

PAPER – 7 : DIRECT TAX LAWS

PART – I : STATUTORY UPDATES

SIGNIFICANT NOTIFICATIONS & CIRCULARS ISSUED BETWEEN 1.7.2011 AND 30.04.2012

I. NOTIFICATIONS

1. Notification No. 49/2011 dated 6.9.2011

Notification of allowances and perquisites exempt under section 10(45)

The Finance Act, 2011 has inserted new clause (45) in section 10 to exempt specified allowances and perquisites received by Chairman or any other member, including retired Chairman or member of the Union Public Service Commission (UPSC). The exemption would be available in respect of such allowances and perquisites as may be notified by the Central Government in this behalf.

Accordingly, the Central Government has notified the following allowances and perquisites for serving Chairman and members of UPSC, for the purpose of exemption under section 10(45) -

- (i) the value of rent free official residence,
- (ii) the value of conveyance facilities including transport allowance,
- (iii) the sumptuary allowance and
- (iv) the value of leave travel concession.

In case of retired Chairman and retired members of UPSC, the following have been notified for exemption under section 10(45):

- (i) a sum of maximum ₹ 14,000 per month for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis.
- (ii) the value of a residential telephone free of cost and the number of free calls to the extent of ₹ 1,500 pm (over and above free calls per month allowed by the telephone authorities)

This notification shall be effective retrospectively from 1st April, 2008.

2. Notification No. 50/2011 dated 9.9.2011

Notification of Long-term infrastructure bonds for section 80CCF

Section 80CCF exempts any amount paid or deposited by an individual or HUF as subscription to long-term infrastructure bonds notified by the Central Government, subject to a limit of ₹ 20,000.

Accordingly, the Central Government has specified the long term infrastructure bonds to be issued in the financial year 2011-12 by The Industrial Finance Corporation of India

(IFCI), The Life Insurance Corporation of India (LIC), The Infrastructure Development and Finance Company Ltd. (IDFCL), The India Infrastructure Finance Company Ltd. (IIFCL) and a Non-Banking Finance Company classified as an Infrastructure Finance Company by Reserve Bank of India, as long term infrastructure bonds for the purpose of the deduction under section 80CCF. The tenure of the bond shall be for a minimum period of ten years. The minimum lock-in period for investors shall be five years.

The notification further specifies certain conditions relating to limit on issuance, yield of the bond, end-use of the proceeds and reporting or monitoring mechanism. Further, it shall be mandatory for the subscribers to furnish their PAN to the issuer.

3. Notification No. 52/2011 dated 23-09-2011 (as amended by Notification No. 6/2012 dated 14-2-2012)

Specification of bonds for interest exemption under section 10(15)(iv)(h)

Section 10(15)(iv)(h) exempts interest payable by any public sector company in respect of such bonds or debentures specified by the Central Government by notification in the Official Gazette. The notification would also specify the conditions subject to which the exemption would be available.

Accordingly, in exercise of the powers conferred in section 10(15)(iv)(h), the Central Government has specified the issue of tax free, secured, redeemable, non-convertible bonds of National Highways Authority of India (NHAI), Indian Railways Finance Corporation Ltd. (IRFCL), Housing and Urban Development Corporation Ltd. (HUDCL) and Power Finance Corporation (PFC) to be issued during the financial year 2011-12, the interest on which would be exempt under the said section.

The tenure of the bonds shall be ten years or fifteen years. It shall be mandatory for the subscribers to furnish their PAN to the issuer. Further, it has been provided that such benefit shall be admissible only if the holder of such bonds registers his or her name and the holding with the said entity.

4. Notification No. 57 dated 24.10.2011

Relaxation of time limit for submission of quarterly statements in case of a deductor being an office of Government

The CBDT has, through this notification, notified the Income-tax (Eighth Amendment) Rules, 2011 which shall come into force on 1st November, 2011. The said amendment Rules have given effect to following amendments:

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

- (i) Rule 31A(2) has been substituted to extend the time limit for submission of quarterly statements in case the deductor is an office of Government :

Date of ending of the quarter of the financial year	Due date in the case of a deductor, being an office of Government
30th June	31st July of the financial year
30th September	31st October of the financial year
31st December	31st January of the financial year
31st March	15th May of the financial year immediately following the financial year in which deduction is made

For other deductors, the due dates as prescribed earlier (i.e., 15th July, 15th October and 15th January of the financial year for quarters ending 30th June, 30th September and 31st December of the financial year, respectively) would continue to be applicable.

- (ii) In Rule 31A(4), clause (vii) has been inserted which requires the deductor to furnish, at the time of preparing statements of tax deducted, particulars of amount paid or credited on which tax was not deducted in view of the furnishing of declaration under section 197A(1) or 197A(1A) or section 197A(IC) by the payee.

(b) Rule 37BA – Credit for tax deducted at source for the purposes of section 199

Rule 37BA(1) provides that credit for tax deducted at source and paid to the Central Government shall be given to the person to whom the payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

Clause (i) of Rule 37BA(2) has four sub-clauses (a) to (d) providing for the specific instances where income of the deductee is assessable in the hands of another person, consequent to which credit for tax deduction at source shall be given to the other person in those specific cases.

Clause (i) of Rule 37BA(2) has been substituted to provide that where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee. In effect, the specific situations have been substituted by a general provision.

However, the deductee should file a declaration with the deductor and the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1) of Rule 37BA.

5. Notification G.S.R. 844(E) dated 25-11-2011

Increase in limit for subscription to public provident fund

As per Paragraph 3(1) of Public Provident Fund Scheme, 1968, the maximum limit for subscription by an individual, on his behalf or on behalf of a minor of whom he is the guardian, is ₹ 70,000.

In exercise of the powers conferred by section 3(4) of the Public Provident Fund Act, 1968, the Central Government has amended Paragraph 3(1) of the Public Provident Fund Scheme, 1968 to increase the maximum limit to ₹ 1,00,000. Such contribution to PPF would qualify for deduction under section 80C.

6. Notification No. 5/2012 dated 6-2-2012

Notification of form and particulars of Annual Statement to be furnished by a non-resident having Liaison Office in India

- (a) Section 285 requires that a non-resident having a liaison office in India, set up in accordance with the guidelines issued by the RBI under the Foreign Exchange Management Act, 1999, shall furnish an annual statement in respect of the activities of the liaison office during the financial year before the jurisdictional Assessing Officer. Such statement shall be furnished within 60 days from the end of such financial year, in such form and containing such particulars as may be prescribed.
- (b) Consequently, the CBDT has, vide this notification, prescribed the form and particulars of the Annual Statement to be furnished by the non-resident having Liaison Office in India. The statement shall be given in Form 49C and shall be submitted in the electronic form along with the digital signature.
- (c) The statement is to be verified by a Chartered Accountant or by the Authorized Signatory i.e., the person authorized by the non-resident in this behalf.
- (d) The procedure for filing such Annual Statement shall be specified by the Director General of Income-tax (Systems). He shall also ensure that appropriate policies for security, archival and retrieval in relation to such statements furnished, are formulated and implemented.

7. Notification No. 7/2012 dated 14-2-2012 (as amended by Notification No. 13/2012 dated 6-03-2012)

Specification of bonds for interest exemption under section 10(15)(iv)(h)

- (a) Section 10(15)(iv)(h) exempts interest payable by any public sector company in respect of such bonds or debentures specified by the Central Government

by notification in the Official Gazette. The notification would also specify the conditions subject to which the exemption would be available.

