

PAPER – 7 : DIRECT TAX LAWS

PART I: NOTIFICATIONS & CIRCULARS

SIGNIFICANT NOTIFICATIONS AND CIRCULARS ISSUED BETWEEN 1ST JULY, 2012 AND 30TH APRIL, 2013

I. NOTIFICATIONS

1. Notification No. 36/2012 dated 30-8-2012

Advance Pricing Agreement Scheme for the purpose of section 92CC prescribed

Section 92CC has been inserted by the Finance Act, 2012 to empower the CBDT to enter into an advance pricing agreement with any person for determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by such person. However, the CBDT can do so only with the approval of the Central Government.

Section 92CC(9) empowers the CBDT to prescribe a scheme, specifying the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

Accordingly, in exercise of the powers conferred in section 92CC(9) read with section 295 of the Income-tax Act, 1961, the CBDT has prescribed rules specifying an Advance Pricing Agreement (APA) Scheme. Some of the important provisions of the scheme have been briefed hereunder -

(1) Persons eligible to apply

Any person who has undertaken an international transaction or is contemplating to undertake an international transaction, shall be eligible to enter into an agreement under these rules.

(2) Pre-filing Consultation

- (a) Every person proposing to enter into an agreement under these rules shall, by an application in writing, make a request for a pre-filing consultation in the prescribed form to the Director General of Income-tax (International Taxation).
- (b) The pre-filing consultation shall, among other things,-
 - (i) determine the scope of the agreement;
 - (ii) identify transfer pricing issues;
 - (iii) determine the suitability of international transaction for the agreement;

- (iv) discuss broad terms of the agreement.
- (c) The pre-filing consultation shall -
 - (i) not bind the Board or the person to enter into an agreement or initiate the agreement process;
 - (ii) not be deemed to mean that the person has applied for entering into an agreement.

(3) Application for advance pricing agreement

- (a) Any person, who has entered into a pre-filing consultation may, if desires to enter into an agreement shall furnish an application in the prescribed form along with proof of payment of requisite fee as specified, to the Director General of Income-tax (International Taxation) in case of unilateral agreement and to the competent authority in India in case of bilateral or multilateral agreement.
- (b) The application may be filed at any time -
 - (i) before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or
 - (ii) before undertaking the transaction in respect of remaining transactions.

Note - The applicant may withdraw the application for agreement at any time before the finalisation of the terms of the agreement.

- (4) The agreement shall be entered into by the Board with the applicant after its approval by the Central Government.

(5) Terms of the agreement

- (a) An agreement may among other things, include -
 - (i) the international transactions covered by the agreement;
 - (ii) the agreed transfer pricing methodology, if any;
 - (iii) determination of arm's length price, if any;
 - (iv) definition of any relevant term to be used in item (ii) or (iii);
 - (v) critical assumptions i.e. the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed ;
 - (vi) the conditions, if any, other than provided in the Act or these rules.

- (b) The agreement shall not be binding on the Board or the assessee if there is a change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into.
- (c) The binding effect of agreement shall cease only if any party has given due notice of the concerned other party or parties.
- (d) In case there is a change in any of the critical assumptions or failure to meet the conditions subject to which the agreement has been entered into, the agreement can be revised or cancelled, as the case may be.

(6) Furnishing of Annual Compliance Report

The assessee shall furnish an annual compliance report in quadruplicate in the prescribed form to Director General of Income-tax (International Taxation) for each year covered in the agreement, within 30 days of the due date of filing income-tax return for that year, or within 90 days of entering into an agreement, whichever is later.

(7) Compliance Audit of the agreement

- (a) The Transfer Pricing Officer having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement. For this purpose, the Transfer Pricing Officer may require -
 - (i) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method;
 - (ii) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.
- (b) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report is received by the Transfer Pricing Officer.

(8) Revision of an agreement

- (a) An agreement, after being entered, may be revised by the Board either *suo moto* or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation), if -
 - (i) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;
 - (ii) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding ; or

- (iii) there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.
- (b) Except when the agreement is proposed to be revised on the request of the assessee, the agreement shall not be revised unless an opportunity of being heard has been provided to the assessee and the assessee is in agreement with the proposed revision.
- (c) The revised agreement shall include the date till which the original agreement is to apply and the date from which the revised agreement is to apply.

(9) Cancellation of an agreement

- (a) An agreement shall be cancelled by the Board for any of the following reasons:
 - (i) the compliance audit has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;
 - (ii) the assessee has failed to file the annual compliance report in time;
 - (iii) the annual compliance report furnished by the assessee contains material errors; or
 - (iv) the assessee is not in agreement with the revision proposed in the agreement.
 - (b) The Board shall give an opportunity of being heard to the assessee, before proceeding to cancel an application.
 - (c) The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation and for non-acceptance of assessee's submission, if any.
 - (d) The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.
 - (e) The order under the Act, declaring the agreement as void ab initio, on account of fraud or misrepresentation of facts, shall be in writing and shall provide reason for such declaration and for non-acceptance of assessee's submission, if any.
- (10)** Mere filing of a application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into.
- (11)** The negotiation between the competent authority in India and the competent authority in the other country or countries, in case of bilateral or multilateral agreement, shall be carried out in accordance with the provisions of the tax treaty between India and the other country or countries.

2. Notification No. 38/2012 dated 17.09.2012**Notification of Cost Inflation Index for F.Y.2012-13**

Clause (v) of *Explanation* to section 48 defines “Cost Inflation Index”, in relation to a previous year, to mean such Index as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to 75% of average rise in the Consumer Price Index for urban non-manual employees.

Accordingly, the Central Government has, in exercise of the powers conferred by clause (v) of *Explanation* to section 48, specified the Cost Inflation Index for the financial year 2012-13 as 852.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125
5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161
9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223
13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480

25.	2005-06	497
26.	2006-07	519
27.	2007-08	551
28.	2008-09	582
29.	2009-10	632
30.	2010-11	711
31.	2011-12	785
32.	2012-13	852

3. Notification No. 40/2012 dated 20.09.2012

Investment in debt instruments issued by any infrastructure finance company registered with the Reserve Bank of India is an approved investment under section 11(5)

Section 11(5) provides the permitted modes of investment by a charitable trust or institution for claiming exemption under section 11. Clause (xii) of section 11(5) specifies that investment can be made by any other mode as may be prescribed. Rule 17C of the Income-tax Rules, 1962 specifies such other modes of investment.

In exercise of the powers conferred by section 295 and section 11(5)(xii), the Central Government has, through this notification, inserted a new clause (viii) in Rule 17C of the Income-tax Rules, 1962 to provide that investment in debt instruments issued by any infrastructure finance company registered with the Reserve Bank of India is also a permitted mode of investment under section 11(5).

4. Notification No. 42/2012 dated 4.10.2012

Notification of class of cases, where compulsory issue of notice for assessing or reassessing the total income of immediately preceding six assessment years is not required

The Finance Act, 2012 has amended sections 153A and 153C w.e.f. 1-07-2012 to provide that the Central Government may notify the class or classes of cases (except the cases where any assessment or reassessment has abated) in which the Assessing Officer shall not be required to issue notice for initiation of assessment or reassessment of the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted or requisition was made.

As a result of the amendment in section 153A and section 153C, the assessment proceedings in the class or classes of cases so notified shall be carried out only for the assessment year relevant to the previous year in which search was conducted or requisition was made, except in cases where any assessment or reassessment in respect of any of the earlier six years has abated.

Accordingly, in exercise of the powers conferred by section 153A and 153C, the Central Government has, through this notification, inserted a new Rule 112F which shall come into force from the 1st July, 2012.

The said Rule provides that the Assessing Officer is not required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, in the following cases:

- (i) where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of the same, **and**
- (ii) where, such search is conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30 read with section 56 of the Representation of the People Act, 1951, or where the assets so seized or requisitioned are connected in any manner to the ongoing election in an assembly or parliamentary constituency.

However, this Rule is not applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified.

Circular No.10/2012 dated 31.12.2012 clarifies that the aforesaid amendment was introduced with a view to reduce infructuous and unnecessary proceedings under the Income-tax Act, 1961 in cases where a search is conducted under section 132 or requisition is made under section 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

In such cases, the officer investigating the case, with the approval of the Director General of Income-tax, is required to certify that -

- (i) the search is conducted under section 132 or the requisition is made under section 132A in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30, read with section 56 of the Representation of the People Act, 1951; or
- (ii) the assets seized or requisitioned are connected in any manner to the ongoing election process in an assembly or parliamentary constituency; and
- (iii) no evidence is available or investigation is required for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

The certificate of the investigating officer shall be communicated to the Commissioner of Income-tax and the Assessing Officer having jurisdiction over the case of such person.

5. Notification No. 46/2012, dated 06.11.2012

(as amended by Notification No. 50/2012, dated 15.11.2012, 10/2013 dated 5-2-2013 & 23/2013 dated 22.3.2013)

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 on 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 by section 10(15)(iv)(h), the Central Government has specified the tax-free, secured, redeemable, non-convertible bonds of National Highways Authority of India (NHAI), Indian Railway Finance Corporation Limited (IRFCL), India Infrastructure Finance Company Limited, Housing and Urban Development Corporation Limited, National Housing Bank (NHB), Power Finance Corporation, Rural Electrification Corporation Limited, Jawaharlal Nehru Port Trust, Dredging Corporation of India Limited, Ennore Port Limited and The Indian Renewable Energy Development Agency Limited, to be issued during the financial year 2012-13, the interest on which would be exempt under the said section.

The notification also specifies certain conditions relating to tenure of bonds, PAN, rate of interest, issue expense and brokerage, public issue, repayment of bonds and selection of merchant bankers, as detailed therein, subject to fulfillment of which the exemption would be available.

6. Notification No. 51/2012 dated 23.11.2012

Rajiv Gandhi Equity Savings Scheme, 2012

Section 80CCG was inserted by the Finance Act, 2012 to provide for deduction to a resident individual who acquires listed equity shares in a previous year in accordance with a scheme notified by the Central Government, in order to encourage flow of savings in financial instruments and improve the depth of domestic capital market.

Accordingly, in exercise of the powers conferred by section 80CCG(1), the Central Government has, through this notification, notified Rajiv Gandhi Equity Savings Scheme, 2012.

The said scheme shall apply for claiming deduction on account of investment in eligible securities under section 80CCG(1) of the Income-tax Act, 1961. The objective of the scheme is to encourage the savings of the small investors in the domestic capital

market. The deduction shall be available to a new retail investor who complies with the conditions of the Scheme and whose gross total income for the financial year in which the investment is made under the Scheme is less than or equal to ₹ 10 lakh. The said scheme also lays down the procedures for opening the demat account, investment there under and also specifies the period of holding requirements.

