. The tenant has made a deposit of ₹ 3 lacs. Annual Corporation Tax of ₹ 1 lac is borne by the tenant. The building is on a freehold land. The written down value of the building is ₹ 80 lacs.
- (b) 'H' filed his return of net wealth for the assessment year 2008-09. Penalty proceeding under section 18 for concealing particulars of net wealth was initiated by the Assessing Officer in 2010. 'H' died in January, 2011. The estate of 'H' devolved on his wife, 'W', who also died in October, 2011. Thereafter, the estate devolved on their daughter 'D'. The Assessing Officer passed penalty order on 28th February, 2012 and served notice of demand for penalty on 'D'. Is the action of the Assessing Officer valid in law?

Answer

- (a) **Computation of net wealth and wealth tax liability of NKP Ltd.**
as on valuation date 31.3.2012

Particulars		₹
Land for industrial purpose (Note 1)		27,00,000
Interest in the assets of partnership firm (Note 2)		44,00,000
Building (Note 3)		<u>1,30,40,625</u>
Net Wealth		<u>2,01,40,625</u>
Wealth-tax@1% of ₹ 1,71,40,625, being the net wealth in excess of ₹ 30 lacs		1,71,406
1.	Unused land held for industrial purpose for more than two years from the date of acquisition is an asset under section 2(ea). As such, wealth tax incidence is attracted	
	Market value of land as on 31.3.2012	50,00,000
	Less: 50% of the unearned increase payable to the lessor [i.e. 50% of (₹ 50 lacs – ₹ 4 lacs)]	<u>23,00,000</u>
	Value for wealth tax purpose	<u>27,00,000</u>
2.	Interest in assets of the firm of which the assessee is a partner is deemed to be asset of the partner under section 4(1)(b) of the	

29.8 Direct Tax Laws

	Wealth-tax Act, 1957	
	Value of interest in the firm as per Rule 15 of Schedule III: ₹ 20,00,000 + [(₹ 150 lacs – ₹ 70 lacs) x 30%] = [20,00,000 + 24,00,000, being 30% of 80,00,000]	44,00,000
3.	Value of Building [Rule 3 to 5 of Part-B of Schedule III]:	
	Actual Rent (₹ 1,00,000 x 6)	6,00,000
	Interest on deposit@15% p.a. for 6 months	22,500
	Corporation tax borne by tenant (for 6 months)	<u>50,000</u>
		<u>6,72,500</u>
	Annual Rent (6,72,500 x 12/6)	13,45,000
	Gross Maintainable Rent (GMR)	13,45,000
	Less: Corporation Tax 1,00,000	
	15% of GMR <u>2,01,750</u>	<u>3,01,750</u>
	Net Maintainable Rent	<u>10,43,250</u>
	Capitalised value for wealth tax purpose of a building on a freehold land. (₹ 10,43,250 x 12.5)	1,30,40,625

Note - As per Rule 14, relating to valuation of assets of a business, the value of a depreciable asset disclosed in the balance sheet shall be taken to be its written down value. In this case, written down value of the building is ₹ 80 lacs. However, if the value of the asset determined in accordance with the relevant rule of Schedule III which is applicable to the asset, exceeds the above value by more than 20%, the higher value shall be taken to be the value of the asset. In this case, the capitalized value of ₹ 1,30,40,625 exceeds ₹ 80,00,000 by 63%. Therefore, ₹ 1,30,40,625 should be taken as the value of the building. It is presumed that building is disclosed in the Balance Sheet.

- (b) The issue under consideration in this case is whether penalty can be levied under the Wealth-tax Act, 1957 against the legal representative after the death of the assessee, in respect of penalty proceedings initiated against the assessee prior to his death.

Section 19(3), which provides for application of certain provisions of the Wealth-tax Act, 1957, to the legal representatives does not refer to the applicability of the provisions of section 18 relating to imposition of penalty. Therefore, penalty under section 18 cannot be levied on the legal representatives. The Delhi High Court, in *CWT v. H.S. Chauhan* (2000) 245 ITR 704, has also held that penalty proceedings initiated against an assessee cannot be continued on the legal heirs on the demise of such assessee. This view is also supported by the Gujarat High Court in *ACIT vs. Late Shrimant F.P. Gaekwad* (2009) 313 ITR 192. Therefore, penalty cannot be levied under the Wealth-tax Act, 1957

on the legal representatives for defaults committed by the deceased for which penalty proceedings have been initiated against the deceased prior to his death.

In view of above, the action of the Assessing Officer is not valid in law.

Question 7

- (a) *Examine the correctness of the following statements as per provisions contained in the Wealth-tax Act, 1957:*
- (i) *The building and land appurtenant thereto held on valuation date always do not form part of net wealth.*
 - (ii) *Every officer of the company shall be treated as principal officer in respect of proceedings under the Wealth-tax Act, 1957.*
- (b) *Dee (P) Ltd. has a farm house situated at 30 kilometers from the local limits of Jaipur Municipal Corporation. It also has a guest house at a distance of 40 kilometers from the local limits of Bangalore Municipal Corporation. Decide whether farm house and guest house are chargeable to wealth-tax.*
- (c) *Mr. Parikh pledged his jewellery with a financier and borrowed ₹ 50 lacs. He acquired shares in limited companies out of the borrowed amount.*

The value of assets as on 31.03.2012 is given below:

- | | |
|---|-------------|
| 1. Market value of jewellery pledged with the financier | ₹ 80,00,000 |
| 2. The market price of shares on the valuation date | ₹ 28,00,000 |

The loan outstanding on the valuation date was ₹ 48 lacs. Compute the net wealth of Mr. Parikh as on valuation date 31.03.2012.

Answer

- (a) (i) The statement is correct.

As per section 2(ea)(i), an asset includes any building or land appurtenant thereto (house), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise and includes a farm house situated within twenty-five kilometers from the local limits of any municipality or a Cantonment Board, but does not include:

- (a) A house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than ₹ 5 lacs.
- (b) Any house for residential or commercial purposes which forms part of stock-in-trade.
- (c) Any house which the assessee may occupy for the purpose of any business or profession carried on by him.

29.10 Direct Tax Laws

(d) Any residential property that has been let out for a minimum period of 300 days in the previous year.

(e) Any property in the nature of commercial establishments or complexes.

Hence, the property mentioned in (a) to (e) above and a farm house, situated beyond 25 kms from the local limits of a municipality or cantonment board, do not form part of net wealth. All other land and building held on valuation date form part of net wealth.

(ii) The statement is not correct.

As per section 2(o) of the Wealth-tax Act, 1957, "principal officer" used with reference to a company, means the secretary, manager, managing agent or managing director of the company, and includes any person connected with the management of the affairs of the company upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof.

Therefore, every officer of the company shall not be treated as the principal officer of the company in respect of proceedings under the Wealth-tax Act, 1957.

(b) A farm house within 25 kilometers from the local limits of a municipal corporation is chargeable to wealth-tax. In this case, the farm house is situated beyond 25 kilometers from the local limits of Jaipur Municipal Corporation and therefore, it is not chargeable to wealth-tax, provided it does not fall within 25 km from the local limits of any other municipality, or a cantonment board.

A guest house, regardless of the distance, is always chargeable to wealth-tax. Hence, the guest house is liable to wealth-tax.

(c) **Computation of net wealth of Mr. Parikh as on valuation date 31st March, 2012**

Particulars	₹
The market value of jewellery on the valuation date is chargeable to wealth-tax.	80,00,000
Shares are not chargeable to wealth tax as the definition of asset in section 2(ea) does not include shares	Nil
	80,00,000
<i>Less: Debts</i>	
The loan outstanding was taken for purchase of shares, which is not an asset under section 2(ea). Therefore, such loan is not eligible for deduction as per section 2(m)	Nil
Net wealth chargeable to tax	80,00,000

Question 8

Mr. Ganesh has a house property at Mumbai, which he has rented out to Mr. Sridhar from 1st October, 2011. The cost of acquisition of the property (acquired in the year 1998) is ₹ 45 lacs. Determine the value of his property chargeable to wealth-tax as on the valuation date 31.3.2012, from the following particulars –

- (i) The annual value of the property as per municipal records is ₹ 8 lacs.
- (ii) The monthly rent which the property fetches is ₹ 54,000.
- (iii) Half yearly municipal tax is ₹ 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 ₹ 4 lacs to Mr. Ganesh.
- (vi) The unexpired period of lease on the valuation date is 25 years.

Answer**Valuation of house property at Mumbai of Mr. Ganesh on valuation date 31.3.2012**

Particulars	₹
Actual Rent (₹ 54,000 × 6)	3,24,000
Add: (i) Municipal taxes borne by the tenant (25% of ₹ 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 ₹ 4 lakh (15% × ₹ 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 ₹ 8,00,000 and the annual rent also works out to ₹ 8,00,000. Therefore, ₹ 8,00,000 shall be the Gross Maintainable Rent.

Computation of Net Maintainable Rent (NMR)		₹
Gross Maintainable Rent, being the annual rent		8,00,000
Less: Corporation Tax (annual)	80,000	
15% of Gross Maintainable Rent	1,20,000	2,00,000
Net Maintainable Rent (NMR)		6,00,000
Capitalised value of NMR		
Capitalised value (₹ 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

29.12 Direct Tax Laws

Note : Where the unexpired lease period is less than 50 years, capitalisation value is $\text{NMR} \times 8$
Therefore, the value of house property chargeable to tax on valuation date 31.3.2012 is ₹48 lakh.

Question 9

Bentac Constructions Ltd. furnishes the following particulars of its wealth for the valuation date as on 31.3.2012:

		₹ in lacs
(i)	Land in urban area (held as stock in trade since 1998)	67
(ii)	Motor cars (including one imported car worth ₹ 32 lacs used for hiring)	43
(iii)	125 acres of land acquired at Ghaziabad township on 15.5.2009 for construction of commercial complex	150
(iv)	Residential flats of 950 sq feet each provided to 2 employees (salary of one employee exceeds ₹ 5 lacs per annum)	22
(v)	Farm house situated at a remote village	7
(vi)	Cash in hand as per cash book	5

	Liabilities:	
(i)	Loan for purchase of land at urban area	45
(ii)	Loan for purchase of land at Ghaziabad	100
(iii)	Wealth-tax liability for A.Y. 2010-11	10
(iv)	Loan for construction of residential flats	14

Compute the net wealth of the company as on valuation date 31.03.2012.

Answer

Computation of net wealth of Bentac Constructions Ltd. as on valuation date 31.03.2012

	Particulars	₹ in lacs
Assets [as per the definition of assets under section 2(ea)]		
(i)	Land in urban area (held as stock in trade since 1998) – taxable since it is held as stock-in-trade for more than 10 years	67
(ii)	Motor cars (excluding imported car not being an asset since it is used for hiring) [43 Lacs – 32 Lacs]	11
(iii)	Land at Ghaziabad township – Since the assessee is engaged in construction business, land and building would form part of his stock-in-trade. Hence, not taxable.	Nil

(iv)	(a) Residential flats provided to an employee drawing salary less than ₹ 5 lacs per annum – not an asset	Nil	
	(b) Residential flat provided to an employee drawing salary exceeding ₹ 5 lacs per annum is an asset $[22 \times 1/2]$	11	
(v)	Farm house at a remote village is not an asset assuming it is not situated within 25 km of any municipality	Nil	
(vi)	Cash in hand as per cash book is not an asset since it represents cash recorded in the books	Nil	
			89
Less: Liabilities			
(i)	Loan for purchase of land in urban area – deductible since it is incurred in relation to land in urban area, which is an asset chargeable to wealth-tax.	45	
(ii)	Loan for purchase of land at Ghaziabad – not deductible since the land, being stock-in-trade, is not an asset under section 2(ea).	Nil	
(iii)	Wealth-tax liability for A.Y.2010-11 – wealth tax liability is not deductible	Nil	
(iv)	Loan for construction of residential flats - the portion relating to taxable asset (1/2) is deductible i.e. $\frac{1}{2} \times 14 \text{ lacs}$	7	52
Net Wealth			37

Question 10

Gamma Limited is engaged in the construction of residential flats. For the valuation date 31.3.2012, it furnishes the following data and requests you to compute the taxable wealth:

- (i) Land in urban area (Construction is not permitted as per municipal laws in force) ₹ 42 Lacs
- (ii) Motor-cars (used for running on hire by the company) ₹ 12 Lacs.
- (iii) Jewellery (investment) ₹ 25 Lacs. Loan taken for purchase of the same ₹ 14 Lacs.
- (iv) Cash balance (as per books) ₹ 3 Lacs.
- (v) Bank balance ₹ 8 Lacs.
- (vi) Guest House (situated in a place which is 45 kms away from the local limits of the municipality) ₹ 15 Lacs.