- (b) Accordingly, in exercise of the powers conferred in section 10(15)(iv)(h), the Central Government has specified the issue of tax free, secured, redeemable, non-convertible bonds of the **Rural Electrification Corporation Limited (RECL)**, to be issued during the financial year 2011-12, the interest on which would be exempt under the said section.
- (c) The tenure of the bonds shall be ten or fifteen years. It shall be mandatory for the subscribers to furnish their PAN to the issuer. Further, it has been provided that such benefit shall be admissible only if the holder of such bonds registers his, her or its name and the holding with the said entity.
- (d) Such exemption shall be available if such bonds are issued by way of public issue and not by way of a private placement.

8. Notification No. 9/2012 dated 17-2-2012

Specified persons exempted from filing return of income under section 139(1) for A.Y. 2012-13

- (a) As per the provisions of section 139(1C), the Central Government is empowered to issue a notification exempting any class or classes of person from the requirement of furnishing a return of income, subject to certain conditions as may be specified.
- (b) In exercise of above mentioned power, the Central Government has, vide this notification, exempted the following class of persons, subject to the conditions specified, from the requirement of furnishing a return of income under section 139(1) for A.Y. 2012-13:

Class of persons exempt from filing of return of income

An individual whose total income does not exceed ₹ 5 lakh shall not be required to furnish the return of income under section 139(1) for the A.Y. 2012-13, in case the total income consists of only income chargeable to income-tax under the head:

- (1) Salaries; and/or
- (2) Income from other sources which consists of only income by way of interest from a **saving account in a bank**, not exceeding ₹ 10,000.

Conditions to be satisfied for claiming above mentioned exemption

The following conditions are to be satisfied by the individual to claim such exemption:

- (1) he has reported his Permanent Account Number (PAN) to his employer;

- (2) he has reported his income from other sources i.e, interest from the savings bank account in the bank to his employer and the employer has deducted tax on the same;
 - (3) the individual is in receipt of certificate of tax deduction in Form 16 from his employer, mentioning the PAN, particulars of income during the year and the tax deducted at source and deposited to the credit of the Central Government;
 - (4) his total tax liability for the assessment year is discharged only through tax deduction at source and the same is deposited by the employer to the credit of Central Government;
 - (5) he has not claimed any refund of taxes due to him in respect of income relating to that assessment year for which exemption is claimed; and
 - (6) he is in receipt of salary from only one employer for such relevant assessment year.
- (c) The individual shall not be exempt from filing return of income for the assessment year in cases where notice under section 142(1) or section 148 or section 153A or section 153C has been issued by the Assessing Officer to such individual requiring him to file return of income for such assessment year.

9. Notification No. 11/2012 dated 28-2-2012

Specification of body/ authority/ Board/ Trust/ Commission for exemption under section 10(46)

- (a) Section 10(46) exempts any specified income arising to a body/ authority/ Board/ Trust/ Commission which has been constituted with the object of regulating or administering any activity for the benefit of the general public and is not engaged in any commercial activity, if the same is notified by the Central Government in this regard subject to certain conditions mentioned the notification.

Accordingly, the Central Government has notified that for the purposes of section 10(46), the following income arising to the National Skill Development Corporation (NSDC), a body constituted by the Central Government, for F.Y. 2011-12 to F.Y. 2015-16, shall not be chargeable to tax:

- (i) long-term or short-term capital gain out of investment in an organization for skill development;
- (ii) dividend and royalty from skill development venture supported or funded by NSDC;
- (iii) interest on loans to Institutions for skill development;
- (iv) interest earned on fixed deposits with banks; and

- (v) amount received in the form of Government grants.
- (b) Such exemption shall apply if:
 - (i) the activities and the nature of the specified income of NSDC remain unchanged throughout the financial year, and
 - (ii) NSDC files its return of income in accordance with section 139(4C)(g).

10. Notification No. 12/2012 dated 28-2-2012

Specification of body/ authority/ Board/ Trust/ Commission for exemption under section 10(46)

- (a) Section 10(46) exempts any specified income arising to a body/ authority/ Board/ Trust/ Commission which has been constituted with the object of regulating or administering any activity for the benefit of the general public and is not engaged in any commercial activity, if the same is notified by the Central Government in this regard subject to certain conditions mentioned the notification.

Accordingly, the Central Government has notified that for the purposes of section 10(46), the following income arising to the Competition Commission of India (CCI), a Commission established under section 7(1) of the Competition Act, 2002, for F.Y. 2011-12 to F.Y. 2015-16, shall not be chargeable to tax:

- (i) amount received in the form of Government grants;
- (ii) fee received under the Competition Act, 2002; and
- (iii) interest income accrued on Government grants and interest accrued on fee received under the Competition Act, 2002.
- (b) Such exemption shall apply if:
 - (i) the activities and the nature of the specified income of CCI remain unchanged throughout the financial year, and
 - (ii) CCI files its return of income in accordance with section 139(4C)(g).

11. Notification No. 15/2012 dated 30-3-2012

Depreciation on wind mill installed after 31.03.2012 restricted to 15%

As per the existing provisions, the plant and machinery in the nature of renewable energy devices being:

- (a) Wind mills and any specially designed devices which run on wind mills
- (b) Any special devices including electric generators and pumps running on wind energy are entitled to depreciation@80% under section 32.

The CBDT has, vide this notification, restricted the eligibility of claiming depreciation@80% to such wind mills and special devices installed on or before 31.03.2012. Accordingly, such plant and machinery installed on or after 1st April, 2012 shall be entitled to depreciation at the general rate applicable to plant & machinery i.e., 15%. However, such plant and machinery installed on or before 31st March, 2012 shall continue to claim depreciation@80%.

II. CIRCULARS

1. Circular No.4/2011 dated 19-7-2011

Guidelines for prior permission under section 281 to transfer or create charge on the assets of the business

The CBDT has, through this circular, issued guidelines for granting of prior permission under section 281 of the Income-tax Act, 1961 to transfer or create a charge on the assets of the assessee to ensure uniformity on the issue -

- a) The taxpayer is required to apply in the prescribed form at least thirty days prior to the proposed date of transaction.
- b) Prior permission under section 281 to be granted by the Assessing Officer only under the following specified circumstances -
 - (i) If there is no demand outstanding and there is no likelihood of demand arising in the next six months, then the permission should be granted.
 - (ii) If undisputed demand is outstanding and there is no likelihood of demand arising in next six months, then, the taxpayer should pay the same along with interest due thereon and then permission should be granted.
 - (iii) If there is disputed demand outstanding, then the taxpayer should obtain stay for the same and indemnify the outstanding demand by way of bank guarantee or sufficient assets or by Department retaining the first charge on the assets proposed to be transferred or on which such charge is being created, to the extent of such demand. Thereafter, the permission under section 281 would be granted by the Assessing Officer.
 - (iv) If demand is likely to arise in the next six months, then the Assessing Officer should explore the possibility of action prescribed under section 281B.
- c) There would be only one level of intervention i.e., at the level of the range head for granting permission. The cases in which Assessing Officer would require such approval would be where -
 - (i) value of assets being transferred or on which charge is being created, or
 - (ii) the amount of charge being createdis rupees ten crores or more.