7. Notification No. 52/2012 dated 29.11.2012

Determination of FMV of unquoted equity shares for the purpose of sections 56(2)(vii), 56(2)(viia) & 56(2)(viib) [Amendment in Rule 11U & Rule 11UA]

Rule 11UA provides the manner of determination of fair market value of a property, other than immovable property, for the purposes of section 56. Rule 11U provides the meaning of the expressions used in determination of fair market value.

The CBDT has, through this notification, amended Rule 11U and renumbered Rule 11UA as Rule 11UA(1). Further, the method of determination of fair market value of unquoted equity shares for the purpose of section 56(2)(vii) and 56(2)(viia) has been modified. New sub-rule (2) has also been inserted to provide for the manner of determination of fair market value of unquoted equity shares for the purpose of section 56(2)(viib).

Manner of determination of FMV of unquoted equity shares for the purpose of section 56(2)(vii) & 56(2)(viia) [Amendment in Sub-rule (1) of Rule 11UA]

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

“A” refers to the adjusted book value of assets i.e., book value of assets in the balance sheet as reduced by certain specified deductions. “L” refers to the adjusted book value of liabilities i.e., book value of liabilities shown in the balance sheet, but not including, *inter alia*, -

- (1) reserves, by whatever name called, other than those set apart towards depreciation and credit balance of the profit and loss account.
- (2) any amount representing provision for taxation, other than amount paid as advance tax under the Income-tax Act, 1961, to the extent of excess over the tax payable with reference to the book profits in accordance with the law applicable thereto.

The computation of adjusted book value of assets and adjusted book value of liabilities has been modified.

The adjusted book value of assets now refers to the book value of assets in the balance sheet as reduced by –

- (1) any amount of tax paid as deduction or collection at source; or
- (2) advance tax payment reduced by the amount of tax claimed as refund under

the Income-tax Act, 1961; and

- (3) any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.

Further, the adjusted book value of liabilities would now mean the book value of liabilities shown in the balance sheet, but not including, *inter alia*, -

- (1) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- (2) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, 1961, to the extent of excess over the tax payable with reference to the book profits in accordance with the law applicable thereto.

Manner of determination of FMV of unquoted equity shares for the purpose of section 56(2)(viib) [Insertion of sub-rule (2) in Rule 11UA]

The Finance Act, 2012 has inserted clause (viib) in section 56(2) to provide for taxation of the consideration received by a closely held company for issue of shares at a premium (i.e., at a price that exceeds the face value of shares), to the extent it exceeds the fair market value of such shares.

As per sub-clause (i) of clause (a) of the *Explanation* to section 56(2)(viib), the fair market value of such unquoted equity shares shall be the value as may be determined in accordance with such method as may be prescribed.

Accordingly, sub-rule (2) has been inserted in Rule 11UA to prescribe the manner of determination of FMV of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of *Explanation* to section 56(2)(viib).

The FMV shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), **at the option** of the assessee, namely:—

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

A = The book value of the assets in the balance sheet as reduced by the following -

- | | | |
|--|---|--|
| <ol style="list-style-type: none"> (1) any amount of tax paid as deduction or collection at source (2) any amount of advance tax payment | } | <i>minus</i> the amount of tax claimed as refund under the Income-tax Act, 1961. |
| <ol style="list-style-type: none"> (3) any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not | | |

represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

- (i) the paid-up capital in respect of equity shares;
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- (iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet

PV = the paid up value of such equity shares

- (b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.

Meaning of certain expressions, used in determination of Fair Market Value, amended [Rule 11U]

Consequent to insertion of sub-rule (2) in Rule 11UA, the meaning of certain expressions, defined in Rule 11U and used in determination of Fair Market Value, have been amended. The new definitions are as follows -

For the purpose of sub-rule (2) of Rule 11UA	In any other case
<u>Definition of “accountant”</u> A fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949, who is not appointed by the company as an auditor under –	Meaning as assigned in the <i>Explanation</i> below section 288(2) i.e., (i) Chartered Accountant within the meaning of the Chartered Accountants Act, 1949; and

(i) section 44AB of the Income-tax Act, 1961 or (ii) section 224 of the Companies Act, 1956.	(ii) In relation to any State, any person who by virtue of the provisions of section 226(2) of the Companies Act, 1956 is entitled to be appointed to act as an auditor of companies registered in that State.
<u>Definition of "Balance Sheet"</u> "Balance sheet", in relation to any company, means, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) - - as drawn up on the valuation date - which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956. Where the balance sheet on the valuation date is not drawn up, the expression "Balance Sheet" in relation to any company, would mean the balance sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company;	"Balance sheet", in relation to any company, means the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) - - as drawn up on the valuation date - which has been audited by the auditor appointed under section 224 of the Companies Act, 1956.
<u>Definition of "valuation date"</u> The date on which the property or consideration, as the case may be, is received by the assessee.	Same as for sub-rule (2) i.e., the date on which the property or consideration, as the case may be, is received by the assessee.

8. Notification No. 56/2012 dated 31.12.2012

Tax not to be deducted on specified payments to notified entities under section 197A(1F)

The Finance Act, 2012 has inserted sub-section (1F) in section 197A to provide that no deduction of tax shall be made from such specified payments to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government.

Accordingly, the Central Government has notified that no deduction of tax shall be made from the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank –

- (i) bank guarantee commission,
- (ii) cash management service charges,
- (iii) depository charges on maintenance of DEMAT accounts ,
- (iv) charges for warehousing services for commodities,
- (v) underwriting service charges,
- (vi) clearing charges (MICR charges) and
- (vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank,

The said notification shall come into force from the 1st January, 2013.

9. Notification No. 4/2013 dated 24.1.2013

TDS under section 194A not attracted in respect of interest other than interest on securities credited to National Skill Development Fund

Section 194A(3)(iii)(f) provides that the provisions of tax deduction at source under section 194A in respect of interest other than interest on securities, shall not be attracted where such income is credited to such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

In exercise of the powers conferred by section 194A(3)(iii)(f), the Central Government has notified '**National Skill Development Fund**'. Accordingly, the TDS provisions under section 194A would not be attracted in respect of interest other than interest on securities credited to National Skill Development Fund.

10. Notification No. 8/2013 dated 31.1.2013

Rules governing functioning of an Electoral Trust, for claim of exemption under section 13B, notified

Section 13B provides for special provisions relating to voluntary contributions received by electoral trusts. Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year if that electoral trust does not function in accordance with the rules made by the Central Government.

In exercise of the powers conferred by section 13B(b) read with section 295, the Central Government has notified Rule 17CA which provides that the following shall be the functions of an electoral trust referred to in section 13B -

- (1) The electoral trust may receive voluntary contributions from
 - (a) an individual who is a citizen of India;
 - (b) a company which is registered in India; and
 - (c) a firm or Hindu undivided family or an Association of persons or a body of individuals, resident in India.
- (2) A receipt indicating the following shall be issued by the trust immediately on receipt of any contribution indicating the following:
 - (a) name and address of the contributor;
 - (b) Permanent account number of the contributor or passport number in the case of a citizen who is not a resident;
 - (c) amount and mode of contribution including name and branch of the Bank and date of receipt of such contribution;
 - (d) name of the electoral trust;
 - (e) Permanent account number of the electoral trust;
 - (f) date and number of approval by the prescribed authority; and
 - (g) Name and designation of the person issuing the receipt.
- (3) The electoral trust shall not accept contributions-
 - (a) from an individual who is not a citizen of India or from any foreign entity whether incorporated or not; and
 - (b) from any other electoral trust which has been registered a company under section 25 of the Companies Act, 1956 and approved as an electoral trust under the Electoral Trusts Scheme, 2013.
- (4) The electoral trust shall accept contributions only by way of an account payee cheque drawn on a bank or account payee bank draft or by electronic transfer to its bank account and shall not accept any contribution in cash.
- (5) The electoral trust shall not accept any contribution without the PAN of the contributor, who is a resident and the passport number in the case of a citizen of India, who is not a resident.
- (6) A political party registered under section 29A of the Representation of the People Act, 1951 shall be an eligible political party and an electoral trust shall distribute funds only to the eligible political parties.
- (7) (i) The electoral trust may, for the purposes of managing its affairs, spend

upto 5% of the total contributions received in a year subject to an aggregate limit of ₹5 lakh in the first year of incorporation and ₹3 lakh in subsequent years;

- (ii) the total contributions received in any financial year alongwith the surplus from any earlier financial year, if any, as reduced by the amount spent on managing its affairs, shall be the distributable contributions for the financial year;
 - (iii) an electoral trust shall be required to distribute the distributable contributions received in a financial year, referred to in item (ii), to the eligible political parties before the 31st March of the said financial year, subject to the condition that at least 95% of the total contributions received during the financial year along with the surplus brought forward from earlier financial year, if any, are distributed.
- (8) The trust shall obtain a receipt from the eligible political party indicating the name of the political party, its permanent account number, registration number, amount of fund received from the trust, date of the receipt and name and designation of person signing such receipt.
- (9) The electoral trust shall not utilize any contributions for the direct or indirect benefit of the members or contributors, or for any of the following persons, namely:
- (a) the members (including members of its Executive Committee, Governing Committee or Board of Directors) of the electoral trust;
 - (b) any relative of such Members;
 - (c) where such member or contributor is a Hindu undivided family, a member of that Hindu undivided family;
 - (d) any person who has made a contribution to the trust;
 - (e) any person referred in sub-section (3) of section 13; and
 - (f) any concern in which any of the persons referred to in clauses (a),(b),(c),(d) and (e) has a substantial interest.
- (10) (i) An electoral trust shall keep and maintain such books of account and other documents in respect of its receipts, distributions and expenditure as may enable the computation of its total income in accordance with the provisions of the Act;
- (ii) The electoral trust shall also maintain a list of persons from whom contributions have been received and to whom the same have been distributed, containing the name, address and permanent account number (PAN) of each such person along with the details of the amount and mode of its payment including the name and branch of the bank.

- (11) Every electoral trust shall get its accounts audited by an accountant as defined in the Explanation below section 288(2) and furnish the audit report in Form No.10BC along with particulars forming part of its Annexure, to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the electoral trust, on or before the due date specified for furnishing the return of income by a company under section 139.
- (12) An electoral trust shall maintain a regular record of proceedings of all meetings and decisions taken therein.
- (13) Every electoral trust shall furnish a certified copy of list of contributors and a list of political parties, to whom sums were distributed in the manner prescribed in sub rule (8), to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, every year along with the audit report as stipulated under sub-rule (12);
- (14) Any change in the shareholders, subsequent to the approval granted under the Electoral Trusts Scheme, 2013 shall be intimated to the Board within thirty days of such change.

11. Notification No.9/2013 dated 31.1.2013

Electoral Trusts Scheme

Section 2(22AAA) defines 'Electoral Trust' to mean a trust so approved by the CBDT, in accordance with the scheme made in this regard by the Central Government.