29.14 Direct Tax Laws

(vii) Residential flat occupied by the Managing Director ₹ 12 Lacs. The managing director is on whole time appointment and is drawing remuneration of ₹ 1.50 Lacs per month.

(viii) Residential house let out on hire for 150 days ₹ 6 Lacs.

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

Answer

Computation of net wealth of Gamma Ltd. as on valuation date 31.3.2012

	Particulars	Notes	₹ in Lacs
(i)	Land in urban area	1	Nil
(ii)	Motor-cars	2	Nil
(iii)	Jewellery	3	25
(iv)	Cash balance	4	Nil
(v)	Bank Balance	5	Nil
(vi)	Guest House	6	15
(vii)	Residential flat occupied by Managing Director	7	12
(viii)	Residential house let out for 150 days	8	<u>6</u>
			58
	Less : Debts - Loan obtained for purchase of jewellery	9	<u>14</u>
	Taxable wealth as on 31.03.2012		<u>44</u>

Notes:

- (1) Land in urban area on which the construction is not permitted as per municipal laws in force does not fall within the meaning of 'asset' defined under section 2(ea) and is therefore, not taxable.
- (2) Motor cars used for running on hire is not an asset as per section 2(ea) and is, therefore, not taxable.
- (3) Jewellery is always taxable unless the same is held as stock-in-trade.
- (4) In the case of assessee, other than individuals and HUFs, cash in hand is not taxable to the extent reflected in the books of account. In this case, since the entire cash balance of ₹ 3 Lacs is reflected in the books of account, it is not taxable.
- (5) Bank balance is not as asset with in the meaning of 'asset' defined under section 2(ea)
- (6) Guest House situated in rural area is an asset and is, therefore, taxable. Only in the case of farm house, if it is situated beyond 25 kms from the local limits of any municipality, taxability does not arise.

- (7) Residential flat which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having gross annual salary of less than ₹5 Lacs is not an asset within the meaning of asset defined under section 2(ea). In the given case, the residential flat is a taxable asset since it is occupied by the Managing Director whose gross annual remuneration exceeds ₹ 5 Lacs.
- (8) Any residential property which is let out for a minimum period of 300 days in the previous year is not an asset. In the given case, the residential house is taxable since it has been let out for less than 300 days during the previous year.
- (9) Debts incurred in relation to assets chargeable to tax shall be allowed as deduction in the computation of net wealth. Accordingly, loan obtained for purchase of jewellery shall be allowed as deduction since jewellery is assessable to wealth tax.

Question 11

State, with reasons, whether the following constitute assets chargeable to wealth tax on the valuation date 31.3.2012:

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

Answer

(i) Farm house situated within 25 kilometers from the local limits of municipality

Section 2(ea) of the Wealth-tax Act, 1957 defines the term "asset". According to the said definition, buildings including farm house situated within 25 kilometers from the local limits of a municipality shall be considered as an asset. Therefore, the farmhouse situated within 18 kilometers from Niwai Municipal Corporation shall be an asset chargeable to wealth-tax.

(ii) Factory building and godowns leased out on rent

Section 2(ea) provides for exceptions to the chargeability of building or land appurtenant thereto to wealth-tax. One such exception is the property in the nature of commercial establishments or complexes. Therefore, factory buildings and godowns are not assets within the meaning of section 2(ea) of the Wealth-tax Act, 1957 and are accordingly not chargeable to wealth-tax.

(iii) Silver and gold used in the jewellers' shop

Jewellery is considered as an asset within the meaning of section 2(ea) of the Wealth-tax Act, 1957. However, if jewellery is used as stock in trade, the same shall be excluded

from the assets chargeable to wealth-tax. Therefore, silver and gold used in the jewellers' shop represent his stock-in-trade and would, therefore, not be chargeable to wealth-tax.

(iv) Cash balance of ₹4 Lacs

Cash in hand in excess of ₹ 50,000 is considered as an "asset" under section 2(ea) for individuals and HUF. In case of other persons, any amount not recorded in the books of account shall be considered as an asset.

In the given case, if the assessee is an individual or HUF, the cash balance in excess of ₹ 50,000 (i.e. ₹ 3.50 Lacs) shall be chargeable to wealth-tax. In any other case, if the entire cash balance is accounted for in the books of account, it would not be chargeable to wealth-tax. If the cash balance is not accounted for in the books of account, the same would be chargeable to wealth-tax.

Question 12

(a) *Mrs. A furnishes the following particulars for the computation of her wealth tax liability on the valuation date 31.03.2012:*

- (1) *Gifts of jewellery and gold ornaments received from her mother on the occasion of her marriage aggregating ₹ 5,00,000. However, the said jewellery were forcibly taken away from her by her mother-in-law after marriage.*
- (2) *She owns two residential house properties each valuing ₹10,00,000.*
- (3) *She is one of the partners in the business with her husband. The value of her interest in assets of the firm as at 31st March, 2012 is ₹ 12,75,500. The said business is conducted in one of the house properties owned by Mrs. A.*
- (4) *She has two motor cars of ₹ 12,50,000, one of which is imported by her for ₹ 7,50,000.*
- (5) *She has invested ₹ 10,00,000 in a bank deposit for five years to meet the future expense of children on their education.*
- (6) *Mrs. A has signed "agreement to sell" for purchase of new residential house property of ₹ 20,00,000 and has made advance payment of ₹ 5,00,000 on 1st March, 2012 and has taken possession. However, the sale deed has not been executed till 31st March, 2012. She has taken loan of ₹ 15,00,000 from bank for purchase of said property.*
- (7) *She has cash balance of ₹ 75,000.*

Compute the wealth tax payable by Mrs. A on the valuation date 31.03.2012.

(b) *Under what circumstances can the Assessing Officer make a reference to the Valuation Officer for the purpose of making an assessment under the Wealth-tax Act, 1957?*

Answer**(a) Computation of wealth-tax payable by Mrs.A on the valuation date 31.03.2012**

Asset	₹	Reason
Jewellery	Nil	Jewellery forcibly taken by mother-in-law and not in the possession of the assessee, is not chargeable to wealth-tax in the hands of the assessee.
House Property 1	Nil	A house used exclusively for residential purpose is treated as an asset under section 2(ea), but the same is exempt under section 5(vi).
House Property 2	Nil	Building owned by a partner but used in firm's business is deemed to be used by the partner for his business purposes and is, hence, not an asset chargeable to tax under section 2(ea).
Value of interest in assets of the firm	12,75,500	Included in the net wealth of Mrs. A by virtue of section 4(1)(b). It has been assumed that the assets are those covered under section 2(ea).
Motor Cars	12,50,000	Motor cars, whether indigenous or imported, are assets chargeable to wealth-tax under section 2(ea).
Bank Deposit	Nil	Not an asset under section 2(ea) and hence, not chargeable to tax under the Wealth-tax Act.
House Property 3	20,00,000	Since the possession of the house property is taken, it is deemed as an asset and is chargeable to wealth-tax. It may be noted that only one house property is exempt under section 5(vi) and this exemption has already been availed in respect of House Property 1.
Cash balance		For an individual, cash in hand in excess of ₹ 50,000 shall be chargeable to wealth tax (₹ 75,000 – ₹ 50,000)
	<u>25,000</u>	
Gross Wealth	45,50,500	
Less: Loan borrowed from Bank		Money borrowed by the assessee for purchase of House Property 3 is deductible under section 2(m), since the value of House Property 3 is included in gross wealth.
	<u>15,00,000</u>	
Net Wealth	30,50,500	

Wealth-tax payable by Mrs. A will be ₹ 505 i.e. 1% of ₹ 50,500 (i.e., ₹ 30,50,500 – ₹ 30,00,000).

29.18 Direct Tax Laws

- (b) Under section 16A of the Wealth-tax Act, 1957, a reference to the Valuation Officer may be made by Assessing Officer, where the market value of any asset is to be taken into account in the wealth tax assessment. Such reference can be made in the following cases -
- (a) Where the value of the asset adopted by the assessee is on the basis of the estimate by a registered valuer and the Assessing Officer is of the opinion that such value returned is less than the fair market value;
 - (b) In any other case, if the fair market value, in the opinion of Assessing Officer, exceeds the value of the asset (as disclosed in the return), by 33-1/3% or ₹ 50,000; or
 - (c) having regard to the nature of the asset and other relevant circumstances, the Assessing Officer is of the opinion that it is necessary to make a reference

Question 13

Examine the correctness of the following taking into consideration the provisions of Wealth-tax Act, 1957:

- (i) *The Commissioner of Wealth-tax is not empowered to reduce or waive penalty unless it is approved by the Chief Commissioner or Director General.*
- (ii) *Penalty for concealment of wealth can be imposed where the value of assets disclosed by the assessee is ₹ 4,00,000 but determined by the Assessing Officer at ₹ 6,00,000.*

Answer

- (i) Under section 18B of the Wealth-tax Act, 1957, the Commissioner is vested with the power to reduce or waive the penalty *suo moto* or on an application made by the assessee, if he is satisfied that the assessee has –
- (1) voluntarily and in good faith made full and true disclosure of the particulars of his wealth, prior to detection of the same by the Assessing Officer;
 - (2) co-operated in any enquiry relating to the assessment of his net wealth; and
 - (3) has also made satisfactory arrangements for the payment of tax or interest payable in consequence of an order passed by the Assessing Officer for the relevant assessment year.

However, no order reducing or waiving the penalty, in the above case, shall be made by the Commissioner without the prior approval of the Chief Commissioner or Director General, if the concealed net wealth in respect of which the penalty was imposed or imposable for any relevant assessment year exceeds ₹5 Lacs.

- (ii) The levy of penalty under section 18(1)(c) of the Wealth-tax Act, 1957 is in respect of concealment of wealth or furnishing inaccurate particulars of wealth. Explanation 4 to section 18 clarifies that an assessee would be deemed to have furnished inaccurate

particulars of his wealth if the value of assets disclosed by him is less than 70% of the value as determined in an assessment under section 16 or 17, unless he proves that the value of assets as disclosed by him is the correct value. In the case of this assessee, the value of the assets determined by the Wealth-tax Officer is ₹6 Lacs whereas the value disclosed by the assessee is only ₹4 Lacs. Since the value disclosed by the assessee i.e., ₹4 Lacs is less than ₹4.2 Lacs, being 70% of the value determined by the Wealth-tax Officer, penalty under section 18(1)(c) is attracted in this case, unless the assessee proves that the value of assets disclosed by him is the correct value.

Question 14

- (a) Mr. Neeraj provides the following particulars and asks you to work out the amount of net wealth on the valuation date 31.03.2012:
- (i) Value of a Motor Car ₹5,00,000
 - (ii) Value of a Motor Cycle ₹50,000
 - (iii) A house of which ground floor is used by him for business purposes and first floor for self residence having value of ₹50,00,000 on 31.3.2012.
 - (iv) Jewellery worth ₹12 lacs purchased on 30.3.2012 by his wife out of funds given by him of ₹5 lacs and by his son of ₹5 lacs.
 - (v) Shares of various companies worth ₹2,00,000 purchased by him in the name of his daughter-in-law.
- (b) An assessee, being aggrieved by the order of Wealth-tax Officer, filed an appeal by taking for the first time a ground "that notice to complete the assessment was not served upon him but he had co-operated in completion of proceedings". Are you in agreement with the view taken by the assessee?
- (c) Ram gifted a house property valued at ₹100 lacs to his wife on 1.4.2012 in an agreement to live apart. In whose hands the said property will be assessed to wealth-tax in the A.Y. 2012-13?