- d) The timelines for granting/refusing permission under section 281 by the Assessing Officer are as follows:
- (i) If there is no demand outstanding and there is no likelihood of demand arising in the next six months, then the Assessing Officer should grant the permission within ten working days of the receipt of the application.
 - (ii) If undisputed demand is outstanding and there is no likelihood of demand arising in next 6 months, then the Assessing Officer should grant permission within ten working days of payment of the outstanding demand along with interest due.
 - (iii) If there is disputed demand outstanding and the taxpayer has obtained stay and indemnified the demand, then the Assessing Officer should grant the permission within ten working days of the indemnification of the demand.
 - (iv) If demand is likely to arise in the next six months and the Assessing Officer is considering actions prescribed under section 281B for the assets excluding the asset under consideration, then the Assessing Officer should grant the permission within fifteen working days of the receipt of the application.
 - (v) If the taxpayer does not pay the undisputed outstanding demand or his application for stay of disputed demand is rejected or he is unable to indemnify the outstanding demand, the application shall be disposed of within a period of ten working days. In case the permission is not being granted, a speaking and reasoned order conveying refusal would be issued with the approval of the Range head within ten working days of expiry of time given to the taxpayer to pay the undisputed demand or rejection of his stay application, as the case may be.
- e) These time limits should be followed scrupulously by the Assessing Officers.
- f) The validity of the letter granting permission under section 281 would be one hundred and eighty days from the:
- (i) date of issue of approval, or
 - (ii) service of order of attachment under section 281B,
- whichever is earlier.
- g) Once the asset is transferred or charge is created, the taxpayer should submit the documents, in this regard, to the Assessing Officer for his record.

2. Circular No. 7/2011 dated 27-09-2011

Procedure for refund of TDS under section 195 to the person deducting tax in cases where tax is deducted at a higher rate prescribed in the DTAA

The CBDT has, through this circular, modified Circular No.07/2007, dated 23.10.2007 which laid down the procedure for refund of tax deducted at source

under section 195 of the Income-tax Act, 1961 to the person deducting tax at source from the payment to a non-resident. The said Circular allowed refund to the person making payment under section 195 in the circumstances indicated therein as the income does not accrue to the non-resident or if the income is accruing, no tax is due or tax is due at a lesser rate. The amount paid to the Government in such cases to that extent does not constitute tax.

The said Circular, however, did not cover a situation where the tax is deducted at a rate prescribed in the relevant DTAA which is higher than the rate prescribed in the Income-tax Act, 1961. Since the law requires deduction of tax at a rate prescribed in the relevant DTAA or under the Income-tax Act, 1961 whichever is lower, there is a possibility that in such cases excess tax is deducted relying on the provisions of relevant DTAA.

Accordingly, in order to remove the genuine hardship faced by the resident deductor, the Board has modified Circular No. 07/2007, dated 23-10-2007 to the effect that the beneficial provisions under the said Circular allowing refund of tax deducted at source under section 195 to the person deducting tax at source shall also apply to those cases where deduction of tax at a higher rate under the relevant DTAA has been made while a lower rate is prescribed under the domestic law.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Incomes which do not form part of total income

1. "The Finance Act, 2011 has inserted clause (46) in section 10 to exempt specified income of certain entities" – Elucidate the statement specifying the conditions mentioned therein to be satisfied to avail the exemption. Are such entities required to file their return of income? Discuss.

Profits and gains of business or profession

2. Discuss, with the aid of a recent case law, whether the following expenditure are revenue or capital in nature –
 - (i) Expenditure on demolition and re-erection of a cell room, which is a part of a building used for business purposes.
 - (ii) Expenditure on purchase of a pumping set, mono block pump and two transformers, which are part of a bigger plant.
3. The rehabilitation scheme of A Ltd., finalized in consensus with banks, provided for waiver of, *inter alia*, part of the principal and interest due to SBI on both term loans and working capital loans (cash credits). Can the provisions of section 41(1) be invoked to bring to tax the principal and interest waived both in respect of working capital loan

utilized for day-to-day business operations and in respect of term loan taken for purchasing a capital asset? Discuss with the aid of a recent case law.

4. MNO Ltd., engaged in the business of bio-technology, furnishes the following particulars for the P.Y.2011-12. Compute the deduction allowable under section 35 for A.Y.2012-13, while computing its income under the head “Profits and gains of business or profession”.

	Particulars	₹
1.	Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
	(a) Revenue expenditure on scientific research	75,000
	(b) Capital expenditure (including cost of acquisition of land ₹ 4,75,000) on scientific research	6,25,000
2.	Amount paid to National Laboratory for an approved scientific research programme	1,75,000
3.	Amount paid to Beta Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	1,00,000

Capital Gains

5. On 1st May, 2011, Mr. Siddharth sold a building, purchased by him five years back for use for the purposes of his sole-proprietorship business, on which he has been claiming depreciation under section 32. He claimed benefit of exemption under section 54F in respect of capital gains arising on sale of the building, by investing the entire net consideration therefrom in purchase of a residential house in March, 2012. The Assessing Officer, however, contended that he would not be eligible for exemption under section 54F in this case since such exemption is available only in respect of capital gain arising from transfer of a long-term capital asset whereas the capital gain arising from transfer of a depreciable asset (namely, building, in this case) is deemed to be a capital gain arising from transfer of a short-term capital asset by virtue of the provisions of section 50. Discuss the correctness of contention of the Assessing Officer, with the aid of a recent case law.
6. Mr. Y was a partner in M/s. XYZ, which owned a building purchased by it in June 2005. M/s. XYZ was dissolved in February, 2011 and the building was taken over by Mr. Y. Mr. Y sold the building in June, 2011, and claimed that the capital gains arising on such sale was a long-term capital gain, since the total period of holding of the building, including the period of holding by the firm, was more than 36 months. Mr.Y, therefore, contended that the capital gains was taxable@20% as per section 112. Discuss the correctness of contention of Mr. Y.

Income from other sources

7. Discuss, with the aid of a recent case law, as to whether prize money winnings on unsold lottery tickets held by the distributor can be assessed as business income in his hands and be subject to normal rates of tax.

Deductions from Gross Total Income

8. One of the conditions to be fulfilled by an industrial undertaking engaged in manufacturing or producing articles or things to qualify for claim of deduction under section 80-IB is that it should employ ten or more workers in a manufacturing process carried on with the aid of power. Examine, with the aid of a recent case law, whether the persons employed by such industrial undertaking through agency (including contractors) can be treated as "workers" for fulfillment of the above condition for claim of deduction under section 80-IB.
9. "Aarush Infra (P) Ltd." is an Indian company engaged in undertaking infrastructure projects. In April 2011, it undertook two projects in Tamil Nadu - a highway project in East Coast Road (ECR) which involves expansion of existing roads by constructing additional lanes and a roadway project in Old Mahabalipuram Road (OMR), which involves relaying of existing roads. The General Manager of the company seeks your advice as to whether deduction under section 80-IA can be availed in respect of profits from such projects.

Assessment of non-residents

10. Can non-resident match referees and umpires in the games played in India fall within the meaning of "sportsmen" to attract taxability under the provisions of section 115BBA and consequently, the provisions of tax deduction at source under section 194E in the hands of the payer? Discuss.

Assessment of firms/LLPs

11. M/s. ABC, a partnership firm having three partners A, B & C sharing profits equally, is engaged in the business of running an approved hotel. It provides the following information relating to the year ended on 31.3.2012:
- (a) Net profit as per profit and loss account of ₹ 150 lacs was arrived at after charge of the following:
- (i) Depreciation on hotel building, having written down value of ₹ 420 lacs on 1.4.2011, was charged by treating the same as plant and machinery.
 - (ii) Capital Expenditure of ₹ 3,00,000 incurred for the purpose of promoting family planning among its employees.
 - (iii) Payment of ₹ 2,00,000 for an advertisement published in the brochure released on 26th January by a political party.