In exercise of the powers conferred by section 2(22AAA), the Central Government, has through this notification, notified the **Electoral Trusts Scheme, 2013** to lay down the procedure for grant of approval to an electoral trust which will receive voluntary contributions and distribute the same to political parties.

Eligibility

A company registered for the purposes of section 25 of the Companies Act, 1956 satisfying all of the following conditions shall be eligible to make an application for approval as an electoral trust, namely –

- (i) The company should be registered on or after 1.4.2012 for the purposes of section 25 of the Companies Act, 1956;
- (ii) The name of the company registered for the purposes of section 25 of the Companies Act, 1956 has to include the phrase "electoral trust";
- (iii) The sole object of the electoral trust should be to distribute the contributions received by it to the political party, registered under section 29A of the Representation of the People Act, 1951;
- (iv) The electoral trust should have a permanent account number.

Criteria for Approval

An electoral trust shall be considered for approval if it fulfills all of the following conditions, namely –

- (i) The company registered for the purposes of section 25 of the Companies Act, 1956, which satisfies the above conditions;
- (ii) The object of the electoral trust shall not be to earn any profit or pass any direct or indirect benefit to its members or contributors, or to any person referred to in section 13(3) or any person referred to in Rule 17CA;
- (iii) It has made adequate arrangement for recording the receipts from the contributors in accordance with Rule 17CA;
- (iv) The stipulations contained in Rule 17A for functioning of the electoral trust are specifically included in the articles of association of the company registered for the purposes of section 25 of the Companies Act, 1956.

Renewal of approval

- (i) The approval shall be valid for the assessment year relevant to the financial year in which such application has been made and for a further period, not exceeding three assessment years, as may be specified in the approval.
- (ii) The electoral trust may apply for renewal of approval at any time during the financial year immediately preceding the last assessment year, for which the approval has been originally granted, and such renewal of approval may be granted after examining the application in the same manner as laid out for approval in this scheme.

II. CIRCULARS**1. Circular No. 5/2012 dated 1-8-2012****Inadmissibility of expenses incurred in providing freebees to medical practitioner by pharmaceutical and allied health sector industry**

Section 37(1) provides for deduction of any revenue expenditure (other than those falling under sections 30 to 36) from the business income if such expense is laid out or expended wholly or exclusively for the purpose of business or profession. However, the *Explanation* below section 37(1) denies claim of any such expenses, if the same has been incurred for a purpose which is either an offence or prohibited by law.

The Central Board of Direct Taxes has, through this circular, clarified by considering the fact that the claim of any expense incurred in providing freebees to medical practitioner is in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the expenditure so incurred shall be inadmissible under section 37(1) of the Income-tax Act, 1961, being an expense

prohibited by the law. The disallowance shall be made in the hands of such pharmaceutical or allied health sector industry or other assessee which has provided aforesaid freebees and claimed it as a deductible expense in its accounts against income.

This circular has also clarified that a sum equivalent to value of freebees enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources, as the case may be, depending on the facts of each case.

2. Circular No. 07/2012 dated 21.09.2012

Approval of loan agreements/long term infrastructure bonds and rate of interest for the purpose of section 194LC

The Finance Act, 2012 had inserted section 194LC in Income-tax Act, 1961 to provide for lower rate of tax deduction at source @ 5% on gross interest payments made by an Indian company to a non-corporate non-resident or to a foreign company on borrowings made in foreign currency, subject to approval of the Central Government, by way of loan agreement or through long-term infrastructure bonds issued during the period from 01.07.2012 to 30.06.2015. The section further provides that the interest to the extent the same does not exceed the interest calculated at the rate approved by the Central Government, taking into consideration the terms of the loan or the bond and its repayment, will be subject to tax at a concessional rate of 5%.

Therefore, the approval of the Central Government is required in respect of both the loan agreement or bond issue and the rate of interest to be paid on such borrowings.

With a view to mitigate the compliance burden on the borrower by providing a mechanism involving approval in each and every case, the CBDT, through this circular conveys the approval of the Central Government, for the purposes of section 194LC in respect of loan agreements and issue of long-term infrastructure bond by Indian Companies subject to satisfaction of following conditions:

(a) In respect of agreements for loan

1. The borrowing of money should be under a loan agreement.
2. The monies borrowed under the loan agreement by the Indian company should comply with section 6(3)(d) of the Foreign Exchange Management Act, 1999 read with *Notification No. FEMA3/2000-RB* viz. Foreign Exchange Management (Borrowing or Lending in Foreign exchange) Regulations 2000, dated May 3, 2000, as amended from time to time, (hereafter referred to as "ECB regulations"), either under the automatic route or under the approval route.

3. The borrowing company should have obtained a Loan Registration Number (LRN) issued by the Reserve Bank of India (RBI) in respect of the Agreement.
4. No part of the borrowing has taken place under the said agreement before 1st July, 2012.
5. The agreement should not be restructuring of an existing agreement for borrowing in foreign currency solely for taking benefit of reduced rate of tax deduction at source.
6. The end use of the funds and other conditions as laid out by the RBI under ECB regulations should be followed during the entire term of the loan agreement under which the borrowing has been made.

(b) In respect of issue of Bonds

1. The bond issued by the Indian company should be authorized under ECB regulations either under the automatic route or under the approval route.
2. The bond issue should have a loan Registration Number issued by the RBI.
3. The term “long term” means that the bond to be issued should have original maturity term of three years or more.
4. The bond issue proceeds should be utilized in the “infrastructure sector” only.
5. The term “infrastructure sector” shall have same meaning as is assigned to it by RBI under the ECB regulations.

(c) Rate of interest

Further, the Central Government has also approved the interest rate for the purpose of section 194LC as any rate of interest which is within the All-in-cost ceilings specified by the RBI under ECB regulations as is applicable to the borrowing by loan agreement or through a bond issue, as the case may be, having regard to the tenure thereof.

In view of the above, any loan agreement or bond issue, which satisfy the above conditions would be treated as approved by the Central Government for the purposes of section 194LC.

The circular has further clarified that in case of other long term Infrastructure Bonds where the Indian company received subscription of such Bonds in foreign currency and such bond issue is not covered under ECB regulations, the approval for the purpose of section 194LC shall be on case to case basis for which application has to be given in writing to Member (IT), CBDT with the relevant details of the purpose, period and rate of interest.

3. Circular No. 9/2012 dated 17.10.2012

Deduction of tax at source on payment of gas transportation charges by the purchaser of natural gas to the seller of gas

In response to the representations received by CBDT, on the difficulties being faced in the matter of Tax deduction at source on Gas Transportation Charges paid by the purchasers of Natural gas to the owners/sellers of gas, CBDT has, through this Circular, clarified that in case the Owner/Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in Section 194C. Therefore, in such circumstances, the provisions of Chapter XVIIIB are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. Further, the use of different modes of transportation of gas by Owner/Seller will not alter the position.

However, transportation charges paid to a third party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and tax shall be deductible at source on such payment to the third party at the applicable rates.

4. Circular No. 1/2013, dated 17.01.2013

Clarification on issues relating to export of computer software

Section 10AA provides deduction to assessee who derive any profits and gains from export of articles or things or services (including computer software) from the year in which the Unit begins to manufacture or produced such articles or things or provide services, as the case may be, subject to fulfillment of the prescribed conditions. *Explanation 2* to the said section clarifies that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

This circular provides certain clarifications in respect of following issues arising out of the said provisions:

	Issue	Clarification given by the CBDT
(1)	Would "On-site" development of computer software qualify as an export activity for tax benefit	The software developed abroad at a client's place would be eligible for such benefit, because these would amount to 'deemed export'. However, it is necessary that there must exist a direct and intimate nexus or connection of development of software done

	under section 10AA?	abroad with the eligible units set up in India and such development of software should be pursuant to a contract between the client and the eligible unit.
(2)	Would receipts from deputation of technical manpower for such “On-site” software development abroad at the client’s place be eligible for deduction under section 10AA?	<i>Explanation 2</i> to section 10AA clarifies that profits and gains derived from ‘services for development of software’ outside India would also be deemed as profits derived from export. Therefore, profits earned as a result of deployment of technical manpower at the client’s place abroad specifically for software development work pursuant to a contract between the client and the eligible unit should not be denied benefit under section 10AA provided such deputation of manpower is for the development of such software and all the prescribed conditions are fulfilled.
(3)	Is it necessary to have separate master service agreement (MSA) for each work contract?	As per the practice prevalent in the software development industry, generally two types of agreement are entered into between the Indian software developer and the foreign client. Master Services Agreement (MSA) is an initial general agreement between a foreign client and the Indian software developer setting out the broad and general terms and conditions of business under the umbrella of which specific and individual Statement of Works (SOW) are formed. These SOWs, in fact, enumerate the specific scope and nature of the particular task or project that has to be rendered by a particular unit under the overall ambit of the MSA. Clarification has been sought whether more than one SOW can be executed under the ambit of a particular MSA and whether SOW should be given precedence over MSA. It is clarified that the tax benefits under section 10AA would not be denied merely on the ground that a separate and specific MSA does not exist for each SOW. The SOW would normally prevail over the MSA in determining the eligibility for tax benefits unless the Assessing Officer is able to establish that there has been splitting up or reconstruction of an existing business or non-fulfillment of any other prescribed condition.

(4)	Would tax benefit under section 10AA continue to be available in case of a slump sale of a unit?	The answer to this issue would depend on the facts of each case, such as how a slump-sale is made and what is its nature. It will also be important to ensure that the slump sale would not result into any splitting or reconstruction of existing business. It is, however, clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed of for the unexpired period at the rates as applicable for the remaining years, subject to fulfillment of prescribed conditions.
(5)	Can tax benefits under section 10AA be enjoyed by an eligible SEZ unit consequent to its transfer to another SEZ?	It is clarified that the tax holiday should not be denied merely on the ground of physical relocation of an eligible SEZ unit from one SEZ to another in accordance with Instruction No. 59 of Department of Commerce, if all the prescribed conditions are satisfied under the Income-tax Act, 1961. It is further clarified that the unit so relocated will be eligible to avail of the tax benefit for the unexpired period at the rates applicable to such years.
(6)	Whether new units set up in the same location where there is an existing eligible unit would amount to expansion of the existing unit?	This issue is a matter of fact requiring examination and verification. However, it has been clarified that setting up of such a fresh unit in itself would not make the unit ineligible for tax benefits, provided – (i) the unit is set-up after obtaining necessary approvals from the competent authorities; (ii) it has not been formed by splitting or reconstruction of an existing business; and (iii) it fulfils all other conditions prescribed under section 10AA.