Answer

(a) Computation of Net Wealth of Neeraj on valuation date 31.3.2012

	Particulars	₹
(i)	Motor car is an asset as per section 2(ea)	5,00,000
(ii)	Motor cycle is not an asset as per section 2(ea)	--
(iii)	Exemption under section 5(vi) shall be allowed in respect of one house, irrespective of its use, that is to say, the building may be used either for self-residence or for business purposes or for both.	--

29.20 Direct Tax Laws

(iv)	Jewellery purchased by his wife out of funds given by him is a deemed asset to the extent of funds given by him. It is presumed that the value of jewellery given in the question also represents the fair market value as on the valuation date, determined as per Rule 18 of Schedule III.	5,00,000
(v)	Shares purchased by him in the name of his daughter-in-law is not a deemed asset because shares are not an asset under the Wealth-tax Act, 1957.	--
Net wealth		10,00,000

- (b) Section 42 provides that the assessee would be precluded from raising any objection in any proceeding or inquiry that the notice was not served upon him or was not served in time or was served in an improper manner, if he had appeared in any proceedings or co-operated in any inquiry relating to assessment or re-assessment. Therefore, if the assessee had appeared in any proceedings or co-operated in any enquiry, it shall be deemed that any notice required to be served on him has been duly served upon him in time in accordance with the provisions of the Act.

Such deeming provision would, however, not apply where the assessee has raised an objection (regarding non-service of notice or non-service of notice in time or improper service of notice) before the completion of such assessment or reassessment.

In this case, the assessee objected to the non-service of notice for the first time at the appellate level i.e., after completion of the wealth-tax assessment. Therefore, the claim of the assessee is not tenable.

- (c) The property, gifted by Ram to his wife in an agreement to live apart, is not an asset to be included as a deemed asset in his wealth and accordingly, should be taxed in the hands of his wife. However, the transfer had taken place by way of gift on 1.4.2012 and accordingly, on the valuation date 31.3.2012, the house property was owned by Ram and therefore, the same would be assessed to wealth-tax in the hands of Ram for A.Y.2012-13. Thereafter, the property would be assessable in the hands of his wife.

Question 15

- (a) *Mr. Duggal, a Chartered Accountant and citizen of India after serving 16 years in U.K. returned back on 12.4.2011 for permanent settlement in Delhi started professional practice, furnishes value of his all assets and liabilities held on 31.3.2012 and request you to compute his net wealth as on valuation date 31.3.2012*

	Particulars	₹ (In lacs)
(i)	Car used for professional work	15
(ii)	Car used for personal purposes	5

(iii)	Laptop used for personal purposes	1
(iv)	Desktop/Scanner/Printer used in Office for professional work	2
(v)	Bank Term Deposits	10
(vi)	Shares of listed and unlisted various companies	5
(vii)	Loan against the car used for professional work	5
(viii)	Urban land purchased in the name of handicapped son (Minor)	3

(ix) Jewellery valuing now ₹ 5 lacs purchased out of money from NRE account on 1.12.2010

(x) House property valuing now ₹ 40 lacs purchased on 11.10.2007 from the funds in NRE account was given on rent to a corporate house on 1.7.2011.

(xi) Amount of ₹ 2,00,000 was withdrawn from bank on 27.3.2012 for a deal of a house which could not be materialized and therefore the cash was deposited back in bank on 2.4.2012.

(xii) Jewellery worth ₹ 2 lacs was gifted on 22.3.2012 to wife on the occasion of 25th marriage anniversary.

(b) What meaning has been assigned to "Net Wealth" under the Wealth-tax Act, 1957?

Answer

(a) Computation of Net Wealth of Mr. Duggal on valuation date 31st March, 2012

	Particulars	₹
(i)	Cars used for professional work is an asset u/s 2(ea)(ii)	15,00,000
	Car used for personal purpose is an asset u/s 2(ea)(ii)	5,00,000
(ii)	Laptop used for personal purposes is not an asset u/s 2(ea)	Nil
(iii)	Desktop/Scanner/Printer used in office for professional work are not assets u/s 2(ea)	Nil
(iv)	Bank term deposits is not an asset u/s 2(ea)	Nil
(v)	Shares of various listed and unlisted companies is not asset u/s 2(ea)	Nil
(vi)	Urban land purchased in the name of handicapped son is not a deemed asset as per section 4(1)(a)(ii)	Nil
(vii)	Jewellery purchased from NRE account on 1.12.2010 is exempted u/s 5(v)	Nil
(viii)	House purchased from NRE account prior to one year of return and also was on rent for less than 300 days (i.e. 274 days) is an asset u/s 2(ea), but exempt by virtue of section 5(vi)	Nil
(ix)	Amount withdrawn from bank and held in the form of cash on	1,50,000

29.22 Direct Tax Laws

(x)	valuation date in excess of ₹ 50,000 is an asset u/s 2(ea)(vi) Value of jewellery gifted to wife is includible under section 4(1)(a)(i) as deemed wealth.	<u>2,00,000</u>
Gross Wealth		23,50,000
	Less: Debts incurred in relation to an asset u/s 2(ea), namely, loan against cars used for professional work is deductible	<u>5,00,000</u>
Net Wealth		<u>18,50,000</u>

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

- (i) Motor Cars, whether used for professional or personal purposes is an asset as per section 2(ea)(ii) and, therefore, included in the net wealth. Only motor cars used by the assessee in the business of running on hire is exempt from wealth-tax.
- (ii) Laptop used for personal purposes is not an asset under section 2(ea). Hence, the same is not to be included in net wealth.
- (iii) Desktop/Scanner/Printer used in office for professional work are not assets under section 2(ea) and hence are not to be included in net wealth.
- (iv) Bank term deposits are not assets under section 2(ea) and hence are not to be included in the net wealth.
- (v) Shares of various listed and unlisted companies are not assets under section 2(ea) and hence are not to be included in net wealth.
- (vi) According to section 4(1)(a)(ii), net wealth of an individual shall include assets held by his minor child, other than a minor suffering from any disability of any nature specified in section 80U. Therefore, urban land purchased in the name of handicapped son is not to be included in the hands of the individual, assuming that the disability is of the nature specified in section 80U.
- (vii) Clause (v) of section 5 seeks to provide wealth-tax exemption in respect of assets acquired by an individual out of moneys brought into India within one year immediately preceding the date of his return and at any time thereafter. Moneys standing to the credit of the person (to whom this clause is applicable) in a NRE account in any Bank in accordance with the Foreign Exchange Regulation Act, 1973 and rules made thereunder on the date of his return shall be deemed to be moneys brought by him into India on that date. Since section 5(v) exempts the value of asset acquired out of money from NRE account within one year immediately preceding the date of return or at any time thereafter, jewellery purchased from NRE account on 1.12.2010 is exempt from wealth-tax.
- (viii) According to section 2(ea)(i), any residential property that has been let out for a minimum period of 300 days in the previous year is not an asset. Since the house purchased from NRE account is prior to one year of return and also was on rent for less than 300 days (i.e. 274 days) and, therefore, it is an asset under section 2(ea).

However, one house belonging to an individual is exempt under section 5(vi). Exemption under section 5(vi) can, therefore, be claimed in respect of this house.

- (ix) Cash in hand, in excess of ₹ 50,000 constitute an asset in case of an individual. Therefore, ₹ 1,50,000, being cash in hand in excess of ₹ 50,000, is to be included in net wealth.
 - (x) According to section 4(1)(a)(i), net wealth of an individual shall include assets held by spouse of such individual to whom such assets have transferred by the individual, otherwise than for inadequate consideration. Therefore, by virtue of this deeming provision, jewellery worth of ₹ 2,00,000 gifted to wife would be included in the net wealth of Mr. Duggal.
 - (xi) Cars used for professional work is an asset under section 2(ea) and therefore debts incurred in relation to such asset is a deductible as per section 2(m) in computing the net wealth.
- (b) Section 2(m) defines 'net wealth' to mean the amount by which the aggregate value, computed in accordance with the provisions of the Wealth-tax Act, 1957, of all the assets, wherever located, belonging to the assessee on the valuation date (including assets required to be included under section 4 in his net wealth as on that date under the Act), is in excess of the aggregate value of all the debts owed by the assessee, on the valuation date which have been incurred in relation to the said assets.

Question 16

- (a) Mr. Manocha has a house property in Delhi, which was lying vacant for last 3 years. He constructed the property in 1990 at a cost of ₹ 40 lacs. He has let out the same at a monthly rent of ₹ 30,000 for a period of three years with effect from 1st January, 2012. The quarterly corporation tax is ₹ 30,000. He took a premium of ₹ 1,20,000 from the tenant and also security deposit of ₹ 1,00,000. The house was constructed on a land measuring 4,000 sft. It has three floors each measuring 960 sft. Compute the value of the house property for wealth tax purpose as at valuation date 31.3.2012.
- (b) An association of persons (AOP), comprising of two members Akash and Vikash, owns an urban land valued at ₹ 60 Lacs on the valuation date 31.3.2012. Examine the tax implications under the Wealth-tax Act, 1957.

Answer

- (a) **Computation of value of the house property for wealth tax purpose as on valuation date 31.03.2012**

Particulars	₹	₹
Computation of Actual Rent & Annual Rent		
Actual Rent (₹30,000 x 3)		90,000
Add: Adjustment for premium received from tenant (₹1,20,000/3) x 3/12		10,000

29.24 Direct Tax Laws

15% p.a. of Security Deposit i.e. $15\% \times ₹1,00,000 \times \frac{3}{12}$		3,750
Actual Rent for 3 months		1,03,750
Annual Rent (₹ 1,03,750 x 12/3)		4,15,000
Computation of Net Maintainable Rent (NMR)		
Gross Maintainable Rent, being the annual rent		4,15,000
Less: Corporation Tax (₹ 30,000 x 4)	1,20,000	
15% of Gross Maintainable Rent	62,250	1,82,250
Net Maintainable Rent (NMR)		2,32,750
Capitalised value of NMR		
Capitalised value (₹ 2,32,750 x 12.5)	29,09,375	
Cost of acquisition	40,00,000	
Capitalised value is the higher of the above		40,00,000
Add: Premium		
(i) Aggregate Area	4000 Sq.Ft.	
(ii) Specified Area (60%)	2400 Sq.Ft.	
(iii) Built up area	960 Sq.Ft.	
(iv) Unbuilt Area	3040 Sq.Ft.	
(v) Excess of unbuilt area over specified area	640 Sq.Ft.	
% of excess area on aggregate area		
$(640/4000) \times 100$	16%	
(vi) Premium to be added when (v) is 16%		16,00,000
(40% of capitalized value i.e., 40% of ₹40 Lacs)		
Value of house property for wealth-tax purpose		56,00,000

(b) The tax implications of an asset owned by an association of persons under the Wealth-tax Act are as follows:

- As per section 3, only individuals, Hindu Undivided Families and Companies are liable to wealth tax. Therefore, an association of persons (AOP) is not chargeable to wealth-tax.
- However, as per section 4(1)(b), the value of interest of a member of an AOP in the assets of the AOP is to be included in his net wealth. Schedule III lays down the manner of determination of the value of such interest.
- Section 21AA deals with a situation where the shares of the members of an AOP are indeterminate or unknown. Where assets chargeable to wealth-tax are held by an AOP and the individual shares of the members are indeterminate or unknown on

the date of formation or at any time thereafter, wealth tax is to be levied in the like manner and to the same extent as applicable to an individual.

Question 17

- (a) *Matisha Constructions Ltd. furnishes the following particulars of its wealth for the valuation date as on 31.3.2012:*

		₹ in lacs
(i)	Land in urban area (held as stock in trade since 1999).	81
(ii)	Motor cars (including one imported car, worth ₹18 lacs used for hiring)	38
(iii)	250 acres agricultural land acquired at Greater Noida Township on 27.8.2011 for construction of residential flats/commercial complex. However, Greater Noida Authority has reserved 25 acres land as green belt.	250
(iv)	Residential flats of 1500 sq feet each provided to 3 employees (salary of one employee exceeded ₹5 lacs per annum)	36
(v)	Farm house of 5 acre at a remote village beyond 25 kms from the local limits of Municipality	9
(vi)	Cash in hand as per cash book	3
	Liabilities:	
(i)	Loan for purchase of land at Urban area	30
(ii)	Loan for purchase of land at Greater Noida	120
(iii)	Wealth-tax liability for Assessment year 2011-12	12
(iv)	Loan for construction of residential flats	9

Compute the net wealth of the company as on valuation date 31.03.2012.