- (iv) Expenses of ₹ 12 lacs incurred on replacement of carpets in the foyer, lounge and bar.
- (v) Depreciation amounting to ₹ 25,000 on motor car bought and used exclusively for business purposes, but not registered in the name of the firm.
- (vi) Interest amounting to ₹ 50,000 paid to the HUF of partner B @15% p.a., which is the general rate of interest paid by the firm in respect of third party loans.
- (vii) Payment of ₹ 22,000 in cash to a florist for flower decoration of the hotel's reception area on the event of its 10th Anniversary.
- (viii) Amount of ₹ 31,000 each was paid in cash to the suppliers of vegetables, milk products and eggs on 05.09.2011 because of suspension of banking operations due to strike of bank employees.
- (b) Amount of ₹ 7 lacs written off in the F.Y. 2010-11 as irrecoverable from a travel agent; Out of the above sum, an amount of ₹ 3 lacs was recovered on 24.2.2012 and credited to a reserve account.

Compute the gross total income chargeable to tax in the hands of M/s. ABC for A.Y. 2012-13 and give reasons in brief for treatment given to each of the items.

12. RST LLP has income of ₹ 28 lakhs under the head "Profits and gains of business or profession". One of its businesses is eligible for deduction@100% of profits under section 80-IA for A.Y.2012-13. The profit from such business included in the business income is ₹ 13 lakhs. Compute the tax payable by the LLP, assuming that it has no other income during the P.Y.2011-12. Would the LLP be eligible for any credit to be carried forward for set-off in the succeeding assessment years?

Assessment of companies

13. Biotech Ltd. is engaged in the manufacture and sale of drugs and pharmaceuticals. Its net profit for the year ending 31-3-2012 after debit/credit of the following items to the profit and loss account was ₹ 41,00,000.
- (i) Income-tax paid on non-monetary perquisites provided to the employees ₹ 2,25,000.
 - (ii) Legal fees incurred in defending title to factory premises ₹ 75,000.
 - (iii) Expenditure on scientific research on in-house research and development facility approved by the prescribed authority ₹ 7,25,000.
 - (iv) Interest paid on arrears of sales tax ₹ 25,000.
 - (v) Cash payment of ₹ 20,000 made on 23.2.2012 to a supplier towards purchase of raw material.
 - (vi) Rent received from letting out vacant land ₹ 75,000.

- (vii) Arrears of rent received in respect of a house property, let out in the earlier years, is ₹ 1,75,000. The said sum was not charged to tax in any earlier year. The property was sold by the company on 1.5.2010.
- (viii) Compensation received from a supplier for delay in supply of raw materials ₹ 50,000.
- (ix) Dividend received from a foreign company ₹ 40,000.

Additional information:

₹ 2,25,000, being fees for technical services payable by Biotech Ltd. to a foreign company in March 2011, was disallowed by the Assessing Officer for the assessment year 2011-12 since tax was not deducted thereon. The company deducted and paid tax at source on the said amount of fees for technical services on 3.4.2011.

The company has brought forward loss of ₹ 57,000 from house property relating to A.Y. 2010-11.

Compute the total income of Biotech Ltd. for the A.Y. 2012-13, ignoring the provisions of MAT. Explain in brief the reasons for the treatment of the various items given above.

14. Beta Ltd., an Indian company, has received dividend income during the P.Y.2011-12 -
- (1) from shares held in Delta Ltd. & Theta Ltd., which are Indian companies – ₹ 74,000.
 - (2) from shares held in Alpha Inc., a foreign company, in which it holds 24% of nominal value of equity share capital – ₹ 52,000;
 - (3) from shares held in Gamma Inc., a foreign company, in which it holds 27% of nominal value of equity share capital – ₹ 1,13,000.

Beta Ltd. has paid commission of ₹ 21,000 for realising dividend, the details of which are as follows –

- (1) ₹ 4,000 (Delta Ltd. & Theta Ltd.)
- (2) ₹ 6,000 (Alpha Inc.)
- (3) ₹ 11,000 (Gamma Inc.)

The income of Beta Ltd. computed under the head "Profits and gains of business or profession" is ₹ 52 lakh. Compute the total income and tax liability of Beta Ltd. for A.Y. 2012-13, ignoring the provisions of minimum alternate tax (MAT).

Assessment Procedure / Profits and gains of business or profession / Set-off and carry forward of losses

15. X Ltd. has undertaken an international transaction with Y Inc., an associated enterprise in USA. Accordingly, the arm's length price of such transaction has been taken into consideration for computing the business income of X Ltd. The net profit as per the profit and loss account for the year 2011-12, after giving effect to the arm's length price adjustment and provision of depreciation as per Income-tax Rules, 1962, is ₹ 80 lakhs.

X Ltd. has deducted tax at source under sections 194C, 194-I and 194J in respect of payments of contract fees of ₹ 2,50,000, rent of ₹ 2,00,000 and fees for professional services of ₹ 7,25,000, respectively, in March 2012. The tax so deducted under section 194-C, 194-I and 194J was deposited on 5th August, 2012, 10th October, 2012 & 4th December, 2012, respectively. The above payments have been debited to the profit and loss account.

Further, the quarterly interest due on term loan taken from SBI for the purpose of business is ₹ 1,25,000. The interest due for the first and second quarters were paid in March, 2012. The interest due for the third quarter i.e. October to December, 2011 was paid on 5th October, 2012 and interest due for the fourth quarter i.e. January to March, 2012 was paid on 1st December, 2012. The annual interest was debited to the profit and loss account.

X Ltd. has incurred the following losses for the P.Y.2011-12 –

- (i) Loss from house property (computed) – ₹ 5 lakhs;
- (ii) Long-term capital loss on sale of land (computed) – ₹ 7 lakhs.

Compute the total income of X Ltd. (ignoring MAT). Also, compute the losses, if any, to be carried forward, assuming that X Ltd. filed its return of income on 30th November, 2012.

Transfer Pricing

16. Mr. Daksh, a non-resident individual, is due to receive interest of ₹ 3,75,000 during March 2012 from a notified infrastructure debt fund eligible for exemption under section 10(47). He incurred expenditure amounting to ₹ 12,000 for earning such income. Assuming that Mr. Daksh is a resident of a Notified Jurisdictional Area (NJA), discuss the tax implications in his hands and the applicability of provisions relating to deduction of tax at source in respect of such interest.

Double Taxation Avoidance Agreement

17. Mrs. Kashvi, a resident Indian aged 21 years, earned a sum of ₹ 10 lakh during the P.Y.2011-12 from playing badminton matches in a country with which India does not have a double taxation avoidance agreement (DTAA). Tax of ₹ 2 lakh was levied on such income in the source country. In India, she earned a sum of ₹ 15 lakh during the P.Y.2011-12 from playing badminton matches. She has deposited ₹ 1 lakh in public provident fund and ₹ 50,000 in IDFC Infrastructure bonds during the year. Compute her income-tax liability for the A.Y.2012-13.

Deduction, Collection and Recovery of tax

18. Hotelia Ltd., engaged in the business of owning, operating and managing hotels, allowed the employees to receive tips from the customers, by virtue of their employment. The tips were also collected directly by the company from the customers, when payment was made by them through credit cards. The company thereafter disbursed the tips to the employees. Is the company liable to deduct tax under section 192 from the tips so disbursed to the employees, by treating the same as salary? Discuss with the aid of a recent case law.