Part II: Legal Decisions

In addition to the legal decisions reported in the publication "Select Cases in Direct and Indirect Tax Laws" relevant for May 2013 and November 2013 examinations, the following legal decisions are also relevant for November 2013 examination.

Basic Concepts

1. Can amount collected by an NBFC from its customers on adhoc basis towards possible sales tax liability which is disputed by it, be treated as its income, if such sum is not kept in a separate interest-bearing account?

Sundaram Finance Ltd. v. Assistant Commissioner of Income-tax (2012) 349 ITR 0356 (SC)

The assessee is a non-banking financial company (NBFC) engaged in the business of hire purchase financing, equipment leasing and allied activities. During the relevant previous year, it collected certain sums on an adhoc basis as “contingent deposit” from its leasing and hire purchase customers to protect itself from sales tax liability, which is under dispute. The assessee did not offer such sum to tax as income on the ground that such sums collected as “contingent deposits”, in anticipation of sales tax liability under dispute, were “refundable”, if the assessee were to succeed in its challenge to the levy of the said tax. Therefore, the assessee contended that the sum of ₹ 36.47 lakhs collected by it, is an imprest with a liability to refund. The amount is in the nature of “deposits”, and hence, the same would not be taxable in the year of receipt but only in the year in which the liability to refund the sales tax ceases.

The Supreme Court, observed that in determining whether a receipt is liable to be taxed, the taxing authorities cannot ignore the legal character of the transaction which is the source of the receipt. The taxing authorities are bound to determine the true legal character of the transaction. The Apex Court noted the assessee’s own statement that the sum of ₹ 36.47 lakhs was not kept in a separate interest-bearing bank account (*inspite of the assessee’s contention that it represented a contingent deposit*) but formed part of its business turnover (*generally credited to the current account, which is non-interest bearing*).

Therefore, the Supreme Court, applying the “substance over form” test, held that the sum of ₹ 36.47 lakhs constituted the income of the assessee, since it -

- (i) formed part of the assessee’s turnover.
- (ii) was collected from customers; and
- (iii) was collected towards sales tax liability.

2. What would be the nature of corporate membership fee paid to the golf club, considering that the membership was for a limited period of six years – Revenue or Capital expenditure?

CIT v. Groz Beckert Asia Ltd. (2013) 351 ITR 196 (P&H)(FB)

On this issue, the High Court observed that the aim and object of the expenditure would determine the character of the expenditure i.e., whether it is a capital expenditure or a revenue expenditure. The High Court further noted the rulings of the various courts,

wherein it was observed that for an expenditure to be treated as capital in nature, it should bring into existence an asset or an advantage for the enduring benefit of a trade.

In this case, the Court observed that the corporate membership of ₹ 6 lakh was obtained for running the business to earn profit and the membership was for a limited period of six years. It is, therefore, an expenditure incurred for the period of membership and is not long-lasting. The Court further observed that though payment of membership fee results in obtaining of club membership for a period beyond the year of payment but the benefit remains in the revenue field and not in the capital field. By such membership, a privilege to use facilities of a club alone are conferred on the assessee and that too for a limited period. Such expenses are incurred for running the business with a view to provide benefits to the assessee. Also, such membership does not bring into existence an asset or an advantage for the enduring benefit of the business.

The High Court, therefore, held that by subscribing to the membership of a club for a limited period, no capital asset is created or comes into existence and consequently, the corporate membership fees cannot be treated as capital in nature.

3. Can power subsidy received by the assessee from the State Government, year after year, on the basis of actual power consumption be treated as a capital receipt?

CIT v. Rassi Cement Ltd. (2013) 351 ITR 169 (A.P.)

In this case, the assessee received power subsidy from the State Government and treated it as a capital receipt. The Assessing Officer, however, denied the assessee's claim, contending that the power rebate given by the Electricity Department cannot be capitalized as the same is given as a rebate which is in the nature of revenue receipt.

The High Court observed the decision of the Supreme Court in *Sahney Steel & Press Works Ltd. v CIT (1997) 228 ITR 253*, where incentives (including power subsidy) granted year after year were treated as supplementary trade receipts. The power subsidy granted after commencement of production is based on actual power consumption and has nothing to do with the investment subsidy given for establishment of industries or expanding industries in the backward areas.

The power subsidy was given as a part of an incentive scheme after commencement of production, which is linked to production and therefore, has to be treated as a revenue receipt, since such assistance is given for the purpose of carrying on of the business of the assessee. The production incentive scheme is different from the scheme giving subsidy for setting up industries in the backward areas. This is, in fact, a basis of discrimination in deciding whether the subsidy has to be treated as a capital receipt or revenue receipt, i.e., the purpose for which the subsidy is given should determine the nature of the receipt.

Accordingly, the High Court held that the power subsidy received by the assessee from the State Government on the basis of actual power consumption has to be treated as a trading receipt and not as a capital receipt.

Income from Salaries

4. Can notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent-free accommodation given to the employee?

CIT v. Shankar Krishnan (2012) 349 ITR 0685 (Bom.)

The assessee, a salaried employee, was provided with rent-free accommodation, being a flat in Mumbai, by his employer company. The monthly rent paid by the employer in respect of the said flat was ₹ 10,000 per month. The employer had given an interest-free refundable security deposit of ₹ 30 lacs to the landlord for renting out the said premises. The assessee-employee computed the perquisite value on the basis of rent of ₹10,000 paid by his employer to the landlord, since the same was lower than 10% (**now, 15%**) of salary.

The Assessing Officer, however, contended that since the employer had given interest-free deposit of ₹ 30,00,000 to the landlord, interest@12% on the said deposit is required to be taken into consideration for estimating the fair rental value of the flat given to the assessee and accordingly, he enhanced the perquisite value of the residential accommodation provided to the employee by such notional interest. The Commissioner (Appeals) upheld the decision of the Assessing Officer.

The Tribunal observed that, as per Rule 3 of the Income-tax Rules, 1962, the perquisite value of the residential accommodation provided by the employer shall be the **actual** amount of lease rent paid or payable by the employer or 10% (now, 15%) of salary, whichever is lower, as reduced by the rent, if any, actually paid by the employee. The Tribunal, therefore, held that there is no concept of determination of the fair rental value for the purpose of ascertaining the perquisite value of the rent-free accommodation provided to the employees.

On appeal by the Revenue, the Bombay High Court held that the Assessing Officer is not right in adding the notional interest on the security deposit given by the employer to the landlord in valuing the perquisite of rent-free accommodation, since the perquisite value has to be computed as per Rule 3 and Rule 3 does not require addition of such notional interest. Thus, the perquisite value of the residential accommodation provided by the employer would be the actual amount of lease rental paid or payable by the employer, since the same was lower than 10% (now 15%) of salary.

Income from house property

5. Can service charges received along with rent in respect of a property, be brought to tax under the head 'Income from house property', if the service agreement is dependent upon the rental agreement?

CIT v. J.K. Investors (Bom.) Ltd. (2012) 211 Taxman 383 (Bom.)

On this issue, the Assessing Officer claimed that since the service charges were in respect of ancillary services, the same has to be assessed under the head 'Income from other sources' and not as 'Income from house property'.

The Bombay High Court observed that the first step is to determine whether the service agreement could stand independently from the rental agreement. In the present case, the service agreement is dependent upon the rental agreement and in the absence of the rental agreement there could be no service agreement. The services being provided under the service agreement are in the nature of lift, common entrance, main road leading to the building through the compound, drainage facilities, air conditioning facility, open space in/around the building etc. which are not separately provided but go along with the occupation of the property.

Therefore, the amount received as service charges have to be considered as a part of the rent received and subjected to tax under the head "Income from house property".

Profits and gains of business or profession

6. Can depreciation on leased vehicles be denied to the lessor on the grounds that the vehicles are registered in the name of the lessee and that the lessor is not the actual user of the vehicles?

I.C.D.S. Ltd. v. CIT (2013) 350 ITR 527 (SC)

The assessee is a non-banking finance company engaged, *inter alia*, in the business of leasing and hire purchase. The assessee purchased vehicles directly from the manufacturers and as a part of its business, leased out these vehicles to its customers, after which the physical possession of the vehicles was with the lessee. Further, the lessees were registered as the owners of the vehicles in the certificate of registration issued under the Motor Vehicles Act, 1988. The assessee-lessor claimed depreciation on such vehicles.

The Assessing Officer disallowed the depreciation claim on the ground that the assessee's use of these vehicles was only by way of leasing out the vehicles to others and not as actual user of the vehicles in the business of running them on hire and secondly, the vehicles were registered in the name of the lessee and not the assessee-lessor. Therefore, according to the Assessing Officer, the assessee had merely financed the purchase of these assets and was neither the owner nor the user of these assets.

The High Court was also of the view that the assessee could not be treated as the owner of the vehicles, since the vehicles were not registered in the name of the assessee and the assessee had only financed the transaction. Therefore, the High Court held that the assessee was not entitled to claim depreciation.

The Supreme Court observed that section 32 imposes a twin requirement of “ownership” and “usage for business” as conditions for claim of depreciation thereunder. The Apex Court further observed that as far as usage of the asset is concerned, the section requires that the asset must be used in the course of business. It does not mandate actual usage by the assessee itself. In this case, the assessee did use the vehicles in the course of its leasing business. Hence, this requirement of section 32 has been fulfilled, notwithstanding the fact that the assessee was not the actual user of the vehicles.

The Supreme Court further noted that section 2(30) of the Motor Vehicle Act, 1988, is a deeming provision which creates a legal fiction of ownership in favour of the lessee only for that Act, not for the purpose of law in general. No inference could be drawn from the registration certificate as to ownership of the legal title of the vehicles, since registration in the name of the lessee during the period of lease is mandatory as per the Motor Vehicles Act, 1988. If the lessee was in fact the legal owner, he would have claimed depreciation on the vehicles which was not the case.

The Apex Court observed that as long as the assessee-lessor has a right to retain the legal title against the rest of the world, he would be the owner of the asset in the eyes of law. In this regard, the following provisions of the lease agreement are noteworthy –

- The assessee is the exclusive owner of the vehicle at all points of time;
- The assessee is empowered to repossess the vehicle, in case the lessee committed a default;
- At the end of the lease period, the lessee was obliged to return the vehicle to the assessee;
- The assessee had a right of inspection of the vehicle at all times.

It can be seen that the proof of ownership lies in the lease agreement itself, which clearly points in favour of the assessee.

The Supreme Court, therefore, held that assessee was entitled to claim depreciation in respect of vehicles leased out since it has satisfied both the requirements of section 32, namely, ownership of the vehicles and its usage in the course of business.