- (b) *Mr. X, a member of co-operative housing society, was allotted a plot as per the bye laws of the society. He constructed a house on plot and substituted the name of his wife in the records of the society in his place. The society executed the registered sale deed in respect of said plot in favour of his wife. The Assessing Officer included the value of the said property in the hands of Mr. X. Examine the validity of the action of the Assessing Officer.*

Answer

- (a) **Computation of Net Wealth of M/s Matisha Constructions Ltd. as on valuation date 31.03.2012**

	Particulars	₹ in lacs
	Assets [as per the definition of assets under section 2(ea)]	
(i)	Land in urban area (held as stock in trade since 1999) – taxable	81

29.26 Direct Tax Laws

(ii)	since it is held as stock-in-trade for more than 10 years		
(ii)	Motor cars (excluding imported car not being an asset since it is used for hiring) [38 Lacs – 18 Lacs]		20
(iii)	Agricultural land acquired for construction of residential and commercial complex (is a stock-in-trade in the hands of a construction company – hence, not an asset)		Nil
(iv)	(a) Residential flats provided to 2 employees drawing salary less than ₹5 lacs per annum – not an asset		Nil
	(b) Residential flat provided to one employee drawing salary exceeding ₹5 lacs per annum is an asset $[36 \times 1/3]$		12
(v)	Farm house - not an asset		Nil
(vi)	Cash in hand as per cash book is not an asset since it represents cash recorded in the books		Nil
			113
Less: Liabilities			
(i)	Loan for purchase of land in urban area – deductible, since it is incurred in relation to land in urban area, which is an asset chargeable to wealth-tax.	30	
(ii)	Loan for purchase of agricultural land - not deductible, since land is not an asset	Nil	
(iii)	Wealth Tax liability for Assessment year 2011-12 – wealth tax liability is not deductible	Nil	
(iv)	Loan for construction of residential flats - the portion relating to taxable asset (1/3) is deductible i.e. $\frac{1}{3} \times 9 \text{ lacs}$	3	33
Net Wealth			80

- (b) 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. X and will be assessed in the hands of Mrs. X (assuming Mr.X has received adequate consideration from his wife Mrs.X for the aforesaid transfer of membership).

Question 18

- (a) State with reasons whether the following constitute assets chargeable to wealth-tax on the valuation date 31.3.2012:

- (i) *Agricultural farm house situated 26 kms outside the municipal limits of Jaipur, but within 22 kms of Niwai Municipal Corporation.*
- (ii) *Factory building and godowns leased out on rent.*
- (iii) *Silver and gold in the jewellers shop*
- (iv) *Aircraft held by a shipping company having turnover of ₹ 800 crores for exclusive use of its managing director.*
- (v) *A cash balance of ₹ 1,50,000.*
- (b) *Rakesh, a married coparcener having no son but two minor daughters, gets a commercial property on disruption of the HUF on 17.3.2012. He, therefore, seeks your advice to know in whose hands the value of this property would be subject to wealth-tax on the valuation date 31.3.2012.*
- (c) *How can the arrear demand of wealth-tax be recovered by the department where the assessee dies prior to making payment thereof?*

Answer

- (a) (i) According to the definition of the term 'asset' under section 2(ea), building includes a farm house situated within 25 kms from the local limits of a municipality. Therefore, the farm house situated within 25 kms from the local limits of Niwai Municipal Corporation is an asset as per section 2(ea) of the Wealth-tax Act, 1957.
- (ii) There are some exceptions to the chargeability of building to wealth-tax. One of the exceptions is property in the nature of commercial establishments or complexes. Therefore, factory buildings and godowns leased out on rent are not assets within the meaning of section 2(ea).
- (iii) The silver and gold lying in a jeweller's shop are not assets under section 2(ea) as the same constitute stock-in-trade of the assessee.
- (iv) The definition of asset under section 2(ea) includes yachts, boats and aircrafts, other than those used by the assessee for commercial purposes. The use for commercial purposes generally means use in the business of running on hire or as stock-in-trade. Therefore, the aircraft held by a shipping company for the exclusive use of its managing director is an asset chargeable to tax, as it was not used for commercial purposes.

Alternate View- A different view has been taken in *Garware Wall Ropes Ltd. v. Addl. CIT (2004) 89 ITD 221 (Mum.)*, where the aircraft used for one's own business is construed as used for "commercial purposes" and hence not exigible to wealth tax. If this view is taken then, in the present case, the aircraft used by the shipping company for exclusive use of its managing director is not an asset chargeable to wealth tax assuming that it was used only for business purposes,

- (v) The cash in hand in excess of ₹ 50,000 is an asset chargeable to wealth-tax in case of individuals and HUFs. In case of any other person, any cash not recorded in the books will only be treated as an asset.
- (b) The facts given in the question are similar to the facts of the case decided by the Apex Court in the case of *Narendra Nath v. CWT* (1969) 74 ITR 190 wherein it was held by the Court that if a co-parcener not having a son but having two minor daughters receives his share in the joint family property on disruption, then, such property would belong to the HUF comprising of himself, his wife and minor daughters and cannot be assessed as his individual property.

It may be noted that any property in the nature of commercial establishments are excluded from the definition of asset under section 2(ea). Therefore, commercial property received by Rakesh would not be chargeable to wealth-tax on the valuation date.

- (c) Where the assessee dies prior to making of payment of demand of wealth tax, the same shall be recovered as per section 19(1) out of the estate of the deceased from his executor, administrator or other legal representative. The executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the wealth tax assessed as payable by such person, if he had not died.

Question 19

- (a) *Mr. Rajpal gives the particulars of various assets held by him on 31.3.2012 and requests you to compute his net wealth by explaining in brief that why the same was dealt with like that :*
 - (i) *Jewellery gifted to wife from time to time in total of ₹ 1 lac and were available with her on the valuation date having market value of ₹ 5 lacs.*
 - (ii) *A flat in Mumbai purchased under instalment scheme in 1996 for ₹ 6 lacs and used for own residence since then. The market value of it was ₹ 20 lacs on 31.3.2012 and installment of ₹ 1 lac was also outstanding.*
 - (iii) *He is a qualified engineer and was in possession of instruments used for his professional activity. The value of all such instruments was ₹ 1 lac.*
 - (iv) *Urban land purchased for ₹ 2 lacs in August 2009 located at Jaipur, in the name of his son who is suffering from a disability specified under section 80U. The age of his son on 31.3.2012 was 17 years and value of land was ₹ 5 lacs.*
 - (v) *House located in NOIDA shown in his wealth-tax return for A.Y.2011-12 at ₹ 40 lacs was sold on 20.3.2012 for ₹ 45 lacs, but the sale deed thereof was executed on 03.04.2012.*
- (b) *Examine the correctness of the statement that "All types of land held by an assessee on the valuation date are treated as 'Urban land' under the Wealth-tax Act, 1957."*

Answer**(a) Computation of Net Wealth of Mr. Rajpal as on valuation date 31.3.2012**

	Particulars of asset with reason for chargeability	Amount (₹)
1.	Under section 4(1)(a)(i) read with Rule 18 of Schedule III, the fair market value of gifted jewellery on the valuation date will be included in the wealth of Mr. Rajpal.	5,00,000
2.	The flat at Mumbai used by the assessee for his own residence is exempt under section 5(vi) and accordingly, the liability of outstanding installment is not deductible.	Nil
3.	Professional instruments held on the valuation date used for the purpose of profession are not assets for the purpose of levy of wealth-tax.	Nil
4.	Urban land is an asset by virtue of section 2(ea)(v). However, since the same is in the name of his minor son who suffers from a disability specified under section 80U, the clubbing provisions are not applicable as per section 4(1)(a)(ii).	Nil
5.	The property at Noida was sold during the year and is, therefore, not an asset of the assessee but is an asset of the beneficial owner, since ownership of the property passes on sale of the property and execution of sale deed only confirms the act of the parties.	Nil
	Net Wealth	5,00,000

- (b)** Urban land is an "asset" as per section 2(ea)(v) and it means (i) land situated in any area comprised within the jurisdiction of a municipality or cantonment board and which has a population of not less than 10,000 according to the last preceding census; (ii) land situated in any area not being more than 8 kms from the local limits of any municipality or cantonment board.

However, in spite of fulfilling the above conditions, the following are not treated as urban land:-

- (i) land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated;
- (ii) land occupied by any building which has been constructed with the approval of the appropriate authority;
- (iii) unused land held by the assessee for industrial purposes for a period of 2 years from the date of its acquisition by him; and
- (iv) any land held by the assessee as stock-in-trade for a period of 10 years from the date of its acquisition by him.

Therefore, all types of land held by an assessee on the valuation date may not be treated as urban land under the Wealth-tax Act, 1957.

Hence, the statement is not correct.

Question 20

- (a) S gifted ₹ 20,00,000 to his wife on 10.1.2012. His wife bought gold jewellery on 31.1.2012 out of the said sum of ₹ 20,00,000. The fair market value of the gold jewellery as on 31.3.2012 was ₹ 25,00,000. S claims that since his wife has not held on 31.3.2012 the sum of ₹ 20,00,000 which he gifted to her, no amount is includible in his net wealth for the assessment year 2012-13. Examine the claim of S.
- (b) Wealth tax is not payable by an assessee in respect of any property held under trust or other legal obligation for any public purpose of a charitable or religious nature in India. Do you agree with the statement?
- (c) Compute the net wealth of UMV Ltd. (carrying on the business of running cars on hire and also dealing in jewellery) which furnishes the following particulars of its assets and liabilities as on 31.3.2012:

	(₹ in crores) Book value	(₹ in crores) If valued as per Schedule III
Assets		
(i) Fixed Assets:		
Plant & Machinery	10	15
Factory Building	25	10
Urban land (450 sq. meters)	40	100
Motor cars	5	10
(ii) Investments		
Jewellery	15	30
Plot of land in Mumbai (480 sq. meters)	10	50
Equity shares in subsidiary companies	20	25
(iii) Current assets :		
Inventories (Jewellery)	150	150
Sundry Debtors	10	10
Cash and bank balances (includes cash balance of ₹1,00,000)	5	5
Liabilities		
(i) Current Liabilities	40	40
(ii) Loans secured on Fixed Assets (Urban land)	30	30

Answer

- (a) Section 4(1)(a) of the Wealth-tax Act, 1957 provides that the value of assets which are

transferred, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart, by a husband to his wife or vice versa, are to be clubbed in the hands of the transferor, whether the assets are held in the form in which they were transferred or otherwise.

The Supreme Court has, in *CWT v. Kishan Lal Bubna* (1993) 204 ITR 600, held that where the assessee transfers money and the transferee utilises that money to acquire an asset, it is the value of that asset on the valuation date which is relevant for the purposes of computing the net wealth of the assessee. Where, what is transferred by the assessee is an asset and the transferee disposes of the asset and acquires with the consideration received another asset, it is the value of that acquired asset on the valuation date which is relevant for the purposes of computing the net wealth of the assessee. In view of this legal position, the claim of S is not valid. The value of gold jewellery as per Schedule III on the valuation date 31.3.2012 is includible in the net wealth of S for A.Y.2012-13. Therefore, ₹25,00,000, being the fair market value of gold jewellery as on 31.3.2012 is includible in the net-wealth of S under section 4(1)(a).

- (b) The statement is valid. This exemption is provided in section 5(i). However, this exemption shall not apply to any property forming part of any business carried on by the above trust.

In the following cases the assets, though held in business, shall continue to be exempt from wealth-tax:

- (a) Any property held under any trust or other legal obligation forming part of any business, other than the business referred to in section 11(4A)(a) or section 11(4A)(b) of the Income-tax Act, 1961 in respect of which separate books of accounts are maintained; or
- (b) Any property forming part of a business carried on by an institution, fund or trust referred to in section 10(23B) or 10(23C) of the Income-tax Act, 1961.