Wealth-tax

19. From the following particulars provided by Mr. Devansh, work out the amount of net wealth on the valuation date 31.03.2012:
- (i) A house having two units of equal square area having value of ₹ 72,00,000 on 31.3.2012 – Unit I is used by him for business purposes and Unit II for residential purposes.
 - (ii) Jewellery worth ₹ 8 lakhs purchased on 28th December, 2011 by Mrs. Devansh out of funds of ₹ 6 lakhs given by him and ₹ 2 lakhs given by her father.
 - (iii) Value of a Motor Car ₹ 7,00,000.
 - (iv) Shares of Alpha Ltd. worth ₹ 60,000 purchased by him in the name of Shreya, his daughter-in-law.
 - (v) Value of a Motor Cycle ₹ 25,000.
 - (vi) Desktop and scanner for business use ₹ 59,000
 - (vii) Term deposit with SBI ₹ 50,000
20. Mr. Anirudh has a house property in Calcutta, which was lying vacant for the last one year. He constructed the property in 1990 at a cost of ₹ 30 lacs. He has let out the same at a monthly rent of ₹ 22,000 for a period of two years with effect from 1st October, 2011. The half-yearly municipal tax is ₹ 25,000, which is borne by Mr. Anirudh. He took a premium of ₹ 80,000 from the tenant and also security deposit of ₹ 60,000. The house was constructed on free-hold land measuring 5,000 sq. ft. The built-up area of the house is 1,000 sq. ft. Compute the value of the house property for wealth tax purpose as at valuation date 31.3.2012.

SUGGESTED ANSWERS/HINTS

1. The Finance Act, 2011 has inserted new clause (46) in section 10 to exempt income arising to a body or authority or Board or Trust or Commission, by whatever name called, the nature and extent of which is to be specified by the Central Government.

For availing the benefit of exemption under this clause, the body or authority or Board or Trust or Commission should be set up or constituted by or under a Central, State or Provincial Act or constituted by the Central or State Government with the object of regulating or administering an activity for the benefit of the general public.

Further, the body or authority or Board or Trust or Commission should –

- (1) not be engaged in any commercial activity;
- (2) be notified by the Central Government in this behalf.

Section 139(4C) has been amended to require such body or authority or Board or Trust

or Commission to furnish its return of income for the previous year in the prescribed form within the period specified under section 139(1), if its total income, without giving effect to the exemption under section 10(46), exceeds the basic exemption limit. Therefore, if the total income of the entity, without giving effect to the exemption under section 10(46) exceeds the basic exemption limit of ₹ 1,80,000, then, the entity has to file a return of income within the period mentioned in section 139(1).

Note- The Central Government has, accordingly, notified National Skill Development Corporation (NSDC) and Competition Commission of India (CCI) for the purpose of exemption under section 10(46) and also specified the income which would be exempt under this clause and the conditions to be fulfilled for availing the exemption.

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

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

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

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

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

- (ii) The Delhi High Court also observed that as far as purchase of pumping set, mono block pump and two transformers were concerned, they were not stand alone equipment, but were part of the bigger plant. Therefore, it would be treated as

replacement of those parts and the expenditure incurred is revenue in nature, eligible for deduction under section 37(1).

3. This issue came up before the Delhi High Court in ***Rollatainers Ltd. v. CIT (2011) 339 ITR 54.***

Waiver of term loan (Principal)

The High Court observed that, as regards term loans, the same were taken for the purchase of capital assets from time to time. Therefore, since the money did not come into the possession of the assessee on account of any trading transaction, the receipts were capital in nature, being loan repayable over a period of time along with interest. The liability in question, i.e. the term loan for purchase of capital assets, is not a trading liability. Therefore, the provisions of section 41(1) are not attracted in this case since the waiver is in respect of a term loan taken for a capital asset and hence, cannot be treated as remission or cessation of a trading liability. Thus, the waiver of such term loans cannot be treated as income of the assessee.

Waiver of working capital loan (Principal)

In a case where loan is written off in the cash credit account, the benefit is in the revenue field as the money had been borrowed for day-to-day affairs and not for the purchase of capital asset. These loans were for circulating capital and not fixed capital. They were received for carrying out the day-to-day operations of the assessee. Therefore, the writing off of these loans on the cash credit account amounted to remission of a trading liability and hence, has to be treated as income in the hands of the assessee by virtue of section 41(1).

The crux of the High Court decision is that the provisions of section 41(1) are attracted in respect of waiver of the working capital loan utilized for day-to-day business operations, since it amounted to remission of a trading liability. However, in the case of waiver of term loan taken for purchasing capital assets, the provisions of section 41(1) are not attracted since it cannot be treated as remission or cessation of a trading liability.

Interest on loans

As far as waiver of interest is concerned, the same cannot be brought to tax by invoking the provisions of section 41(4), whether it be interest on term loan or working capital loan, since such interest would not have been allowed as deduction in any earlier previous year due to the provisions of section 43B requiring actual payment for claiming deduction of interest. Therefore, since no deduction would have been allowed in any earlier previous year on account of non-payment of such interest, there is no question of taxability of interest in the year of waiver.

4. Computation of deduction under section 35 for the A.Y.2012-13

Particulars	₹	Section	% of weighted deduction	Amount of deduction (₹)
Expenditure incurred on in-house research and development facility				
Revenue expenditure	75,000	35(2AB)	200%	1,50,000
Capital expenditure (excluding cost of acquisition of land ₹ 4,75,000)	1,50,000	35(2AB)	200%	3,00,000
Payment for scientific research				
National Laboratory	1,75,000	35(2AA)	200%	3,50,000
Beta Ltd.	1,00,000	35(1)(iia)	125%	<u>1,25,000</u>
Deduction allowable under section 35				<u>9,25,000</u>

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

5. The issue as to whether exemption under section 54F can be claimed in respect of capital gains arising from sale of a depreciable asset held for more than 36 months came up before the Delhi High Court in *CIT v. Rajiv Shukla* (2011) 334 ITR 138.

In that case, the assessee had claimed benefit of exemption under section 54F in respect of capital gain arising on the sale of property, being a depreciable asset held for more than 36 months. However, the department contended that no exemption under section 54F would be available, as the said exemption is granted in respect of capital gain arising from the transfer of a long-term capital asset whereas the capital gain arising from transfer of a depreciable asset is deemed to be capital gain arising from transfer of short-term capital asset by virtue of provisions of section 50.

The Delhi High Court, relying on the decision of the Bombay High Court in the case of *CIT v. Ace Builders P. Ltd.* (2006) 281 ITR 210 and the decision pronounced by Gauhati High Court in *CIT v. Assam Petroleum Industries P. Ltd.* [2003] 262 ITR 587, in relation to erstwhile section 54E, held that the deeming fiction created by section 50 that the capital gain arising on transfer of a depreciable asset shall be treated as capital gain arising on transfer of short-term capital asset is only for the purpose of sections 48 and 49 and not for the purpose of any other section.

In effect, the benefit of indexation as per the second proviso to section 48 would not be available in respect of depreciable assets. Further, the written down value of the block at the beginning of the year, as increased by the actual cost of the asset purchased during

the year in that block will be reduced from the net sale consideration for determining the taxable capital gains.

Section 54F, being an independent section, will not be bound by the provisions of section 50. The depreciable asset, if held for more than 36 months, shall be a long-term capital asset as per the provisions of section 2(29A). Therefore, the exemption under section 54F cannot be denied on account of the fiction created by section 50, if the depreciable asset which is transferred is held for more than 36 months and the net consideration is invested in purchase of a new residential house.

Applying the above rationale of the Delhi High Court ruling to this case, Mr. Siddharth can invest the net consideration on sale of building for purchasing a new residential house and claiming exemption under section 54F, since the building is held for more than 36 months. Thus, we can conclude that the contention of the Assessing Officer is not correct.

6. Clause (i)(b) of *Explanation 1* to section 2(42A) provides that where the capital asset becomes the property of the assessee in the circumstances mentioned in section 49(1), the period of holding of the asset by the previous owner shall be included while determining the period for which the capital asset is held by the assessee. Under section 49(1), the circumstances where the cost of acquisition of the capital asset shall be deemed to be the cost for which the previous owner of the asset acquired it, is enlisted. One such circumstance, mentioned in clause (iii)(b) of section 49(1), is where the capital asset became the property of the assessee on any distribution of assets on dissolution of a firm, where such dissolution had taken place at any time before 1st April, 1987.