7. **Can waiver of loan given to the assessee by the Government of India from Steel Development Fund (SDF) to meet the capital cost of asset be reduced to arrive at the actual cost as per section 43(1) for computing depreciation under section 32?**

Steel Authority of India Ltd. v. CIT (2012) 348 ITR 150 (Delhi)

The assessee is a public sector undertaking engaged in the manufacture and sale, including export of iron and steel of various grades. It has several steel plants in India. The

Government of India sanctioned huge loans to the assessee from the SDF to meet its requirements. On account of glut in the international steel market due to heavy production of steel in South East Asia and the meltdown in the USA, the price of steel fell rapidly and the assessee started incurring heavy losses. The assessee, therefore, approached the Government of India for waiver of loans granted from SDF. The Government of India, as a measure of providing relief to the steel industry in general and the assessee in particular, waived repayment of loans granted to the assessee from the SDF.

The assessee reduced the cost of the assets by the amount of the loans waived by the Government of India in its books of account and accordingly calculated depreciation. However, in the returns filed for the years under consideration, the assessee took a contrary stand and claimed depreciation on the assets without reducing the loans waived by the Government. The assessee took a plea that *Explanation 10* to section 43(1) does not consider the waiver of a loan as a subsidy or a grant or reimbursement of the cost.

The Assessing Officer, however, contended that depreciation ought to be allowed to the assessee in respect of assets purchased on the reduced cost, after reducing the loans waived by the Government, as per the provisions of section 43(1). The Commissioner (Appeals) and Tribunal upheld the view of the Assessing Officer.

The Delhi High Court observed that the case of the assessee may not fall under *Explanation 10* to section 43(1), since the *Explanation* covers only a case of subsidy, grant or reimbursement but not a case of waiver of loan. However, having regard to the facts of the case, the waiver of the loan would amount to the meeting of a portion of the cost of the assets under the main provision of section 43(1) which spells out the meaning of "actual cost". As per section 43(1), "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. The intention of the parties, as reflected in the accounts of the assessee, appears to be that the loans have been granted towards a portion of the cost of the assets.

The waiver of the loan, in this case, is not a mere quantification of a subsidy granted generally for industrial growth. It was granted specifically to the assessee, who had reduced the amount waived from the cost of the assets in its books of account. This accounting treatment reflects the analogous understanding by the assessee regarding the purpose of the grant of loan. The High Court, therefore, held that, by applying the main provision of section 43(1), the amount of loan waived by the Government is to be reduced from the cost of assets to arrive at the "actual cost" for computing depreciation.

8. **Can the second proviso to section 32(1) be applied to restrict the additional depreciation under section 32(1)(ia) to 50%, if the new plant and machinery was put to use for less than 180 days during the previous year?**

M.M. Forgings Ltd. v. ACIT (2012) 349 ITR 0673 (Mad.)

In this case, the Assessing Officer, by applying the second proviso to section 32(1), restricted the allowability of depreciation to 50% of the amount of additional depreciation

computed under section 32(1)(iia), since the new plant and machinery was put to use for less than 180 days during the previous year. The assessee argued that he has satisfied all the conditions stipulated under section 32(1)(iia), and therefore, the depreciation under section 32(1)(iia) should not be restricted to 50% by resorting to the second proviso to section 32(1).

The Commissioner (Appeals) and Appellate Tribunal, however, affirmed the action of the Assessing Officer.

On appeal, the Madras High Court observed that clause (iia) was inserted by the Finance Act, 2002, with effect from April 1, 2003, in the second proviso to section 32(1). Therefore, it was imperative that on and after April 1, 2003, the claim of the assessee made under section 32(1)(iia) had to be necessarily allowable by applying the second proviso to section 32(1).

As per the second proviso to section 32(1), which specifically mentions that where an asset referred to in, *inter alia*, clause (iia) of section 32(1) is acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period of less than 180 days in that previous year, the deduction in respect of such asset shall be restricted to 50% of the amount calculated at the prescribed percentage under section 32(1)(iia).

The Madras High Court held that if an asset is acquired on or after 1.04.2003, it was mandatory that the claim of the assessee made under section 32(1)(iia) had to be necessarily assessed by applying the second proviso to section 32(1). Since there is a statutory stipulation restricting the allowability of depreciation to 50% of the amount computed under section 32(1)(iia), where the asset is put to use for less than 180 days, the amount of depreciation allowable has to be restricted to 50% of the amount computed under section 32(1)(iia). The High Court, accordingly, affirmed the order of the Tribunal.

9. **Can encashment of bank guarantee by the Export Promotion Council on account of failure of the assessee to utilise its export entitlements be considered as compensatory in nature to be eligible for deduction under section 37(1), where the failure to honour export commitment was a business decision taken by the assessee in view of losses incurred by it?**

CIT v. Regalia Apparels Pvt. Ltd. (2013) 352 ITR 71 (Bom.)

The assessee is engaged in the business of manufacturing of garments. The Apparel Export Promotion Council granted to the assessee entitlement for export of garments and knit wares. In consideration for export entitlements, the assessee furnished a bank guarantee in support of its commitment that it shall abide by the terms and conditions in respect of export entitlements. The failure to fulfill the obligation to export would render the bank guarantee liable to forfeiture.

The assessee started incurring losses and hence decided not to utilize the export entitlements, which consequently led to forfeiture of bank guarantee by the Export

Promotion Council. The assessee recorded the payment as penalty in its books. It, however, claimed deduction under section 37(1) on the ground that such expenditure was compensatory and not penal in nature.

The Assessing Officer contended that though expenditure was incurred for business purpose, the forfeiture of bank guarantee was in the nature of penalty and therefore, the same cannot be allowed as deduction.

The Tribunal, however, observed that the assessee had taken a conscious business decision not to honour its commitment of fulfilling the export entitlements in view of losses being suffered by it. The High Court concurred with the view of the Tribunal holding that there is no contravention of any provision of law and the forfeiture of the bank guarantee was compensatory in nature and therefore, allowable as deduction under section 37(1).

- 10. Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) even though the same is within the statutory limit prescribed under section 40(b)(v)?**

CIT v. Great City Manufacturing Co. (2013) 351 ITR 156 (All)

In this case, the Assessing Officer contended that the remuneration paid by the firm to its working partners was highly excessive and unreasonable, on the ground that the remuneration to partners (₹ 39.31 lakh) was many times more than the total payment of salary to all the employees (₹ 4.87 lakh). Therefore, he disallowed the excessive portion of the remuneration to partners by invoking the provisions of section 40A(2)(a).

On this issue, the High Court observed that section 40(b)(v) prescribes the limit of remuneration to working partners, and deduction is allowable up to such limit while computing the business income. If the remuneration paid is within the ceiling limit provided under section 40(b)(v), then, recourse to provisions of section 40A(2)(a) cannot be taken.

The Assessing Officer is only required to ensure that the remuneration is paid to the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of remuneration to the working partners and the remuneration is within the limits prescribed under section 40(b)(v). If these conditions are complied with, then the Assessing Officer cannot disallow any part of the remuneration on the ground that it is excessive.

The Allahabad High Court, therefore, held that the question of disallowance of remuneration under section 40A(2)(a) does not arise in this case, since the Tribunal has found that all the three conditions mentioned above have been satisfied. Hence, the remuneration paid to working partners within the limits specified under section 40(b)(v) cannot be disallowed by invoking the provisions of section 40A(2)(a).

11. Can unpaid electricity charges be treated as “fees” to attract disallowance under section 43B?

CIT v. Andhra Ferro Alloys P. Ltd. (2012) 349 ITR 255 (A.P)

On this issue, the Assessing Officer was of the view that electricity charges come within the ambit of section 43B and therefore, could be allowed as deduction only on payment basis. Therefore, he disallowed the unpaid electricity charges. The Tribunal, however, set aside the disallowance.

The Andhra Pradesh High Court observed that the provisions of section 43B do not incorporate electricity charges. Therefore, non-payment of electricity charges would not attract disallowance under section 43B since such charges cannot be termed as “fees”. The Court, therefore, held that deduction is allowable in respect of such electricity charges.

Capital Gains

12. Can exemption under section 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?

CIT v. Kamal Wahal (2013) 351 ITR 4 (Delhi)

The assessee sold a capital asset and invested the sale proceeds in purchase of a new house in the name of his wife. He claimed deduction under section 54F in respect of the new residential house purchased by him in the name of his wife. However, the same was denied by the Assessing Officer on the ground that, in order to avail the benefit under section 54F, the investment in the residential house should be made by the assessee in his own name.

The Tribunal, however, accepted the assessee's contention observing that since section 54F is a beneficial provision enacted for encouraging investment in residential houses, the said provision has to be interpreted liberally.

The Delhi High Court concurred with the Tribunal's view and observed that, for the purpose of section 54F, a new residential house need not necessarily be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. A similar view was upheld by this Court in *CIT v. Ravinder Kumar Arora (2012) 342 ITR 38*, where the new residential house was acquired in the joint names of the assessee and his wife and the Court had held that the assessee was entitled for 100% exemption under section 54F. In that case, it was further observed that section 54F does not require purchase of new residential house property in the name of the assessee himself. It only requires the assessee to purchase or construct a residential house.

Further, in this case, the Delhi High Court observed that the assessee had not purchased the new house in the name of a stranger or somebody who is unconnected with him, but

had purchased it in the name of his wife. The entire investment for purchase of new residential house had come out of the sale proceeds of the capital asset (of the assessee) and there was no contribution from his wife.

Hence, the Delhi High Court, having regard to the rule of purposive construction and the object of enactment of section 54F, held that the assessee is entitled to claim exemption under section 54F in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.

13. Would an assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point?

CIT v. Syed Ali Adil (2013) 352 ITR 0418 (A.P.)

The assessee-individual had inherited an ancestral house property, which he sold during the relevant previous year. Out of the sale consideration, he purchased two adjacent residential flats. The assessee claimed exemption under section 54 in respect of investment in both the residential flats, in view of the decision of the Karnataka High Court in *CIT v. Ananda Basappa (2009) 309 ITR 329*, wherein investment in two adjacent flats were considered eligible for exemption under section 54.

The Assessing Officer, however, restricted the exemption under section 54 only in respect of investment in one residential flat (including stamp duty paid for registration of the flat), contending that –

- (i) the two residential units were separated by a strong wall;
- (ii) the two flats were purchased from two different vendors under two separate sale deeds.

The Commissioner (Appeals), however, observed that the assessee was entitled to exemption under section 54 in respect of investment in both the flats, since the two flats had adjacent kitchens and toilets and also had a common meeting point. The Tribunal concurred with the view of the Commissioner (Appeals).

On appeal by the Revenue, the High Court referred to the Karnataka High Court decision in *CIT v. Ananda Basappa (2009) 309 ITR 329*, wherein it was observed that –

- (i) the expression “a residential house” in section 54(1) has to be understood in a sense that the building should be of residential nature and “a” should not be understood to indicate a singular number.
- (ii) where the flats are situated side by side and the builder had effected the necessary modification to make it as one unit, the assessee would be entitled to exemption under section 54 in respect of investment in both the flats, despite the fact that they were purchased by separate sale deeds.