(c) Computation of Net Wealth of UMV Limited as on the valuation date 31.03.2012

Particulars		Reasons	Value (₹ in crores)
Assets:			
(i)	Fixed Assets:		
	Plant & Machinery	Not an asset u/s 2(ea)	Nil
	Factory building	Commercial property. Hence, not an asset u/s 2(ea)	Nil

29.32 Direct Tax Laws

	Urban land (450 sq. meters)	It is an asset u/s 2(ea) - Refer Note 2	100
	Motor cars	Used for running on hire. Hence, not an asset u/s 2(ea) – Refer Note 3	Nil
(ii)	Investments:		
	Jewellery	Not stock-in-trade. Hence, an asset u/s 2(ea)	30
	Plot of land in Mumbai	An asset u/s 2(ea). Refer Note 2	50
	Equity shares in subsidiary companies	Not an asset u/s 2(ea)	Nil
(iii)	Current assets:		
	Inventories (Jewellery)	Stock-in-trade. Hence, not an asset u/s 2(ea)	Nil
	Sundry Debtors	Not an asset u/s 2(ea)	Nil
	Cash and bank balances (includes cash balance of ₹1,00,000)	Bank balance – not an asset under section 2(ea). Cash in hand – recorded in books – hence, not an asset under section 2(ea).	Nil
Value of assets as per Schedule III of the Wealth-tax Act, 1957(A)			180
Liabilities:			
(i)	Current Liabilities	Not incurred in relation to an asset under section 2(ea). Hence, not eligible for deduction.	Nil
(ii)	Loans secured on Fixed Assets (Urban land)	Assuming that the loan is taken for purchase of urban land, which is included in the net wealth, it is eligible for deduction.	30
Liabilities eligible for deduction (B)			30
Net wealth [(A) – (B)]			150

Notes:

1. The value of any asset other than cash shall be its value as on the valuation date determined in the manner laid down in Schedule III.
2. Plot of land not exceeding 500 sq. meters is exempt only in the case of an individual or HUF and not in the case of a company.
3. It is assumed that all the motor cars are used in the business of running on hire.

Question 21

Dinesh an individual, has the following assets and liabilities as on 31.3.2012

Assets	₹ in Lacs
Plot of land at Bhopal comprising an area of 1,200 square metres on which building has been constructed without the approval of the appropriate authority	25
Building constructed on land at Bhopal without the approval of the appropriate authority and used for his business purposes.	10
Motor cars held as stock-in-trade	60
Gold jewellery brought into India from Singapore, where he was residing, on his return to India on 1.11.2007 for permanently residing in India.	6
Jewellery made of Platinum.	9
Interest in the coparcenary property of the Hindu undivided family of which he is a member	15
Cash in hand recorded in the books of account	5
Fixed deposits in a co-operative bank	10
Liabilities	
Loan borrowed for marriage of daughter	6
Loan borrowed for construction of building at Bhopal	5

The minor married daughter of Dinesh holds a plot of land at Indore valued at ₹ 20 Lacs.

The amounts stated against the 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 Dinesh as on valuation date 31.03.2012.

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

Answer**Computation of net wealth of Mr. Dinesh as on valuation date 31.03.2012**

Particulars	Note	₹
Plot of land of 1,200 sq. mts. at Bhopal	(a)	25,00,000
Building constructed on land at Bhopal – construction without the approval of appropriate authority – not an asset under section 2(ea) since used for business purposes	(b)	Nil
Motor cars held as stock-in-trade – not an asset under section 2(ea)	(c)	Nil
Gold jewellery brought from Singapore on 1.11.2007 on his return to India for permanently residing in India – Exempt under section 5(v)	(d)	Nil
Jewellery made of platinum	(e)	9,00,000
Interest in coparcenary property of the HUF– Exempt under section 5(ii)	(f)	Nil

29.34 Direct Tax Laws

Cash in hand in excess of ₹50,000	(g)	4,50,000
Fixed deposits in a co-operative bank—not an asset under section 2(ea)	(h)	Nil
Gross wealth		38,50,000
Less: Liabilities		
Loan borrowed for marriage of daughter – not deductible	(i)	Nil
Loan borrowed for construction of building at Bhopal – not deductible	(j)	Nil
Net wealth		38,50,000

The reasons for the inclusion or exclusion of the various items are furnished below -

- (a) Plot of land at Bhopal on which building has been constructed without the approval of the appropriate authority is an asset under section 2(ea) and is, therefore, includible in the net wealth. Since the plot of land comprises an area of more than 500 square meters, it is not eligible for exemption under section 5(vi).
- (b) Building constructed on land at Bhopal without the approval of the appropriate authority is not a specified asset under section 2(ea) since it is used for business purposes by Dinesh. It is, therefore, not includible in the net wealth.
- (c) Motor cars held as stock-in-trade do not fall under the purview of 'asset' under section 2(ea) and are, therefore, not chargeable to wealth tax.
- (d) Gold jewellery brought into India on 1.11.2007 from Singapore is exempt under section 5(v) for seven successive assessment years beginning with the assessment year 2008-09.
- (e) Jewellery made of platinum is an asset under section 2(ea) and is, therefore, included in the net wealth.
- (f) Interest in the coparcenary property of the Hindu undivided family of which Dinesh is a member is exempt under section 5(ii).
- (g) Cash in hand, in excess of ₹ 50,000, is includible in the net wealth of an individual, whether such cash is recorded in the books of account or not.
- (h) Fixed deposits in a co-operative bank do not constitute 'assets' within the meaning of section 2(ea) and, therefore, are excluded from net wealth.
- (i) Only loans borrowed in relation to the 'assets' as per section 2(ea) are deductible. Hence, loan borrowed for marriage of daughter is not deductible.
- (j) Since building at Bhopal is used for business purposes and is, therefore, not an asset and excluded while computing the net wealth, the loan borrowed for its construction is not a deductible debt.
- (k) Assets held by a minor married daughter are not includible in the net wealth of any parent as per section 4(1)(a)(ii). Hence, the value of the plot of land at Indore, held by the minor married daughter, does not form part of the net wealth of Dinesh.

Question 22

Gautam an individual, furnishes the following particulars of his assets and liabilities as on 31.3.2012:

Assets:	₹ in Lacs
Residential house at New Delhi	25
Residential house at Agra	15
Plot of land comprising an area of 450 square meters at Mumbai	60
House at New Delhi exclusively used for carrying on his business	15
Commercial complex at Agra	20
Residential house at Chennai let out for 335 days during the relevant previous year	10
Motor cars used in business of running them on hire	20
Shares in private limited companies	25
Cash in hand	3
Gold jewellery	12
Liabilities:	
Loan borrowed for purchase of land at Mumbai	20
Loan borrowed for purchase of shares in private limited companies	10
Loan borrowed for purchase of gold jewellery	6

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 Gautam as on valuation date 31.03.2012.

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

Answer**Computation of net wealth of Gautam as on valuation date 31.03.2012**

	Particulars	Amount in ₹
(a)	Residential house at New Delhi is an asset	25,00,000
(b)	Residential house at Agra is an asset	15,00,000
(c)	Plot of land comprising an area of 450 square meters at Mumbai is an asset but exempt under section 5(vi)	Nil
(d)	House at New Delhi exclusively used for carrying on his business is not an asset	Nil
(e)	Commercial complex at Agra is not an asset	Nil
(f)	Residential house at Chennai let out for 335 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

29.36 Direct Tax Laws

(h)	Shares in private limited companies is not an asset	Nil
(i)	Cash in hand in excess of ₹ 50,000 is not includible in net wealth	2,50,000
(j)	Gold jewellery is an asset	12,00,000
		54,50,000
	Less: Debts incurred in relation to assets	
(k)	Loan borrowed for purchase of land at Mumbai (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	6,00,000
	Net Wealth	48,50,000

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

- (a) Residential house at New Delhi 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 Mumbai whose value is higher.
- (b) Residential house at Agra is an asset under section 2(ea) and, therefore, included in the net wealth.
- (c) Plot of land measuring 450 square metres at Mumbai 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 New Delhi, occupied for own business purposes, is excluded from net wealth as it is not an asset.
- (e) Commercial complex at Agra 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 Chennai 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 ₹ 50,000, of individuals constitutes an asset. Therefore, ₹ 2,50,000, being cash in hand in excess of ₹ 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 Mumbai 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.

Question 23

New Era Ltd. furnishes the following particulars of its wealth for the valuation date of 31st March, 2012. The company is engaged in real estate business and also in jewellery trade.

Compute its net wealth on valuation date 31.03.2012 and the wealth tax payable.

	₹	₹
Land in rural area (within 5 kms of Aligarh – purchased in 1991, construction on which is permissible but not held as stock in trade)		90,00,000
Land in urban area (for construction of Mall – not held as stock in trade)		20,00,000
Land in urban area (held as stock-in-trade since 2000)		50,00,000
Motor car (including one imported car worth ₹ 6 Lacs)		11,00,000
Jewellery (held as stock-in-trade)		18,00,000
Aircraft (for use of directors and auditors)		1,58,00,000
Bank balance		5,00,000
Cash in hand as per cash book		2,70,000
Guest house and land appurtenant thereto in rural area		8,00,000
Residential flats of identical size provided to six employees for their use near factory in rural areas (salaries of two such employees exceed ₹ 5,00,000 p.a.)		15,00,000
Residence provided to managing director (salary exceeds ₹ 5,00,000 p.a.)		10,00,000
Flats constructed remaining unsold (not held as stock in trade)		30,00,000
Residence provided to whole time director (salary ₹ 15,000 p.m.)		17,00,000
<i>The company has taken the following loans :</i>		
(a) for purchase of jewellery	6,00,000	
(b) for purchase of aircraft	7,00,000	
(c) for flats constructed remaining unsold	2,00,000	
(d) for residence provided to whole time director	90,000	

Answer

Computation of net wealth of New Era Ltd on the valuation date 31.03.2012

	Particulars	₹	₹
1.	Land in rural area within 5 kms. of Aligarh (within the prescribed limit)		90,00,000
2.	Land in urban area [for construction of mall not - held as stock-in-trade]		20,00,000
3.	Land in urban area (held for more than 10 years as stock in trade – hence taxable)		50,00,000
4.	Motor car (including imported car)		11,00,000
5.	Jewellery (held as stock in trade – hence, not taxable)		Nil
6.	Aircraft used other than for commercial purposes (See note below)		1,58,00,000
7.	Bank balance - not an asset under section 2(ea)		Nil
8.	Cash in hand as per cash book - not an asset as per section 2(ea)		Nil
9.	Guest house in rural area (always taxable as wealth)		8,00,000
10.	(a) Four residential flats given to employees, whose salary does not exceed ₹ 5,00,000 p.a. – exempt		Nil
	(b) Two residential flats given to employees, whose salary exceed ₹ 5,00,000 p.a. – taxable		5,00,000
11.	Residential house given to Managing Director whose salary exceeds ₹ 5,00,000 p.a.		10,00,000
12.	Unsold flats		30,00,000
13.	Residence given to whole time director (not taxable, since salary does not exceed ₹ 5,00,000 p.a.)		Nil
Gross Wealth			3,82,00,000
Less: Debts			
1.	Loan for purchasing jewellery – Not deductible since jewellery held as stock in trade is exempt from wealth-tax	Nil	
2.	Loan for purchasing aircraft	7,00,000	
3.	Loan for flats constructed remaining unsold	2,00,000	
4.	Loan for residential house provided to the whole time director – not deductible as the house is exempt from wealth-tax	Nil	9,00,000
Net Wealth			3,73,00,000
Wealth-tax liability = 1% of ₹ 3,43,00,000 (i.e. 3,73,00,000-30,00,000)			₹ 3,43,000

Note:-The definition of asset under section 2(ea) includes yachts, boats and aircrafts, other than those used by the assessee for commercial purposes. The use for commercial purposes generally means use in the business of running on hire or as stock-in-trade. Therefore, the aircraft held by New Era Ltd for use of its director and auditors is an asset chargeable to tax, as it was not used for commercial purposes.

Alternate View- A different view has been taken in *Garware Wall Ropes Ltd. v. Addl. CIT (2004) 89 ITD 221 (Mumb.)*, where the aircraft used for one's own business is construed as used for "commercial purposes" and hence not exigible to wealth tax. If this view is taken then, in the present case, the aircraft used by the shipping company for exclusive use of its managing director is not an asset chargeable to wealth tax assuming that it was used only for business purposes.

Question 24

What are the various circumstances under which an assessee will be deemed to have concealed the particulars of his net wealth or furnished inaccurate particulars thereof?