The Kerala High Court, in *P. P. Menon v. CIT (2010) 325 ITR 122*, held that the benefit of including the period of holding of the previous owner under section 2(42A) read with section 49(1)(iii)(b) can be availed by the partner only if the dissolution of the firm had taken place at any time before April 1, 1987.

In this case, the firm, M/s. XYZ dissolved in February, 2011. Therefore, applying the provisions of section 2(42A) read with section 49(1)(iii)(b) and the ratio of the above case, Mr. Y cannot include the period of holding of M/s. XYZ to determine whether the capital gains arising from sale of building by him is long-term or short-term. The period of holding of the building by Mr. Y has to be reckoned only from the date of dissolution of the firm and take over of the building by Mr. Y. Since Mr. Y sold the property within four months of acquiring the same, the gains arising therefrom would be treated as a short-term capital gain, chargeable to tax at the normal rates of tax.

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

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

Similarly, all unclaimed prizes shall also be the property of the distributor and shall be refunded to the distributor.

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

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

8. One of the conditions to be fulfilled by an industrial undertaking engaged in manufacturing or producing articles or things to qualify for claim of deduction under section 80-IB is that it should employ ten or more workers in a manufacturing process carried on with the aid of power or twenty or more workers in a manufacturing process carried on without the aid of power. The issue as to whether the persons employed by such industrial undertaking through agency (including contractors) can be treated as "workers" for fulfillment of the above condition was considered by the Bombay High Court in *CIT v. Jyoti Plastic Works Private Limited (2011) 339 ITR 491*.

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

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

9. Section 80-IA(1) provides for 100% deduction of profits derived by an undertaking or an enterprise from an eligible business referred to in sub-section (4) for ten consecutive assessment years. Clause (i) of sub-section (4) provides that the deduction under section 80-IA(1) would be applicable to any enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility fulfilling the conditions mentioned therein. The *Explanation* to this clause defines "infrastructure facility" to include, *inter alia*, -

- (a) a road, including a toll road, a bridge or a rail system and
- (b) a highway project including housing or other activities being an integral part of the highway project.

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

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

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

The Court observed that though umpires and match referees can be described as professionals or technical persons who render professional or technical services, they cannot be said to be either non-resident sportsmen (including an athlete) or non-resident sports association or institution so as to attract the provisions of section 115BBA. Consequently, the provisions of tax deduction at source under section 194E would not be attracted in this case. Though for the purpose of section 194J, match referees and umpires are considered as professionals, the tax deduction provisions thereunder are attracted only in case where the deductee/payee is a resident individual, which is not so in the present case.

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

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

11. **Computation of gross total income of M/s. ABC for the A.Y.2012-13**

Particulars	₹	
Income from business and profession		
Net profit as per profit and loss account		1,50,00,000
Add: Items charged in profit and loss account which are not allowable		
Excess depreciation on building @ 5%(i.e. 15% - 10%) on ₹ 420 lacs	21,00,000	
Capital expenditure on promoting family planning amongst the employees	3,00,000	
Advertisement in brochure of a political party	2,00,000	
Payment for flower decoration of hotel made in cash	<u>22,000</u>	26,22,000
Add: Recovery of bad debts credited in reserve but chargeable under section 41(4)		<u>3,00,000</u>
Gross Total Income		<u>1,79,22,000</u>

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

- (i) Hotel building does not constitute plant and machinery and therefore, depreciation chargeable thereon is 10%. However, depreciation has been charged in the profit and loss account at the rate applicable to plant and machinery i.e. @ 15%. Accordingly, the excess depreciation charged in the profit and loss account @ 5% (15%-10%) has to be added back.
- (ii) Capital expenditure on promoting family planning amongst employees is allowable under section 36(1)(ix) only in the case of a company assessee. In this case, since the assessee is a firm, such expenses are not allowable and therefore, the same has to be added back.
- (iii) Advertisement of any nature given in a magazine / souvenir / brochure published by a political party is not allowable as per section 37(2B), and hence, such advertisement expenditure has to be added back.
- (iv) Carpets in the hotel business require frequent replacement. They are not capital assets. The expenditure incurred on replacement of carpets by a hotel are, therefore, in the nature of expenses incurred for the purposes of business and are allowable as revenue expenses under section 37(1).

- (v) Depreciation on motor car bought and used exclusively for the purposes of business is allowable though not registered in the name of the firm in view of the ratio of the decision of the Supreme Court in *Mysore Minerals Ltd. v. CIT* (1999) 239 ITR 775.
- (vi) Since B is a partner in his individual capacity, interest paid to the Hindu Undivided Family of partner B does not attract disallowance under section 40(b)(iv). Further, since the general rate of interest paid in respect of third party loans is 15%, no disallowance would be attracted under section 40A(2) also.
- (vii) Section 40A(3) provides for disallowance@100% of the expenditure incurred, where payment is made otherwise than by way of account payee cheque/account payee bank draft. Since the firm has made payment of ₹ 22,000 for flower decoration on the event of its 10th anniversary by cash, the entire expenditure would be disallowed.
- (viii) As per Rule 6DD(j), the cash payments made totalling ₹ 93,000 on the day when bank employees were on strike is an exception to section 40A(3). Therefore, disallowance under section 40A(3) is not attracted.
- (ix) The recovery of a debt which was earlier written off and allowed as deduction under section 36(1)(vii) in an earlier previous year is chargeable to tax under section 41(4) in the year of such recovery. Accordingly, the amount of ₹ 3,00,000 has to be added to compute business income despite the fact that the same was credited by the firm in a reserve account.

12. Computation of total income and income-tax payable under the normal provisions of the Act

Particulars	₹
Profits and gains of business or profession	28,00,000
Less: Deduction under section 80-IA	<u>13,00,000</u>
Total Income	<u>15,00,000</u>
Tax payable = ₹ 15,00,000 × 30% =	4,50,000

Computation of Alternate Minimum Tax (AMT)

Particulars	₹
Total Income as per the Income-tax Act, 1961	15,00,000
Add: Deduction under section 80-IA	<u>13,00,000</u>
Adjusted Total Income	<u>28,00,000</u>
AMT = 18.5% × ₹ 28,00,000 =	5,18,000

As per section 115JC, since the income-tax payable as per the normal provisions of the Income-tax Act, 1961 is less than the AMT, the adjusted total income of ₹ 28 lakhs would be deemed to be the total income of the LLP and the LLP would be liable to pay tax

@18.5% thereof. The tax payable by the LLP for the A.Y.2012-13 would, therefore, be ₹ 5,18,000 plus education cess@2% and secondary and higher education cess@1%, totaling ₹ 5,33,540.

The LLP would be eligible for credit to the extent of ₹ 70,040 [₹ 5,33,540 – ₹ 4,63,500 (i.e. 4,50,000 + 3% cess)] to be carried forward for set-off in the year in which tax on total income computed under the normal provisions of the Income-tax Act, 1961 exceeds the AMT. AMT credit can be carried forward for set-off upto a maximum period of 10 assessment years succeeding the assessment year in which the credit becomes allowable. No interest shall, however, be payable on such tax credit.