The above ruling was also followed by the Karnataka High Court in *CIT v. K.G. Rukminamma (2011) 331 ITR 211*, wherein it was held that were a residential house was

transferred and four flats in a single residential complex were purchased by the assessee, all the four residential flats constituted “a residential house” for the purpose of section 54.

The Andhra Pradesh High Court, on the basis of the above rulings of the Karnataka High Court, held that in this case, the assessee was entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point.

Deductions from gross total income

- 14. Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee?**

CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.)

The assessee was in the business of manufacture of wires. It installed a windmill for power generation. The assessee claimed depreciation on windmill against income from power generation, which was eligible for deduction under section 80-IA. The balance depreciation was set off against the profits from manufacturing of wires, being a non-eligible business.

The Assessing Officer contended that depreciation relating to a business eligible for deduction under section 80-IA cannot be set off against non-eligible business income. Therefore, unabsorbed depreciation was to be carried forward to the subsequent year to be set off against the eligible business income of the assessee of that year.

The Tribunal observed that the balance depreciation of the eligible business is required to be carried forward for set-off against eligible business income of the next year while determining the profits eligible for deduction under section 80-IA in that year. However, the Tribunal noted that section 80-IA is a beneficial section permitting certain deduction in respect of certain income under Chapter VI-A. A provision granting tax incentive for economic growth should be construed liberally and any restriction placed should also be construed in a reasonable and purposive manner to advance the objects of the provision.

The High Court observed that it is a generally accepted principle that deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1). The assessee had incurred loss in eligible business after claiming depreciation. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed. It is thereafter that section 70(1) comes into play, whereby the assessee is entitled to set off the losses from one source against income from another source under the same head of income. The Court, therefore, held that the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible

business. However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction under section 80-IA in the subsequent year.

Note – The crux of the above decision can be explained with a simple example. Let us consider a company, X Ltd., having two units, Unit A and Unit B. If Unit A engaged in eligible business (say, power generation) has a profit of ₹100 lacs in A.Y.2013-14, before claiming depreciation of ₹120 lacs and Unit B engaged in non-eligible business (say, manufacture of wires) has a profit of ₹70 lacs, then, as per the above decision, the loss of ₹20 lacs (representing balance depreciation not set-off) pertaining to Unit A can be set-off against profit of ₹70 lacs of Unit B carrying on non-eligible business. Therefore, the net profit of ₹50 lacs would be taxable in the A.Y.2013-14. If in the next year, i.e. A.Y.2014-15, the net profits of Unit A and Unit B are ₹200 lacs and ₹80 lacs, respectively, then the eligible deduction under section 80-IA for that year would be ₹180 lacs (i.e., ₹200 lacs minus ₹20 lacs, being loss (representing balance depreciation) set-off in the A.Y.2013-14 against other income).

Assessment of various entities

15. Under which head of income is rental income from plinths inherited by individual co-owners from their ancestors taxable - “Income from house property” or “Income from other sources”? Further, would such income be assessable in the hands of the individual co-owners or in the hands of the Association of Persons?

Sudhir Nagpal v. Income-tax Officer (2012) 349 ITR 0636 (P & H)

As regards the head of income under which rental income from plinths is assessable, the High Court referred to the Division Bench judgment in *Gowardhan Das and Sons v. CIT* (2007) 288 ITR 481, wherein it was observed that it is the income from property consisting of any building or land appurtenant thereto which is assessed under section 22 and not the income from renting out of open land or some kutchha plinth only.

Therefore, the Court held that the income from letting out the plinths is assessable under section 56 as “Income from other sources” and not under the head “Income from house property”.

The second issue relates to whether such rental income is assessable in the hands of the individual co-owners or in the hands of the Association of Persons. To appreciate this issue, it is necessary to understand the complete facts of the case.

In the present case, five persons of the Nagpal family were co-owners of the agricultural land “Nagpal farms” inherited from their forefathers. The co-owners executed a power of attorney in favour of Mr. Sudhir Nagpal, one of the co-owners, appointing him to

construct plinths on the agricultural land and to further lease out such open plinths to any party on their behalf. The co-owners had, therefore, not purchased the land for the said purpose but had inherited the land. They were owners not in their joint capacity but in their individual capacity with a definite/defined proportion of share. The co-owners filed their individual returns of income disclosing their rental income and also paid tax on such income.

The Assessing Officer, however, issued notice under section 148 to all the co-owners of the property in the name of Mr. Sudhir Nagpal on the ground that there is an association of persons formed by the co-owners and therefore, income had escaped assessment in the hands of association of persons.

The assessee contended that since no land was purchased, therefore, the status of the co-owners cannot be treated as association of persons.

The Assessing Officer did not agree with the contention of the assessee and assessed the entire rental income from the plinths as income from other sources in the hands of the association of persons and determined the tax payable by applying section 167B(2). The Commissioner (Appeals) and the Tribunal confirmed the action of the Assessing Officer.

On appeal, the High Court observed that in order to assess individuals as “association of persons”, the individual co-owners should have joined their resources and thereafter, acquired property in the name of association of persons and the property should have been commonly managed. It is only in such a case that income could be assessed in the hands of “association of persons”. Mere accruing of income jointly to more persons than one would not constitute them an association of persons in respect of such income. In other words, unless the associates have done some acts or performed some operations together, which have helped to produce the income in question, they cannot be termed as an association of persons. Unless the members combine or join in a common purpose, it cannot be held that they have formed themselves into an association of persons.

In this case, the co-owners had inherited the property from their ancestors and there was nothing to show that they had acted as an association of persons. Thus, the High Court held that the rental income from the plinths has to be assessed in the status of individual and not association of persons and consequently, section 167B would not be attracted in this case.

Income-tax Authorities

- 16. Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature?**

Sahara Hospitality Ltd. v. CIT (2012) 211 Taxman 15 (Bom.)

On this issue, the Bombay High Court observed that, the provisions of section 127(1) stipulate, *inter alia*, that the income tax authority mentioned therein **may** give an

opportunity of being heard to the assessee, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him to any other Assessing Officer or officers subordinate to him.

The Bombay High Court held that the word "may" used in this section should be read as "shall" and such income-tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, wherever possible to do so, and thereafter, record the reasons for taking any action under the said section. "Reasonable opportunity" can only be dispensed with in a case where it is not possible to provide such opportunity. In such a case also, the authority should record its reasons for making the transfer, even though no opportunity was given to the assessee. The discretion of the authority is only to consider as to what is a reasonable opportunity in a given case and whether it is possible to give such an opportunity to the assessee or not. The authority cannot deny a reasonable opportunity of being heard to the assessee, wherever it is possible to do so.

Appeals and Revision

17. **Can an assessee file a revision petition under section 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified under section 139(5) on account of the error coming to the notice of the assessee after the specified time limit?**

Sanchit Software and Solutions Pvt. Ltd. v. CIT (2012) 349 ITR 404 (Bom.)

The assessee-company had electronically filed its return of income. It committed a mistake by including dividend income [exempt under section 10(34)] and long term capital gains on sale of shares [exempt under section 10(38)] in its return of income, though the same was correctly disclosed in the Schedule containing details of exempt income. The return was processed under section 143(1) denying the exemptions under section 10(38) and 10(34) and therefore, intimation under section 143(1) was served on the assessee raising a demand of tax. The assessee, on receiving the intimation, noticed the error committed and filed a revised return rectifying the error. However, the revised return was not sustainable as the same was filed beyond the period of limitation as provided under section 139(5). Later, the assessee filed an application for rectification under section 154 and also a revision petition under section 264.

The Commissioner of income-tax, while considering the revision petition, contended that the intimation under section 143(1) was based on the return of the assessee, in which the claims under section 10(34) and under section 10(38) were not made by the assessee. Hence, it cannot be said that the intimation under section 143(1) was erroneous, since the same was squarely based on the return filed by the assessee. Secondly, the power of Commissioner under section 264 is only restricted to the record available before the Assessing Officer which can be examined by the Commissioner. In the circumstances, the other evidence sought to be brought on record to establish the mistake committed by the assessee cannot be considered by the Commissioner under

section 264. The revision petition under section 264 was rejected by the Commissioner on the above grounds.

The High Court observed that the entire object of administration of tax is to secure the revenue for the development of the country and not to charge the assessee more tax than which is due and payable by the assessee. In this context, the High Court referred to the CBDT Circular issued as far back as 11th April, 1955 directing the Assessing Officer not to take advantage of the assessee's mistake. The High Court opined that the said Circular should always be borne in mind by the officers of the Revenue while administering the Act.

The High Court observed that, in this case, the Commissioner of income-tax had committed a fundamental error in proceeding on the basis that no deduction on account of dividend income and long-term capital gains under section 10 was claimed from the total income, without considering that the assessee had specifically sought to exclude the same as is evident from the entries in the relevant Schedule. Therefore, this was an error on the face of the order and hence, the same was not sustainable. Accordingly, the High Court set aside the order of Commissioner and remanded the matter for fresh consideration.

The High Court further directed the Assessing Officer to consider the rectification application filed by the assessee under section 154 as a fresh application received on the date of service of this order and dispose of the rectification application on its own merits, without awaiting the result of the revision proceedings before the Commissioner of Income-tax on remand, at the earliest.

Penalties

- 18. Can penalty under section 271(1)(c) be imposed if an assessee had wrongly claimed deduction of provision made for payment of gratuity in its return of income, though the same was shown as disallowed under section 40A(7) in the statement of particulars filed along with tax audit report under section 44AB?**

Price Waterhouse Coopers Pvt. Ltd. v. CIT (2012) 348 ITR 306 (S.C.)

The assessee is engaged in multi disciplinary management consultancy services. It had claimed deduction of provision made for payment of gratuity, though the annexure to the tax audit report in Form No. 3CD indicated that the provision towards payment of gratuity was not allowable under section 40A(7).

The Assessing Officer issued a notice to the assessee under section 148 for reopening the assessment. Thereafter, upon request, he furnished the reasons for reopening the assessment. It was then that the assessee realised its mistake and informed the Assessing Officer, by way of a letter, that there was no willful suppression of facts but a genuine mistake had been committed. Accordingly, the assessee filed a revised return on the same day and paid the tax due with interest.

The Assessing Officer, thereafter, initiated penalty proceedings under section 271(1)(c) and levied penalty at 300% of the tax sought to be evaded by the assessee, contending that the assessee has furnished inaccurate particulars of its income. The Tribunal reduced the penalty to 100% and the High Court confirmed the order of the Tribunal.