Answer

The circumstances under which an assessee will be deemed to have concealed the particulars of his net wealth or furnished inaccurate particulars thereof are as follows:

- (i) Where a person fails to offer an explanation or offers an explanation which is found to be false in respect of any facts material to the computation of net wealth, he will be deemed to have concealed the particulars. Further, where such person offers an explanation which he is unable to substantiate and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of his net wealth have been disclosed by him, he will be deemed to have concealed the particulars - *Explanation 2* to section 18.
- (ii) Where a person, fails, without reasonable cause, to furnish within the due date, a return of his net wealth which he is required to furnish and the Assessing Officer is satisfied that the person has assessable wealth, he shall be deemed to have concealed the particulars of his assets - *Explanation 3* to section 18.
- (iii) Where the value of any asset returned by any person is less than 70% of the value of such asset as determined in an assessment under section 16 or section 17, such person shall be deemed to have furnished inaccurate particulars.
- (iv) Where in the course of search u/s 37A, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing and such assets have been neither declared in the return of wealth nor recorded in the books of account, he shall be deemed to have concealed the particulars of such assets or furnished inaccurate particulars of such assets.

Question 25

X Limited is engaged in the construction of residential flats. For the valuation date 31.3.2012, it furnishes the following data and requests you to compute the taxable wealth:

- (i) Land in urban area (Construction is not permitted as per Municipal Laws in force) ₹ 35,00,000
- (ii) Motor-cars (used on hire by the company) ₹ 7,00,000
- (iii) Jewellery (Investment) ₹ 15,00,000. Loan taken for purchasing the same ₹ 10,00,000
- (iv) Cash Balance (as per books) ₹ 1,75,000
- (v) Bank Balances ₹ 2,50,000
- (vi) Guest House (situated in a place which is 30 kms away from the local limits of the municipality) ₹ 6,00,000
- (vii) Residential flats occupied by the Managing Director ₹ 10,00,000. The managing director is on whole time appointment and is drawing remuneration of ₹ 12,00,000.
- (viii) Residential house let out on hire for 200 days ₹ 8,00,000

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

Answer**Computation of taxable wealth of X Limited as on 31.3.2012**

	Particulars	Note No.	₹ in lacs
(i)	Land in urban area	(1)	Nil
(ii)	Motor-cars used on hire	(2)	Nil
(iii)	Jewellery	(3)	15
(iv)	Cash balance	(4)	Nil
(v)	Bank balance	(5)	Nil
(vi)	Guest house	(6)	6
(vii)	Residential flat occupied by the Managing Director	(7)	10
(viii)	Residential house let out for 200 days	(8)	8
			39
	Less: Debts: Loan obtained for purchasing jewellery	(9)	10
	Net wealth as on 31.3.2012		29

Notes:

- (1) Land in urban area on which the construction is not permitted as per municipal laws in force is not an asset with in the meaning of "asset" as defined u/s 2(ea) and as such excluded from taxability.

- (2) Motor car held as stock in trade or used on hire is not taxable. It is taxable only if it is used for business purposes or personal purposes.
- (3) Jewellery is always taxable unless the same is held as stock in trade.
- (4) Cash on hand in excess of ₹50,000 as on the valuation date is taxable in the case of an individual or HUF. In other cases it is not taxable to the extent reflected in the books of account. In this case, since cash balance of ₹1,75,000 is as per books of X Ltd., it is not taxable.
- (5) Bank balance is not an asset within the meaning of "asset" as defined in section 2(ea).
- (6) Guest house situated 30 kms away from the local limits of the municipality is an asset and is therefore taxable. Only in the case of farm house situated beyond 25 kms from the local limits of any municipality, the taxability would not arise.
- (7) Residential flat which is allotted by a company to an employee or an officer or a director who is in whole time employment, having gross annual salary of ₹ 5 lacs or more is an asset within the meaning of "asset" as defined in section 2(ea) of the Act. Accordingly, the residential flat occupied by the managing director is taxable since his annual remuneration is ₹ 12 lacs.
- (8) Any residential property which is let out for a minimum period of 300 days in the previous year is not an asset. In the given case, the residential house is taxable since it has been let out for only 200 days (i.e. less than 300 days during the previous year).
- (9) Debts incurred in relation to assets chargeable to wealth tax shall be allowed as deduction in the computation of net wealth. Accordingly loan obtained for purchase of jewellery shall be allowed as deduction since jewellery is assessable to wealth tax.

Question 26

A company incorporated outside India is not liable to wealth tax in India. Discuss.

Answer

Under section 2(h) of the Wealth-tax Act, 1957, a company shall have the same meaning as assigned to it in clause (17) of section 2 of the Income-tax Act, 1961. As per section 2(17), a company means, any Indian company or any body corporate incorporated by or under the laws of a country outside India.

Therefore, a company incorporated outside India will be liable to wealth tax in respect of assets located in India and which are subject to wealth tax under section 2(ea) of the Wealth-tax Act, 1957.

Question 27

A Cooperative Society formed for the purpose of construction of residential flats for its members acquired a large area of urban land for ₹3 crores. The society had a membership of 10 members, all having equal share. The Assessing Officer proposes to tax urban land in the hands of the society.

- (i) *What is meant by urban land?*
- (ii) *Is the action of the Assessing Officer correct?*

Answer

- (i) Urban land is chargeable to wealth tax since it falls under the definition of asset in section 2(ea). Urban land means land situated –
 - (a) in any area comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand, according to the last preceding census for which the relevant figures have been published before the valuation date; or
 - (b) in any area within eight kilometers from the local limits of any municipality or cantonment board as the Central Government may specify by notification in the Official Gazette, having regard to the extent of and scope for urbanization of that area.

It does not include land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or any land occupied by any building which has been constructed with the approval of the appropriate authority, or any unused land held by the assessee for industrial purposes for a period of 2 years from the date of its acquisition or any land held by the assessee as stock-in-trade for a period of 10 years from the date of its acquisition by him.

- (ii) No wealth tax can be levied on a co-operative society as section 45 specifically excludes co-operative societies from the purview of wealth tax. Therefore, the action of the Assessing Officer proposing to tax urban land in the hands of the society is incorrect.

Question 28

- (a) *State with reasons whether the following constitute assets chargeable under Wealth Tax Act, 1957 as the wealth of Raja, a former ruler?*
 - (i) *Jewellery transferred to a minor handicapped daughter on 31-12-2011.*
 - (ii) *50% of the Palace (occupied by him and declared by Government as his official residence) was rented out throughout the previous year ending 31-03-2012.*
- (b) *State the circumstances in which the Assessing Officer can refer valuation of an asset to the Valuation Officer.*
- (c) *Return of net wealth declaring wealth of ₹ 55.50 Lacs for Assessment year 2011-12 was filed by Ravi on 30-09-2011. The Assessing Officer issued notice under section 16(2), which was served upon the assessee on 28-02-2012. The assessment was completed by the Assessing Officer on 13-03-2012 on the wealth of ₹ 85 Lacs. Ravi wants to know:*
 - (i) *Whether the order passed by the Assessing Officer is a valid order under the Act?*

- (ii) Will his case be fit for levy of penalty, if assessed wealth is not disputed?

Answer

- (a) (i) As per section 4(1)(a)(ii), the clubbing provisions are not applicable in the case of a minor child who is suffering from any disability of the nature specified in section 80U of the Income-tax Act, 1961.

In view of the aforesaid provisions, in case the minor child is suffering from a disability referred to in section 80U, the income and wealth of such a child shall not be clubbed in the hands of the parents. However, if the disability is not of the nature specified in section 80U, clubbing provisions will apply.

- (ii) The palace of the former ruler, which was declared by the Government as his official residence is not an asset chargeable to wealth tax under section 5(iii). However, the building/buildings (comprised in the palace) which were rented out by the former ruler shall constitute an asset chargeable to Wealth Tax.

The Supreme Court in the case of *Mohd. Ali Khan v. CWT [1997] 224 ITR 672* held that where a palace consisting of a number of buildings was declared to be the official residence of the ruler, and some of the buildings were occupied by the ruler and the others were let out to tenants, the exemption will be available only in respect of buildings occupied by the ruler.

Since only 50% of the residence is occupied by the former ruler and the balance is let out throughout the year, such an exemption cannot be claimed in respect of the portion let out. However, section 2(ea) excludes any residential property which is let out for more than 300 days in a year. Hence, the balance 50% of the property let out is not an asset chargeable to wealth tax.

- (b) Section 16A provides that the Assessing Officer may refer valuation of any asset under the following circumstances:
- (i) In a case where the value of the asset as returned is in accordance with the estimate by a registered valuer, if the Assessing Officer is of the opinion that the value so returned is less than the fair market value (FMV).
 - (ii) In any other case, if the Assessing Officer is of the opinion:
 - that the fair market value of the asset exceeds by $33\frac{1}{3}\%$ or ₹ 50,000/- over the value of such asset as adopted by the assessee; or
 - that having regard to the nature of the asset and the other relevant circumstances, it is necessary to make a reference.
- (c) (i) The time limit for completion of assessment under section 17A of the Wealth-tax Act, 1957 is 21 months from the end of the assessment year in which the net wealth

was first assessable. Notice under section 16(2) has to be served within 12 months from the end of the month in which the return is furnished.

In this case, the notice under section 16(2) was served within 12 months from the end of the month in which the return was furnished. Also, the order was passed within 21 months from the end of the assessment year. Therefore, the order passed by the Assessing Officer is a valid order under the Act.

- (ii) Explanation 4 to section 18 of the Wealth-tax Act, 1957, specifies that where the value of an asset returned by any person is less than 70% of the value of such asset as determined in an assessment under section 16 or section 17, then such person shall be deemed to have furnished inaccurate particulars of such asset and shall be liable for levy of penalty under section 18(1)(c).

In the present case, the wealth assessed by the Assessing Officer is ₹85 Lacs against the returned wealth of ₹55.50 Lacs. The returned wealth is only 65.3% of assessed wealth. Since the returned wealth is less than 70% of the wealth assessed and determined by the Assessing Officer, therefore, the assessee is liable for levy of penalty under section 18(1)(c) of the Wealth-tax Act, 1957, unless he proves that the value of the asset as returned by him is the correct value.

Question 29

- (i) *Mr. Raj executed a 'will' during his life time. His uncle Mr. Amitabh was appointed as executor, under the 'will'. Mr. Raj died on 13.6.2011. The executor could complete the distribution of assets after the valuation date 31.3.2012.*

The wealth tax records of Raj reveal that (a) the return of wealth for the valuation date 31.3.2011 was not filed; (b) wealth tax demands for the assessment years 2007-08 and 2008-09 are payable. On these facts, Mr. Amitabh approached you to advise him on his obligations under Wealth-tax Act, 1957.

- (ii) *In respect of defaults committed under Wealth-tax Act 1957, penalty proceedings are initiated against the deceased prior to his death. Can the wealth tax officer continue the proceedings and levy penalty on the legal representative?*
- (iii) *X enters into an agreement on 13.3.2012 to sell the house property for ₹50 Lacs purchased by him for ₹20 Lacs and received an advance of ₹10 Lacs. Further, an amount of ₹15 Lacs was received by him on 22.3.2012 but the sale deed could only be executed on 21.4.2012. Does the house constitute his asset on the valuation date 31.3.2012.*

Answer

- (i) The pending wealth tax demand relate to assessment years 2007-08 and 2008-09.

Mr. Amitabh was appointed as an executor of the 'will' by deceased Mr. Raj. As per the provisions of section 19 of the Wealth-tax Act, 1957, the tax liability of the deceased is payable by the legal representative in the following situations.

- (i) Where the assessment had been completed on the deceased but tax is still payable [section 19(1)];
- (ii) Where the deceased has not furnished a return or the return furnished by him is incorrect or incomplete [section 19(2)].

Therefore, Mr. Amitabh is responsible for filing of the pending wealth tax return of the deceased for the assessment year 2011-12 and making payment of the wealth-tax demands for A.Y. 2007-08 & 2008-09 out of the estate of the deceased.

Further, as per section 19A, the executor of a 'will' is responsible for the assessment in respect of the estate of the deceased for the period from the date of death of the deceased till the completion of the distribution of assets amongst the legatees. The executor holds the status as of the deceased during the period of distribution of assets amongst the beneficiaries in the 'will' and accordingly a separate assessment will be made under section 19A in the hands of the executor in respect of the net wealth of the deceased as on the valuation dated viz. 31.03.2012.