13. Computation of total income of Biotech Ltd for the A.Y. 2012-13

Particulars	₹	₹
Profits and gains of business or profession		
Net profit as per profit and loss account		41,00,000
Add: Income-tax paid on non-monetary perquisites provided to employees not allowable [See Note (i)]		<u>2,25,000</u>
		43,25,000
Less: Deduction / Additional deduction allowable		
Additional sum allowable towards scientific research expenditure [See Note (iii)]	7,25,000	
Fees for technical services payable to a foreign company in March 2011, disallowed in A.Y. 2011-12, for non-deduction of tax at source, is now allowable as deduction since tax thereon has been deducted and paid in April 2011 [See Note (x)]	<u>2,25,000</u>	<u>9,50,000</u>
		33,75,000
Less: Income credited in the profit and loss account to be considered under other heads of income		
Rent received from letting out vacant land [See Note (vi)]	75,000	
Dividend received from a foreign company [See Note (ix)]	40,000	
Arrears of rent received in respect of house property [See Note (vii)]	<u>1,75,000</u>	<u>2,90,000</u>
		30,85,000
Income from house property		
Arrears of rent received in respect of property let out in an earlier year chargeable to tax under section 25B [See Note (vii)]	1,75,000	
Less: 30% of ₹ 1,75,000	<u>52,500</u>	
	1,22,500	
Less: Brought forward loss from property relating to A.Y.2010-11 set off [See Note (xi)]	<u>57,000</u>	65,500

Income from other sources		
Rent received from letting out vacant land [See Note (vi)]	75,000	
Dividend from foreign company [See Note (ix)]	<u>40,000</u>	<u>1,15,000</u>
Total Income		<u>32,65,500</u>

Explanations for the treatment of the various items are furnished herein below -

- (i) Income-tax paid by an employer on non-monetary perquisites provided to the employees is not deductible as per section 40(a)(v).
- (ii) Legal fees incurred in defending title to factory premises is a revenue expenditure, which is incurred wholly and exclusively for the purpose of business and is, therefore, allowable under section 37(1). This was held by the Supreme Court in *Dalmia Jain & Co. Ltd. v. CIT (1971) 81 ITR 754*.
- (iii) Expenditure incurred by the company on in-house scientific research is entitled to a weighted deduction@200% under section 35(2AB). Since the company has debited the actual expenditure of ₹ 7,25,000 in the profit and loss account, the additional deduction allowable under section 35(2AB) is ₹ 7,25,000. It is assumed that the expenditure is not incurred towards cost of land and building.
- (iv) Interest paid on arrears of sales tax is not penal in nature but is compensatory in character and is an allowable deduction under section 37(1) as held by the Supreme Court in *Lachmandas Mathurdas v. CIT (2002) 254 ITR 799*.
- (v) Disallowance under section 40A(3) is attracted where cash payment in excess of ₹ 20,000 is made in respect of any expenditure. In such a case, 100% of the expenditure is disallowed. Since the cash payment made by the company in this case is ₹ 20,000 (that is, not exceeding ₹ 20,000), the expenditure does not attract disallowance under section 40A(3).
- (vi) Rent received from letting out vacant land is assessable under the head "Income from other sources". Since the same has been credited to profit and loss account, it must be reduced for computing business income.
- (vii) Arrears of rent received in respect of the house property let out in earlier years is deemed to be income from house property in the year of receipt. As per section 25B, such arrears of rent, after deduction of 30% thereof, is assessable as income from house property even though the assessee is not the owner of the property in the year of its receipt. Since the arrears of rent has been credited to profit and loss account, the same has to be reduced while computing business income.
- (viii) Compensation received from a supplier for delay in supplying the raw materials is a trading receipt. Since the same has been rightly credited to profit and loss account, no further adjustment is required.

- (ix) Dividend received from a foreign company is assessable under the head “Income from other sources”. Since the dividend has been credited to profit and loss account, the same has to be reduced to compute business income.
- (x) Fees for technical services payable by Biotech Ltd. to a foreign company in March 2011 was disallowed by the Assessing Officer while computing the business income of Biotech Ltd. for A.Y.2011-12, since tax deductible at source was not deducted. However, since the tax thereon was deducted and paid in April, 2011 i.e., during the P.Y.2011-12, the expenditure of 2,25,000 towards fees for technical services is allowable as deduction while computing the business income of A.Y.2012-13, as per the proviso to section 40(a)(i).
- (xi) Brought forward loss from house property relating to the A.Y. 2010-11 can be set off against the deemed income from house property for the A.Y. 2012-13 in accordance with the provisions of section 71B.

14. Computation of total income of Beta Ltd. for A.Y. 2012-13

Particulars	₹
Profits and gains of business or profession	52,00,000
Income from other sources (<i>See Note below</i>)	<u>1,59,000</u>
Total income	<u>53,59,000</u>

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

Particulars	₹
From shares in Delta Ltd. & Theta Ltd, Indian companies ₹ 74,000 – exempt under section 10(34) since dividend distribution tax would have been paid under section 115-O [As per section 14A, no deduction is allowable in respect of expenditure incurred to earn exempt income]	Nil
From Alpha Inc. – net dividend (i.e., ₹ 52,000 – ₹ 6,000) is taxable at normal rates	46,000
From Gamma Inc., a specified foreign company – gross dividend is taxable@15% under section 115BBD [No deduction is allowable in respect of any expenditure as per section 115BBD(2)]	<u>1,13,000</u>
	<u>1,59,000</u>

Computation of tax liability of Beta Ltd. for A.Y. 2012-13

Particulars	₹
Tax@15% under section 115BBD on ₹ 1,13,000 (gross dividend)	16,950
Tax@30% on balance income of ₹ 52,46,000	<u>15,73,800</u>
	15,90,750

Add: Education cess@2% and Secondary and higher education cess@1%	<u>47,723</u>
Tax liability	<u>16,38,473</u>

Notes:

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

15.

Computation of total income of X Ltd.

Particulars	₹
Net profit as per profit and loss account	80,00,000
Add: Disallowance under section 40(a)(ia) (See Notes 1 & 3 below)	7,25,000
Disallowance under section 43B (See Notes 1 & 2 below)	<u>1,25,000</u>
Income chargeable under "Profits and gains of business or profession"	88,50,000
Less: Loss from house property (computed) (See Note 4 below)	<u>5,00,000</u>
Total Income	<u>83,50,000</u>

Notes:

- (1) As per section 92E, every person who has entered into an international transaction during a previous year is required to obtain a report from an accountant and furnish such report on or before the specified date, which is the due date referred to in section 139(1). The Finance Act, 2011 has extended the due date for filing of return of income under section 139(1) of corporate assessee who are required to furnish a report referred to in section 92E from 30th September to 30th November of the assessment year. Therefore, since X Ltd. has entered into an international transaction during the P.Y.2011-12, it is required to furnish a report under section 92E. Consequently, the due date for filing of return of income for X Ltd. for A.Y.2012-13 would be 30th November, 2012.

- (2) Consequently, the due date within which the sums referred to in section 43B have to be actually paid by X Ltd. to escape disallowance under that section would be 30th November, 2012. Interest on capital borrowed for the purposes of business qualifies for deduction under section 36(1)(iii). However, such interest payable, *inter alia*, to a scheduled bank in accordance with the terms and conditions of the agreement governing such loan or advance, should be paid on or before the due date of filing return of income to escape disallowance under section 43B.

Accordingly, in this case, interest due on term loan taken from SBI, a scheduled bank, is allowable as deduction only if it is paid on or before the due date of filing of return of income. In this case, interest due for the first three quarters of the previous year 2011-12 would be allowed as deduction under section 36(1)(iii), since the same have been paid on or before 30th November, 2012, being the due date of filing of return of income of X Ltd. However, the fourth quarter interest of ₹ 1,25,000, which is paid on 1st December, 2012 would attract disallowance under section 43B.