Considering the above facts, the Supreme Court observed that the tax audit report was filed along with the return and it unequivocally stated that the provision for gratuity was not allowable under section 40A(7). This fact indicates that the assessee made a computation error in its return of income. The error was also not noticed by the Assessing Officer who framed the assessment order and before whom, the tax audit report was also placed. The contents of the tax audit report showed that there was no question of the assessee concealing the income or furnishing any inaccurate particulars. Therefore, the Apex Court held that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. Therefore, the Apex Court held that imposition of penalty on the assessee was not justified and it reversed the decision of the High Court.

- 19. Can reporting of income under a different head be considered as tantamount to furnishing of inaccurate particulars or suppression of facts to attract penalty under section 271(1)(c)?**

CIT v. Amit Jain (2013) 351 ITR 74 (Delhi)

In this case, the assessee declared a particular income as short-term capital gains in his return. The Assessing Officer, on an interpretation of the relevant provisions and having regard to the nature of transactions, assessed such income as income from business. He further levied penalty under section 271(1)(c) on the ground that the assessee had furnished inaccurate particulars of his income.

The Commissioner (Appeals), however, cancelled the penalty. The Tribunal upheld the order of the Commissioner (Appeals), observing that the record reveals that the amount in question, which formed the basis of levy of penalty by the Assessing Officer, was honestly reported in the return. Therefore, merely because the Assessing Officer was of the opinion that the income fell under some other head cannot be reason enough to treat the particulars reported in the return as "inaccurate particulars" or as suppression of facts.

The High Court, after considering the above observations of the Tribunal and the decision of the Supreme Court in *CIT v. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158*, held that mere reporting of income under a different head would not characterize the particulars reported as "inaccurate" to attract levy of penalty under section 271(1)(c).

- 20. Can penalty under section 271(1)(c) be imposed on the ground of disallowance of a certain deduction under Chapter VI-A owing to the subsequent decision of the Supreme Court?**

CIT v. Celetronix Power India P. Ltd. (2013) 352 ITR 70 (Bom.)

In this case, the assessee had claimed deduction a particular section under Chapter VI-A relying on a judgment of the Bombay High Court. Subsequent to filing of its return, the

above judgment was reversed by the Supreme Court and accordingly, the deduction was not allowed at the time of assessment. Consequent to additions made on account of such disallowance, penalty was also imposed.

The Tribunal observed that for imposing penalty under section 271(1)(c), there should be concealment of income or furnishing of inaccurate particulars of income, which were missing in this case. The assessee had disclosed all material facts relevant for assessment and there was no concealment.

The Bombay High Court affirmed the decision of Appellate Tribunal deleting the penalty under section 271(1)(c) on the ground that the additions made on account of disallowance were neither due to the failure on the part of the assessee to furnish accurate particulars nor on account of furnishing inaccurate particulars.

- 21. In the case of an assessee liable to pay minimum alternate tax under section 115JB, can penalty under section 271(1)(c) be imposed on account of additions made in respect of certain capital expenditure, treated by the assessee as revenue expenditure, if, even after such additions to total income, the assessee is still assessable under section 115JB?**

CIT v. Amtek Auto Ltd. (2013) 352 ITR 394

The Assessing Officer levied penalty under section 271(1)(c), in respect of additions made on account of loss on sale of fixed asset, loss on sale of shares and expenses paid towards placement of preference shares. On appeal by the assessee, the Tribunal observed that the additions were based on a difference of opinion as to whether such expenses and losses were revenue or capital in nature, and not on account of any false claim made by the assessee. Further, even after such additions, the tax on total income was lower than the minimum alternate tax on book profit, consequent to which there was no change in the tax payable.

On appeal by the Revenue, the High Court observed that the assessee had disclosed the nature of transactions in its return. It was on the basis of the information disclosed and the interpretation of the provisions of the statute, the Assessing Officer found that such expenditure claimed by the assessee is not revenue expenditure but capital expenditure. The High Court, therefore, concurred with the observation of the Tribunal and held that merely for the reason that the assessee-company had claimed the expenditure to be revenue will not render it liable to penal proceedings, when there has been no concealment of income.

Deduction, Collection and Recovery of Tax

- 22. Can discount given to stamp vendors on purchase of stamp papers be treated as 'commission or brokerage' to attract the provisions for tax deduction under section 194H?**

CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC)

The principal issue in this case is whether stamp vendors are agents of the State Government who are being paid commission or brokerage or whether the sale of stamp

papers by the Government to the licensed vendors is on "principal-to-principal" basis involving a "contract of sale".

On this issue, the Gujarat High Court had in, *Ahmedabad Stamp Vendors Association v. Union of India* (2012) 348 ITR 378, observed that the crucial question is whether the ownership in the stamp papers passes to the stamp vendor when the treasury officer delivers stamp papers on payment of price less discount. The Gujarat Stamp Supply and Sales Rules, 1987 contemplates that the licensed vendor, while taking delivery of the stamp papers from the Government offices, is purchasing the stamp papers. The Rules also indicate that the discount which the licensed vendor has obtained from the Government is on purchase of the stamp papers.

If the licensed stamp vendors were mere agents of the State Government, no sales tax would have been leviable when the stamp vendors sell the stamp papers to the customers, because it would have been sale by the Government "through" stamp vendors. However, entry 84 in Schedule I to the Gujarat Sales Tax Act, 1969 specifically exempts sale of stamp papers by the licensed vendors from sales-tax. The very basis of the State Legislature enacting such exemption provision in respect of sale of stamp papers by the licensed vendors makes it clear that the sale of stamp papers by the licensed vendors to the customers would have, but for such exemption, been subject to sales tax levy. The question of levy of sales tax arises only because the licensed vendors themselves sell the stamp papers on their own and not as agents of the State Government. Had they been treated as agents of the State Government, there would be no question of levy of sales tax on sale of stamp papers by them, and consequently, there would have been no necessity for any exemption provision in this regard.

Therefore, although the Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of price less discount on "principal to principal" basis and there is no "contract of agency" at any point of time. The definition of "commission or brokerage" under clause (i) of the *Explanation* to section 194H indicates that the payment should be received, directly or indirectly, by a person acting on behalf of another person, *inter alia*, for services in the course of buying or selling goods. Therefore, the element of agency is required in case of all services and transactions contemplated by the definition of "commission or brokerage" under *Explanation (i)* to section 194H. When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to the retail customers, neither of the two activities (namely, buying from the Government and selling to the customers) can be termed as service in the course of buying and selling of goods. The High Court, therefore, held that discount on purchase of stamp papers does

not fall within the expression “commission or brokerage” to attract the provisions of tax deduction at source under section 194H.

The Supreme Court affirmed the above decision of the High Court holding that the given transaction is a sale and the discount given to stamp vendors for purchasing stamps in bulk quantity is in the nature of cash discount and consequently, section 194H has no application in this case.

- 23. Can an assessee carrying on commission agency business (i.e., business of arranging transportation of goods through lorries owned by other transporters) be made liable to deduct tax under section 194C, in respect of amount received from clients and passed on to the lorry owners/transporters (after retaining his booking commission)?**

CIT v. Hardarshan Singh (2013) 350 ITR 0427 (Delhi)

The assessee has four trucks and is in the business of transporting goods (hereinafter referred to as “own business”). He also carries on the business of a commission agent by arranging for transportation of goods through other transporters (hereinafter referred to as “lorry booking business”). In respect of his own business, the payments received by the assessee were after deduction of tax.

The issue under consideration is whether the assessee can be treated as the “person responsible for making the payment” under section 194C in respect of amount collected from clients and paid to the lorry owners/transporters, and consequently, be made liable to deduct tax at source.

The assessee contended that, as far as the lorry booking business is concerned, he has no contract of carriage with any other person. The contract is between the clients and the lorry owners/transporters, in which the assessee only acts as a facilitator or as an intermediary. His income is only the booking commission, which he retains out of the amount collected from the clients. The remaining amount is passed on entirely to the lorry owners/transporters.

The Assessing Officer and the Commissioner, however, did not agree with this contention of the assessee and were of the view held that there was a privity of contract between the assessee and the clients for carriage of goods and that the assessee was not a mere intermediary or facilitator.

The Tribunal, noting that the assessee has not done the work of actual transportation of goods and earned only commission, held that the assessee has no privity of contract for carriage of goods with the clients and he merely acted as a facilitator or intermediary. Therefore, the assessee was not liable to deduct tax at source, and accordingly disallowance under section 40(a)(ia) was not attracted in this case.

The Revenue contended before the High Court that the assessee was the “person responsible for paying” as provided in section 194C read with section 204. The High Court observed that this contention was tenable only if there was privity of contract between the assessee and its clients. The High Court also noted that the facts of the case were similar to the case of *CIT v. Cargo Linkers (2009) 179 Taxman 151 (Delhi)*, where the principal contract was between the exporter and the airline. In that case, it was held that the assessee had merely functioned as an intermediary, and hence, it was not the “person responsible for deduction of tax” in terms of section 194C.

The High Court, applying the rationale of the above ruling to the case on hand, held that, in this case also, the assessee mainly acted as an intermediary or facilitator for which he received commission, and hence, he was not the “person responsible for making the payment” in terms of section 194C.

PART – III : QUESTIONS AND ANSWERS

QUESTIONS

Basic Concepts

1. Mr. Hariharan is a retail trader and his returned income for the last five years ranged between ₹ 5 lakh to ₹ 7 lakh. Mr. Hariharan celebrated his silver wedding anniversary on 2nd March, 2013 by hosting a grand cruise party in the luxury cruise liner “The Oyster”, for which he had spent ₹ 20 lakh. The Assessing Officer, in the course of scrutiny assessment of Mr. Hariharan, asked him to explain the source of such expenditure. The explanation offered by Mr. Hariharan that the same was out of his savings for the last ten years, was not found satisfactory by the Assessing Officer, since two years ago, he had spent to tune of ₹ 25 lakh on the lavish wedding of his daughter. You are required to examine the tax consequences.

Incomes which do not form part of total income

2. (i) Explain with the aid of a recent case law, whether the provisions of section 14A disallowing expenditure incurred in respect of exempt income, would be applicable in case of expenditure incurred on income, in respect of which deductions are permissible under Chapter VI-A.
- (ii) A charitable institution was registered under section 12AA in April, 2010, with the main object of “advancement of general public utility”. Its trading receipts for the first two years, i.e. P.Y.2010-11 and P.Y.2011-12, were ₹ 8 lakh and ₹ 22 lakh, respectively. The institution claimed and was allowed benefit of exemption under section 11 for both the years. During the P.Y.2012-13, its trading receipts were ₹ 26 lakh. The Assessing Officer denied the benefit of exemption under section 11 to the institution. The institution, however, contended that it was entitled to the benefit of exemption under section 11 for the P.Y. 2012-13, since it continues to be

registered under section 12AA and has been enjoying the benefit of exemption for the last two years i.e., from the time of its registration. Discuss the correctness of contention of the charitable institution.