- (ii) Section 19 of the Wealth-tax Act, 1957 determines the liability of legal representative for the defaults committed by the deceased assessee. According to section 19(3), the provisions of section 14, 15 and 17 shall apply to legal representative as they apply to any person referred to in those sections, whereas section 18 dealing with penalty does not form part of section 19(3). In view of the legal position, penalty under section 18 of Wealth-tax Act, 1957 can neither be levied nor penalty proceedings already initiated be continued on the legal representative for the defaults committed by deceased against whom penalty proceedings have been initiated prior to his death.
- (iii) Since the sale deed was executed only in April of the next financial year and the house property was transferred by 'X' only after the valuation date i.e. after 31st March, the assessee has to include the asset i.e. house property in his net wealth for wealth tax purpose. It is assumed that the possession of the property is not transferred to the purchaser upto 31.3.2012.

Question 30

Explain the procedure for adoption of the value of Jewellery for the valuation date as at 31st March, 2012 and subsequent 3 years assuming the value of Jewellery has been determined by Valuation Officer as at 31st March, 2011.

Answer

Rules 18 & 19 of Part G of Schedule III to the Wealth Tax Act provide that when the value of jewellery has been determined by Valuation Officer, such value shall be taken to be value of such jewellery for the subsequent 4 assessment years subject to the following two adjustments:

- (a) Where the jewellery includes gold or silver or any alloy of these, then the value of such metal as on the valuation date relevant to that assessment year shall be substituted for the value as on the valuation date on which the Valuation Officer determined the value.

29.46 Direct Tax Laws

- (b) Where jewellery is sold or otherwise disposed off or jewellery is acquired, the value of jewellery determined shall be reduced or increased to the extent of such deletions or additions to the jewellery.

Question 31

Mr. Kamat, a not ordinarily resident in India, seeks your advice with regard to the furnishing of his wealth-tax return. The value of assets held on 31.3.2012 is indicated below. You are requested to compute the taxable wealth of Mr. Kamat giving justification for the inclusion or exclusion of each item. The valuation date as indicated above is 31st March, 2012:

	₹
(i) Motor cars of foreign make held as Fixed Assets	9,50,000
(ii) 8% Bonds issue by Reserve Bank of India	15,00,000
(iii) Residential house property at Pune let out with effect from 05 th June, 2011	11,00,000
(iv) Jewellery held	9,00,000
(v) Lands purchased for industrial purpose:	
on 1 st January, 2009	5,50,000
on 25 th March, 2012	7,50,000
(vi) Loan against the purchase of lands:	
on 01 st January, 2009	2,75,000
on 25 th March, 2012	3,50,000
(vii) Wealth-tax liability	9,000
(viii) Cash in hand	75,000
(ix) Cash at Bank	1,25,000
(x) Fixed Assets located in USA	50,00,000
(xi) Value of Assets held by Mrs. Kamat acquired out of the gifts received from her husband:	
Shares and Securities	2,00,000
Residential House Property at Mumbai	9,00,000

Answer

Computation of taxable wealth of Mr. Kamat on valuation date 31.3.2012

	₹
(a) Motor cars of foreign make held as fixed assets	9,50,000

[included as asset under section 2(ea)(ii)]	Nil
(b) Bonds issue of Reserve Bank of India [Not an asset under section 2(ea)(iii)]	Nil
(c) Residential House Property let out for 300 days: [not an asset under section 2(ea)]	Nil
(d) Jewellery Held: [Asset under section 2(ea)(iii)]	9,00,000
(e) (i) Land purchased on 01.01.2009 [included as asset under section 2(ea)(v) as 2 years have lapsed from the date of acquisition]	5,50,000
(ii) Land purchased – II (held for less than 2 years - exempt under section 2(ea)(v))	Nil
(f) Cash on hand in excess of ₹50,000 taxable [Section 2(ea)(vi)]	25,000
(g) Cash at bank [exempt under section 2(ea)(vi)]	Nil
(h) Fixed assets located in USA (Not included as assets in the case of Not Ordinarily Resident in India)(Section 6)	Nil
(i) Deemed assets includible under section 4(1)(a) Shares and Securities: [Not an asset under section 2(ea)]	Nil
Residential House Property at Mumbai [Exempt under section 5(vi)]	Nil
Total	24,25,000
Less:(a) Wealth-tax liability (Not a deductible debt)	Nil
(b) Loan taken against purchase of land Outstanding balance, being debt in relation to taxable wealth under the Wealth-tax Act, 1957	2,75,000
(c) Loan against the purchase of land-II. Since the asset is exempted from tax the debt is not deductible	Nil
Net Wealth	21,50,000

Question 32

ABC Ltd is a company engaged in the construction and sale of buildings. It has the following assets as on 31.3.2012. You are required to compute the Net Wealth of the company, in respect of Assessment year 2012-13:

	₹ in lacs
(i) Flats – residential ready for sale	200
(ii) Commercial properties ready for sale	500
(iii) Guest House situated 30 kms away from Delhi	25
(iv) 2 Residential Houses occupied by:	
(a) An officer having an annual salary of ₹ 4 Lacs	10
(b) An officer having an annual salary of ₹ 5 Lacs	15
(iv) Cars used for company's business	20

29.48 Direct Tax Laws

(vi)	Aircraft used by the officers for business purposes	400
(vii)	Urban land held from 31.1.2000, on which no building could be built due to dispute of title	50
(viii)	Cash in hand	5

Answer**Net Wealth of ABC Ltd as on Valuation Date 31.3.2012**

		₹ in Lacs
(i)	Residential flats for sale – stock in trade – exempt u/s 2(a)(i)(2)	NIL
(ii)	Commercial properties being stock-in-trade – exempt u/s.2(ea)(i)(2)	NIL
(iii)	Guest House situated beyond 25 km from the municipal limits of Delhi – asset u/s 2 (ea)(i)	25
(iv)	Residential house allotted to employee with annual salary of ₹4 Lacs – exempt U/s.2(ea)(i)(1)	NIL
(v)	Residential house allotted to employee with annual salary of ₹ 5 Lacs – asset u/s.2(ea)(i)	15
(vi)	Cars (other than those used for running on hire or stock-in-trade) – asset u/s.2(ea)(ii)	20
(vii)	Aircraft used other than for commercial purposes – asset u/s.2(ea)(iv)	400
(viii)	Urban land held as stock-in-trade for over 10 years – asset u/s.2(ea)(v) [See Note)	50
(ix)	Cash on hand (assumed that is recorded in the books of account)	Nil
	Net Wealth	510

Notes:

1. The question clearly states that no construction could be carried out due to dispute of title. The exemption under the Explanation 1(b) to clause (ea) of section 2 is available only if the construction is prohibited in that place by law. This is not the case here. Hence the value of urban land will have to be included in the net wealth.
2. The definition of asset under section 2(ea) includes yachts, boats and aircrafts, other than those used by the assessee for commercial purposes. The use for commercial purposes generally means use in the business of running on hire or as stock-in-trade. Therefore, the aircraft held by ABC Ltd for the use of its officers is an asset chargeable to tax, as it was not used for commercial purposes.

Alternate View- A different view has been taken in *Garware Wall Ropes Ltd. v. Addl. CIT (2004) 89 ITD 221 (Mumb.)*, where the aircraft used for one's own business is construed as used for "commercial purposes" and hence not exigible to wealth tax. If this view is taken then, in the present case, the aircraft used by the shipping company for exclusive

use of its managing director is not an asset chargeable to wealth tax assuming that it was used only for business purposes.

Question 33

Under the Wealth-tax Act, 1957, what is the scope of taxation of an individual who is not residing in India?

Answer

In computing the net wealth of an individual who is not residing in India, the value of assets and debts located outside India shall not be taken into account. Value of assets and debts located within India will be considered for the purpose of net wealth computation. Assets for the purpose of wealth tax would mean assets defined in section 2(ea) of the Wealth-tax Act, 1957.

Question 34

- (a) *How is the value of the interest of a person in a firm of which he is a partner determined under the Wealth-tax Act, 1957?*
- (b) *The concept of a partial partition is alien to the Wealth-tax Act, 1957. Discuss.*

Answer

- (a) Under clause (b) of section 4, the value of the interest of a partner in a firm is to be determined in the manner laid down in schedule III. Under Schedule III part E, Rule 16 lays down the method of such determination. The net wealth of the firm shall first be determined as if it were the assessee. Thereafter, that portion of wealth of the firm as is equal to the amount of its capital shall be allocated among the partners in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm shall be allocated among the partners in accordance with the agreement of partnership for distribution of assets in the event of dissolution and in the absence of such an agreement, in the proportion in which the partners are entitled to share the profits. The sum total so allocated to a partner shall be taken as the value of his interest. No account shall be taken of the exemption under section 5(1) in determining the net wealth of the firm.
- (b) Section 20A clearly lays down that where a partial partition has taken place after 31.12.1978, such family shall continue to be liable to be assessed as if no such partial partition has taken place. The effect of a partial partition will be that those assets divided or allowed to a member or some of them will continue to be treated as HUF property and assessed as such.

Question 35

- (a) *Amar Co-operative Housing Society Ltd owns a building in Mumbai, which stands on freehold land. There is no unbuilt area. It has 10 members, each of whom has contributed ₹ 10 lacs towards the shares in the Co-operative society. The building was completed and occupied exclusively for residential purposes by its members before 31.3.2012. It was financed partly by the shares contributed by members and partly by*

29.50 Direct Tax Laws

bank finance. The annual value fixed by the municipality for the building is ₹20 Lacs, the taxes amount to ₹1 Lac.

'X' is a member of the society owning one of the flats. The cost of the flat to 'X' has been fixed by the society at ₹20 Lacs and the amount outstanding by way of instalment loan payable to the society by 'X' is ₹2 Lacs. You are required to determine the net wealth of 'X' as on 31.03.2012.

- (b) Mr. Jogi is aged 45 years. His father settled a property in trust giving whole life interest therein to Jogi. The income from the property for the years 2008-09 to 2011-12 was ₹ 60,000, ₹ 64,000, ₹ 70,000 and ₹ 76,000 respectively. The expenses incurred each year were ₹ 2,000, ₹ 4,000, ₹ 5,000 and ₹ 6,000 respectively. Calculate the value of life interest of Mr. Jogi in the property to settled on the valuation dated 31.3.2012, with the help of the factor 9.267.

Answer

(a) Valuation of building as per Rule 3 of Schedule III

Gross maintainable rent		20,00,000
Deduct municipal tax	1,00,000	
Deduction @ 15%	3,00,000	4,00,000
		16,00,000
Net Maintainable Rent X 12.5 = 2 crores		
X's share in the property (1/10)	20,00,000	
Less : Outstanding instalment	2,00,000	
	18,00,000	

Under clause (vi) of section 5, the assessee can claim exemption of the net wealth of ₹18 Lacs relating to residential flat.

Notes –

1. A Co-operative society is not an assessee under the Wealth-tax Act, 1957.
2. Under sub-section (7) of section 4, where an assessee is a member of a co-operative society and a building or part thereof is allotted to him, he is deemed to be the owner of the building or part thereof and the value thereof shall be included in computing the net wealth of such assessee. The value of any outstanding instalment towards the cost of the building is also deemed to be a debt owed by him in relation to such building.

Under the second proviso to Rule 3, if the value arrived at on the basis of Schedule III is less than the cost of acquisition, the cost of acquisition shall be taken to be the value of the property. However, this proviso will not apply, if the house is exclusively used for residential purposes by the assessee himself throughout the period of 12 months preceding the valuation date and the cost of construction does not exceed ₹ 50 Lacs in

Mumbai. The period of 12 months would mean the period right from inception if it is less than 12 months.

- (b) The valuation of life interest of Mr. Jogi in the property settled by his father is governed by Rule 17 of Schedule III. The average annual income of the last three years is to be considered for the purpose of valuation. The expenses of the last three years are also to be taken on an average by restricting it to 5 per cent of the average annual income.

Computation of interest:	
Average annual income of last 3 years (64,000 + 70,000 + 76,000)	70,000
Less: Average of annual expenses restricted to 5% of the average annual income i.e. $\frac{1}{3} \times (4,000 + 5,000 + 6,000) = ₹5,000$ but restricted to 5% of ₹70,000	3,500
Net average annual income	66,500
Value of life interest = ₹ 66,500 x 9.267 = ₹6,16,255.50	

Question 36

'X' is the legal heir of 'C'. 'C.' had delayed filing of the returns of wealth for the assessment year 2007-08 to 2009-10. Penalty proceedings under section 18(1)(a) were initiated by the assessing officer against 'C' when he was alive and were continued against 'X'. Penalty was levied against 'X' who contends that no penalty for delay in the filing of return of wealth could be levied. In the contention correct? Discuss.