- (3) Similarly, the tax deducted at source at any time during the year by X Ltd. can be deposited on or before the extended due date of 30th November, 2012 to avoid disallowance under section 40(a)(ia). Therefore, disallowance under section 40(a)(ia) would not be attracted in respect of payment of contract fees and rent, since tax has been deducted at source under section 194C and 194-I during the previous year 2011-12 and deposited on 5th August, 2012 and 10th October, 2012, respectively, which is before the due date of filing of return of income of X Ltd. However, disallowance under section 40(a)(ia) would be attracted in respect of payment of ₹ 7,25,000 towards fees for professional services, since tax deducted at source under section 194J during the P.Y.2011-12 was deposited only on 4th December, 2012, which is after the due date of 30th November, 2012.
- (4) Current year loss from house property can be set-off against business income as per section 71. Accordingly, the loss of ₹ 5 lakhs from house property has been set-off against business income of ₹ 88.50 lakhs.
- (5) Long-term capital loss on sale of land can be set-off only against any other long-term capital gains, as per section 70(3) read with section 71(3). In this case, since there is no income under the head "long-term capital gains", the long-term capital loss has to be carried forward for set-off against long-term capital gains of the following assessment year, as per section 74(1). Such loss can be carried forward for a maximum period of 8 assessment years. Since the return of income of X Ltd. has been filed on 30th November, 2012, being the due date for filing return of income for companies which have entered into an international transaction during the P.Y.2011-12, X Ltd. can carry forward the long-term capital loss as per section 74 for set-off against long-term capital gains of the following assessment year.

16. The interest income received by Mr. Daksh, a non-resident, from a notified infrastructure debt fund would be subject to a concessional tax rate of 5% under section 115A on the gross amount of such interest income. Therefore, the tax liability of Mr. Daksh in respect of such income would be ₹ 19,313 (being 5% of ₹ 3,75,000 plus education cess@2% and secondary and higher education cess@1%).

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

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

Mr. Daksh can, however, claim refund of excess tax deducted along with interest.

17. Mrs. Kashvi shall be allowed deduction under section 91 provided all the following conditions are fulfilled :-

- She is a resident in India during the relevant previous year.
- The income accrues or arises to her outside India during that previous year.
- Such income is not deemed to accrue or arise in India during the previous year.
- The income in question has been subjected to income-tax in the foreign country in the hands of Mrs. Kashvi and she has paid tax on such income in the foreign country.
- There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

In this case, Mrs. Kashvi satisfies all the above conditions, and therefore, she is eligible for deduction under section 91.

Computation of tax liability of Mrs. Kashvi for the A.Y.2012-13

Particulars	₹	₹
Indian income		15,00,000
Foreign income		<u>10,00,000</u>
Gross Total Income		25,00,000
Less: <u>Deduction under section 80C</u>		
PPF Contribution	1,00,000	

<u>Deduction under section 80CCF</u>		
IDFC infrastructure bonds (₹ 50,000, but restricted to ₹ 20,000, being the maximum allowable deduction)	<u>20,000</u>	<u>1,20,000</u>
Total Income		<u>23,80,000</u>
Tax on total income		5,65,000
Add: Education Cess @ 2%		11,300
Secondary and higher education cess @ 1%		<u>5,650</u>
		5,81,950
Less: Rebate under section 91 on doubly taxed income of ₹ 10,00,000 @ 20%, being the lower of average Indian tax rate and average rate of tax in the foreign country (See Note below)		<u>2,00,000</u>
Net tax payable in India		<u>3,81,950</u>

Note – Calculation of Average Rate of Tax

- | | |
|---|--------|
| (i) Average rate of tax in India | 24.45% |
| [i.e. ₹ 5,81,950/₹ 23,80,000 x 100] | |
| (ii) Average rate of tax in the foreign country | 20% |
| [i.e. ₹ 2,00,000/ ₹ 10,00,000 x 100] | |

Lower of the above, i.e., 20% has to be applied on the doubly taxed income of ₹ 10,00,000 to compute rebate under section 91

18. This issue was considered by the Delhi High Court in *CIT (TDS) v. ITC Ltd. (2011) 338 ITR 598*.

The Delhi High Court observed that once the tips were paid by the customers either in cash directly to the employees or by way of charge to the credit cards in the bills, the employees gained additional income, which was by virtue of their employment. When the tips were received by the employees directly in cash, the employer hardly had any role and it may not even know the amount of tips collected by the employees. That would be out of the purview of responsibility of the employer under section 192.

However, when the tips were charged to the bill either by way of a fixed percentage on the total bill, or where no percentage was specified, the amount was indicated by the customer on the bill as a tip, the tip went into the receipt of the employer and was subsequently disbursed to the employees. As soon as such amounts were received by the employer, there was an obligation on the part of the employer to disburse them to the rightful persons, namely, the employees. Simultaneously, a right accrued to the

employees to claim the tips from the employer. By virtue of the employer-employee relationship, a vested right accrued to the employee to claim the tips. The High Court, therefore, held that the tips would constitute income within the meaning of section 2(24) and are, thus, taxable under section 15. Consequently, it was obligatory upon the company to deduct tax at source from such payments under section 192.

Applying the ratio of the above case, Hotelia Ltd. is liable to deduct tax under section 192 from the tips collected by it directly and disbursed to its employees, by treating the same as salary.

19. Computation of Net Wealth of Mr. Devansh on valuation date 31.3.2012

	Particulars	₹
(i)	Unit I of the house used for business purposes is specifically excluded from the definition of asset under section 2(ea). Even though Unit II of the house used for self-occupation is an asset under section 2(ea), exemption under section 5(vi) shall be allowed in respect of Unit II, since, it is used for self-residence.	--
(ii)	Jewellery purchased by Mrs. Devansh out of funds given by her husband is a deemed asset in the hands of Mr. Devansh to the extent of funds given by Mr. Devansh. 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.	6,00,000
(iii)	Motor car is an asset as per section 2(ea)	7,00,000
(iv)	Shares purchased by him in the name of his daughter-in-law, Shreya, is not a deemed asset because shares are not an asset as per section 2(ea) of the Wealth-tax Act, 1957	--
(v)	Motor cycle is not an asset as per section 2(ea)	--
(vi)	Desktop and scanner for business use is not an asset as per section 2(ea)	--
(vii)	Term deposit with SBI is not an asset as per section 2(ea)	--
	Net wealth	<u>13,00,000</u>

20. 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 (₹ 22,000 x 6)		1,32,000
Add: Adjustment for premium received from tenant (₹ 80,000/2) x 6/12		20,000

15% p.a. of security deposit i.e. $15\% \times ₹ 60,000 \times \frac{6}{12}$		<u>4,500</u>
Actual Rent for 6 months		<u>1,56,500</u>
Annual Rent ($₹ 1,56,500 \times 12/6$)		<u>3,13,000</u>
Computation of Net Maintainable Rent (NMR)		
Gross Maintainable Rent, being the annual rent		3,13,000
Less: Municipal Tax ($₹ 25,000 \times 2$)	50,000	
15% of Gross Maintainable Rent	<u>46,950</u>	<u>96,950</u>
Net Maintainable Rent (NMR)		<u>2,16,050</u>
Capitalised value of NMR		
Capitalised value ($₹ 2,16,050 \times 12.5$)	27,00,625	
Cost of acquisition	30,00,000	
Capitalised value is the higher of the above		30,00,000
Add: Premium		
(i) Aggregate Area	5000 sq.ft.	
(ii) Specified Area (60%)	3000 sq.ft.	
(iii) Built up area	1000 sq.ft.	
(iv) Unbuilt Area	4000 sq.ft.	
(v) Excess of unbuilt area over specified area	1000 sq.ft.	
% of excess area on aggregate area		
$(1000/5000) \times 100$	20%	
(vi) Premium to be added when (v) is 20% (40% of capitalized value i.e., 40% of ₹ 30 lacs)		<u>12,00,000</u>
Value of house property for wealth-tax purpose		<u>42,00,000</u>