Answer

The question is based on the judgment of the Delhi High Court in *CWT v. H.S. Chauhan* 245 ITR 704. In this case, the delay in filing the returns of wealth was attributable to "C" during his lifetime. The question is whether a legal representative can be penalized for default committed by the person of which he is the representative. Section 19(3) provides only for the application of sections 14, 15 and 17 to the representative, as they would have applied to the deceased. Section 18 which deals with penalties is not applicable to legal representative. Therefore, "X" cannot be subjected to penalty.

Question 37

Bhaskar, a person of Indian origin was working in Kenya from 1987. He returned to India for permanent settlement in May, 2007, when he remitted money into India. For the valuation date 31st March 2012, the following particulars were furnished. You are required to compute the taxable wealth. The reason for inclusion or exclusion should be stated.

(i)	Building owned and let out for 270 days for residence Net maintainable rent (40,000) and the market value ₹10,00,000 (Excess of unbuilt area over specified area is 20% of the aggregate area)	
(ii)	Jewellery:	

29.52 Direct Tax Laws

	(a) Purchased in July 2004 out of money remitted to India from Kenya	5,00,000
	(b) Purchased in August, 2008 out of sale proceeds of motor car brought from abroad and sold	4,00,000
(iii)	Value of interest in urban land held by a firm in which he is a partner	7,00,000
(iv)	Bonds held in companies	5,00,000
(v)	Motor car used for own business	2,50,000
(vi)	Vacant house plot of 400 sq.mts (purchased in December 2006) market value	9,00,000
(vii)	Cash in hand	80,000
(viii)	Urban land purchased in the year 2010 out of withdrawals from NRE account	10,00,000

Answer

Section 5(v) gives special concession to persons of Indian origin or citizen of India, who ordinarily reside in a foreign country upon their return to India with the intention of permanently residing in India. The value of assets acquired one year before the date of return to India out of moneys remitted from foreign country is exempt from wealth tax. Similarly, assets brought in to India upon their return are exempt from wealth tax. However, this exemption is only for a period of 7 successive assessment years commencing with the assessment year next following the date on which such person returned to India.

Computation of Net Wealth of Bhaskar as on valuation date 31.03.2012

		Amount in ₹
1.	Building let out for 270 days during the year less than 300 days and hence includible in net wealth Market value is irrelevant unless Rule 8 is invoked Net maintainable rent ₹40,000 12.5 times thereof (vide Rule 3 Schedule III) Adjustment for unbuilt area under Rule 6(c) – 40 per cent thereof Total	5,00,000 2,00,000 7,00,000
2.	Vacant plot 400 sq.mtrs market value [Exempt u/s 5(vi)]	Nil
3.	Urban land held by firm – value of interest therein	7,00,000
4.	Urban land purchased out of withdrawals of NRE account (Under explanation 2 to clause (v) section 5, moneys standing to the credit in NRE account shall be deemed to be moneys brought to India)	Nil
5.	Jewellery purchased in July 2004 out of moneys remitted to India from Kenya [Not exempt under section 5(v) as it was acquired beyond one year before the date of his return]	5,00,000
6.	Jewellery purchased in August 2008 out of sale proceeds of motor car [Exempt under section 5(v) in view of CWT vs. K.O. Mathews (2003) 261	Nil

	ITR 702]	
7.	Motor car used for own business	2,50,000
8.	Cash on hand ₹80,000 – exempt ₹50,000	30,000
	Total	21,80,000

Notes :

1. Bonds held in companies do not come within the definition of the term 'asset'.
2. Motor car is exempt only if it is held as stock in trade or used in the business of running them on hire.

Question 38

- (i) What are the conditions to be satisfied before the Assessing Officer is statutorily required to refer the valuation to the Valuation Officer under section 16A of the Wealth-tax Act, 1957?
- (ii) The assessee was a Trust, whose objects were wide-ranging including imparting education, running free library, to raise the status of humanity and also advancement of general public utility. The trust was also conducting chits and collection of deposits from the public, but it was not its predominant or primary object. Is the trust exempt from Wealth-tax?
- (iii) Mrs. W, wife of a coparcener, unilaterally executed a release deed stating that she relinquished her status as a member of HUF, but still maintaining her marital status. It was claimed by the HUF, that in view of this unilateral declaration by Mrs.W, her wealth should not be included in the wealth of the HUF. Discuss the validity of the claim.

Answer

- (i) As per section 16A of the Wealth-tax Act, 1957, the Assessing Officer may make a reference to the Valuation Officer for valuation of any asset, if
 - (a) the Assessing Officer is of the opinion that the value of the assets as valued by the registered valuer is less than the fair market value of the asset.
 - (b) the fair market value of the asset exceeds the value of the asset as returned by the assessee by more than 33 1/3% of the value of the asset or by more than ₹50,000, and
 - (c) Having regard to the nature of the asset and other relevant circumstances of the case, it is necessary to do so.
- (ii) Under section 5(i), wealth tax is not payable by an assessee in respect of property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature. Unlike section 11 of the Income-tax Act, 1961, the word "wholly" is not to be found in section 5(i). Thus, for claiming exemption it is not necessary that all the objects should fall within the expression "public purpose of a charitable nature". It is

29.54 Direct Tax Laws

sufficient if the trust can be said to be primarily or dominantly for a public purpose of a charitable nature. [*Trustees of K.B.H.M.Bhiwandiwalla Trust v. C.W.T.*(1977) 106 ITR 709 (Bom)]. Therefore, in accordance with the above ruling the aforesaid trust shall not be chargeable to wealth tax.

- (iii) The claim is totally untenable. The High Court, in *CIT v. M.A.R.Rajkumar* (1997) 226 ITR 804 (AP), held that the wife of the karta cannot relinquish her status as a member of HUF by a unilateral declaration while retaining her marital tie.

Question 39

Y Ltd is engaged in the construction of residential flats. For the valuation date 31.3.2012, furnishes the following data and requests you to compute the taxable wealth:

		₹ (in Lacs)
(a)	Land in urban area (construction is not permitted as per Municipal law in Force)	20
(b)	Motor-cars (in the use of company)	5
(c)	Jewellery (investment and not stock in trade)	10
(d)	Cash balance (as per books)	2
(e)	Bank Balance (as per books)	3
(f)	Guest house (situated in rural area)	4
(g)	Residential flat occupied by Managing Director (annual remuneration of whom is ₹ 6 Lacs excluding perquisites)	8
(h)	Residential house let out for 100 days in the financial year	7
(i)	Loans obtained:	
	For purchase of motor-car	2
	For purchase of jewellery	2

The reasons for inclusion or exclusion should be stated in the computation.

Answer

Computation of net wealth as on valuation date 31.3.2012

		₹ in Lacs
(a)	Land in urban area (not taxable as the construction is not possible under the municipal tax laws, hence not an asset)	NIL
(b)	Guest house in rural area (This is an asset under section 2(ea)(i))	4
(c)	Residential flat occupied by Managing Director (This is falling outside the exceptions of section 2(ea)(i)(1), hence includible since the gross annual salary is exceeding ₹5 Lacs)	8

(d)	Residential house let out for 100 days (this is includible as the asset is falling outside the exception 4) to section 2(ca)(i) of the Wealth-tax Act, 1957	7
(e)	Motor cars (used by the company). This asset is includible as per clause (ii) of section 2(ea) as it does not fall under the exceptions.	5
(f)	Jewellery This is includible as it is an asset under clause (iii) of section 2(ea) and is not stock in trade of the business. The assessee is engaged in construction of flats and the jewellery may be kept as an investment and not as stock in trade of business.	10
(g)	Cash balance and bank balance as per books are not taxable and not includible as an asset as per clause (vi) of section 2(ea)	Nil
		34
	Less: Debts incurred in relation to assets	
	Both the loans obtained are in the case of assets that are includible as wealth as they are assets under section 2(ea) of the Act. They satisfy the conditions of deductibility of debts from the aggregate of assets.	
	On motor cars	2
	On Jewellery	2
	Net Wealth	30

Question 40

The net wealth of a firm consisting of three partners Balu, Kausik and Deepu having equal shares and a capital contribution of ₹ 7,00,000, ₹ 3,00,000 and ₹ 2,00,000 respectively is as under:

	₹
(i) Value of assets located outside India	20,00,000
(ii) Value of assets located in India	50,00,000
(iii) Debts incurred in relation to assets in India	10,00,000

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

Answer

Value of assets of the firm:			
Particulars		₹	
Value of assets located outside India		20,00,000	
Value of assets located in India (₹ 50 Lacs – ₹ 10 Lacs)		<u>40,00,000</u>	
Net Wealth of the firm		<u>60,00,000</u>	
Allocation of net wealth among partners:	A	B	C
Net wealth to the extent of share capital i.e. upto ₹12,00,000 – to be distributed in capital ratio	7,00,000	3,00,000	2,00,000
Balance ₹48,00,000 in profit sharing ratio (equally)	16,00,000	16,00,000	16,00,000
	23,00,000	19,00,000	18,00,000

Self-examination Questions

- Define the following terms under the Wealth-tax Act, 1957 -
 - Assessment year and valuation date;
 - Net wealth
- A company incorporated outside India is not liable to wealth tax in India. Discuss.
- A Cooperative Society formed for the purpose of construction of residential flats for its members acquired a large area of urban land for ` 3 crores. The society had a membership of 10 members, all having equal share. The Assessing Officer proposes to tax urban land in the hands of the society.
 - What is meant by urban land?
 - Is the action of the Assessing Officer correct?
 - Can the members of the society be assessed on their share in the value of the urban land?
- Enumerate the entities to which the provisions of the Wealth-tax Act, 1957 do not apply.
- Discuss the provisions of the Wealth-tax Act, 1957, regarding the inclusion of the wealth of minor child in the assessment of the parent. Enumerate the exceptions to this provision.
- Under what circumstances can the net wealth of an individual include assets held by others?

7. Discuss the validity of the following proposition, setting forth the reasons for your answer – Wealth tax is not a debt owed on the valuation date and is therefore not deductible from net wealth.
8. In certain circumstances, the procedure for valuation of house property as contained in Rule 3 of schedule III of the Wealth-tax Act, 1957 are not applicable. What are these circumstances? Explain.
9. Explain the procedure for adoption of the value of jewellery for the valuation date 31.3.2012 and subsequent three years, assuming the value of jewellery has been determined by the Valuation Officer as at 31.3.2011.
10. How is the value of interest of a person in a firm of which he is a partner determined under the Wealth-tax Act, 1957?
11. What are the provisions of the Wealth-tax Act, 1957 relating to the valuation of assets of a business?
12. State the rule for determining value of life interest for wealth-tax purposes.
13. What is the procedure under the Wealth-tax Act, 1957, for assessment of persons residing outside India? What are the provisions for recovery of tax from him?
14. The concept of partial partition is alien to the Wealth-tax Act, 1957. Discuss.
15. State the circumstances in which the Assessing Officer can refer valuation of an asset to the Valuation Officer.
16. When is a person deemed to have concealed the particulars of his net wealth, within the meaning of section 18 of the Wealth-tax Act, 1957?
17. Can the Assessing Officer refer valuation of assets to the Departmental Valuation Officer for the purpose of making an assessment in a case where no return of wealth has been filed by the assessee?

Answer

17. This question was answered by the Punjab & Haryana High Court in *CWT v. Anil Tayal (HUF)* (2006) 285 ITR 243. The High Court observed that the object of section 16A of the Wealth-tax Act, 1957 is to enable the Assessing Officer to refer the issue relating to the value of any asset to a Valuation Officer for the purpose of making assessment. The expression "in any other case" in clause (b) of section 16A(1) is wide enough to include a case where no return has been filed by the assessee. If a narrow view is taken that a reference under section 16A(1) can be made only where the return has been filed, then the expression "in any other case" in clause (b) of section 16A(1) and the expression "where no such return has been made" in sub-section (4) of section 16A would become redundant. Therefore, a reference under section 16A(1) could be made even where no return has been filed by the assessee under section 14 or section 15.