Profits and gains of business or profession

3. Mr. Ganesh carried on the business of purchase and sale of agricultural commodities. He borrowed loans from Tamil Nadu State Financial Corporation and United Bank of India and has not paid interest as detailed hereunder:

	Particulars	₹
(i)	Tamil Nadu State Financial Corporation (Previous years 2009-10, 2010-11 & 2011-12)	27,00,000
(ii)	United Bank of India (Previous years 2010-11 & 2011-12)	48,00,000
		75,00,000

Tamil Nadu State Financial Corporation and United Bank of India, while restructuring the loan facilities of Mr. Ganesh during the financial year 2012-13, converted the above interest arrears as loan repayable in 60 and 48 equal installments, respectively.

During the year ended 31.3.2013, Mr. Ganesh paid nine installments to Tamil Nadu State Financial Corporation and six installments to United Bank of India.

Mr. Ganesh claimed the entire interest of ₹ 75,00,000 as an expenditure while computing the income from business of purchase and sale of agricultural commodities for the financial year 2012-13.

Discuss whether his claim is valid and if not, what is the amount of interest, if any, allowable as deduction while computing the business income of Mr. Ganesh for the A.Y.2013-14.

4. Discuss, with the aid of case laws, whether the following expenditure are revenue or capital in nature -
- Corporate membership fee paid by a company to the golf club, if the membership is for a limited period of six years;
 - Amount paid for purchase of second hand medical equipment by a doctor for use as spare parts for existing equipment in his own clinic;
 - Expenditure incurred by a company on alteration of a dam constructed by the State Government to ensure -
 - sharing of water with the State Government without having any right or ownership in the dam or water; and
 - adequate supply of water for the super smelter plant owned by the company, in the absence of which it would not be able to function.

- (iv) Expenditure incurred on total reconditioning and overhauling of machinery, which broke down several years ago, to make the same functional and increase its useful life by replacing many vital parts, overhauling and repairing of its power transmission unit, replacing electronic panel, geometrical aligning and painting of machines.
- (v) Expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business, where the project was abandoned without creating a new asset.

Capital Gains

5. Mr. Abhinav was carrying on the textile business as a proprietorship concern, Abhinav Textiles. On 1.4.2012 the business of Abhinav Textiles was succeeded by ABV Textile Private Limited and all the assets and liabilities of Abhinav Textiles on that date became the assets and liabilities of ABV Textile Private Limited and Mr. Abhinav was given 60% share in the share capital of the company. No other consideration was given to Mr. Abhinav on account of this succession.

The assets and liabilities of Abhinav Textiles transferred to the company included an urban land which was acquired by Mr. Abhinav on 1.7.2009 for ₹ 7,40,000. The company sold the same on 30.03.2013 for ₹ 12,00,000.

Discuss the tax implications on account of such succession and the subsequent sale of urban land by the company. Compute the capital gains chargeable to tax in the hands of the company for A.Y.2013-14. [CII of F.Y.2009-10 : 632; F.Y.2012-13 : 852]

6. "The Assessing Officer can make a reference to the Valuation Officer under section 55A only in a case where the sale consideration declared by the assessee, based on the estimate made by a registered valuer, is, in his opinion, less than the fair market value of the asset" – Discuss the correctness or otherwise of this statement.

Income from other sources

7. Discuss the tax implications under section 56(2) in respect of each of the following transactions -
 - (i) A (P) Ltd. issued 50,000 equity shares of ₹ 10 each at a premium of ₹ 7. The fair market value of each share on the date of issue is ₹ 15.
 - (ii) B (P) Ltd. purchased 10,000 equity shares of C(P) Ltd. at ₹ 25 per share. The fair market value of the share on the date of transaction is ₹ 35.
 - (iii) D's son transferred a house property to D HUF without any consideration. The stamp duty value of the house property is ₹ 15 lakh.
 - (iv) Miss E received bullion worth ₹ 75,000 from her friend on her birthday.
 - (v) Mr. F's land was acquired by the Government in January 2011. He received interest of ₹ 2,70,000 on enhanced compensation in March 2013, out of which

₹ 15,000 related to the year 2010-11, ₹1,25,000 related to the year 2011-12, ₹ 1,30,000 related to the year 2012-13.

Deductions from Gross Total Income

8. ABC Ltd. raises the following issues in connection with its eligibility for claiming deduction under section 80-IB for your consideration and advice for the A.Y. 2013-14:
 - (i) It operates two separate industrial units. One unit is eligible for deduction under section 80-IB, while the other unit is not eligible for such deduction. If the eligible unit has profit and the other unit has loss, should it claim deduction after setting off the loss of the other unit against profit of the eligible unit?
 - (ii) If the company had not claimed deduction under section 80-IB in the first three years, can it claim the deduction for the remaining years during the period of eligibility?
 - (iii) Can DEPB benefit and Duty Drawback be treated as “profit derived from the business of the industrial undertaking” to be eligible for deduction under section 80-IB?
 - (iv) Can it treat the persons employed by it on casual or contractual basis as workers to satisfy the condition of employment of ten or more “workers” for availing benefit of deduction under section 80-IB?

Assessment of individuals

9. The details given hereunder relate to two non-residents, Mr. Frank Lampard, an English football player and his sister, Ms. Eva Lampard, a magician for the A.Y.2013 -14–

	Particulars	Mr. Frank Lampard	Ms. Eva Lampard
(1)	Participation in football tournaments in India	₹ 25 lakh	
(2)	Winnings from horse races (net) in India	₹ 34,550	
(3)	Contribution of an article relating to the history of the football game in a leading magazine in India	₹ 25,000	
(4)	Performance in a magic show in India		₹ 3 lakh

With reference to the provisions of the Income-tax Act, 1961, you are required to –

- (i) Compute their tax liability for the A.Y.2013-14.
 - (ii) Discuss whether the above income are subject to deduction of tax at source.
 - (iii) Explain whether it is necessary for them to file their return of income for A.Y.2013-14.
10. Mr. Vaibhav, a resident individual aged 62, has the following income for the A.Y.2013-14 –
 - (i) Rental income of ₹15,000 per month.

- (ii) Income under the head "Profits and gains of business or profession" (computed) – ₹ 45 lakh.
- (iii) Long-term capital gains taxable under section 112 (computed) - ₹ 5 lakh.
- (iv) Interest on bank fixed deposits – ₹ 23,000.

One of his businesses is eligible for deduction@100% of profits under section 80-IA for A.Y.2013-14. The profit from such business included in the business income is ₹ 28 lakh. Compute the tax payable by Mr. Vaibhav, assuming that he has invested ₹ 1 lakh in PPF during the P.Y.2012-13.

Assessment of firms

11. M/s. XYZ, a firm, consisting of three partners namely, X, Y and Z, carried on the business of purchase and sale of electronic equipments in wholesale and manufacture and sale of steel furniture under a deed of partnership executed on 1.4.2008. X, Y and Z were partners in their individual capacity.

The deed of partnership provided for payment of salary amounting to ₹ 2,10,000 each to X and Y, who were the working partners. A new deed of partnership was executed on 1.10.2012 which, apart from providing for payment of salary to the two working partners as mentioned in the deed of partnership executed on 1.4.2008, for the first time provided for payment of simple interest @ 12% per annum on the balances standing to the credit of the Capital accounts of partners from 1.4.2012.

The firm was dissolved on 31.3.2013 and the Capital assets of the firm were distributed among the partners on 15.4.2013. The net profit of the firm for the year ending 31.3.2013, after payment of salary to the working partners and debit/credit of the following items to the Profit and Loss Account, was ₹ 2,75,000:

- (i) Interest@12% p.a. for the period from 1.4.2012 to 31.3.2013 amounting to ₹ 75,000 paid to the partners on the balances standing to the credit of their capital accounts.
- (ii) Interest@12% p.a. for the period from 1.4.2012 to 31.3.2013 amounting to ₹ 25,000 paid to the partners on the balances standing to the credit of their current accounts
- (iii) Interest amounting to ₹ 18,000 paid to the Hindu undivided family of partner X @ 18% per annum.
- (iv) Payment of ₹ 40,000 towards purchase of smart phones (electronic equipment) made by crossed cheque on 1.9.2012.
- (v) ₹ 3,00,000 being the value of car received as gift from a manufacturer for achieving sales target.
- (vi) Depreciation amounting to ₹ 25,000 on motor car bought and used exclusively for business purposes, but not registered in the name of the firm.
- (vii) Depreciation under section 32(1)(ii) amounting to ₹ 37,500 of new machinery bought and installed for manufacture of steel furniture on 1.11.2012 at a cost of

₹ 5,00,000. There was no increase in the installed capacity as a result of the installation of the new machinery.

- (viii) Interest amounting to ₹ 32,000 received from bank on fixed deposits made out of surplus funds.

The firm furnishes the following information relating to it:

- (a) Closing stock-in-trade was valued at ₹ 45,000 as per the method of lower of cost or market rate consistently followed by it. The market value of the closing stock-in-trade was ₹ 52,000.
- (b) Brought forward business loss relating to the assessment year 2012-13 was ₹ 65,000.
- (c) The fair market value of the capital assets as on 31.3.2013 was ₹ 20,00,000 and the cost of their acquisition was ₹ 15,00,000.

Compute the total income of M/s. XYZ for the assessment year 2013-14 and furnish explanations for the treatment of the various items given above.

Assessment of companies

12. Alpha Ltd., an Indian company, receives the following dividend income during the P.Y. 2012-13 -

- (1) from shares held in Beta Inc., a foreign company, in which it holds 25% of nominal value of equity share capital – ₹ 80,000;
- (2) from shares held in Gamma Inc., a foreign company, in which it holds 30% of nominal value of equity share capital – ₹ 1,85,000.
- (3) from shares held in Indian subsidiaries, on which the dividend distribution tax payable under section 115-O, has been paid by such subsidiaries – ₹ 90,000.

Alpha Ltd. has paid remuneration of ₹ 18,000 for realising dividend, the break up of which is as follows –

- (1) ₹ 4,000 (Beta Inc.)
- (2) ₹ 9,000 (Gamma Inc.)
- (3) ₹ 5,000 (Indian subsidiaries)

The business income of Alpha Ltd. computed under the provisions of the Act is ₹ 35 lakh. Compute the total income and tax liability of Alpha Ltd., ignoring MAT. Assuming that Alpha Ltd. has distributed dividend of ₹ 4,20,000 in February, 2013, compute the additional income-tax payable by it under section 115-O.

13. The net profit of Omicron Ltd. as per profit and loss account for the previous year 2012-13 is ₹ 220 lacs after debiting/crediting the following items:
- (i) Provision for income-tax : ₹ 12 lacs

- (ii) Dividend Distribution tax : ₹ 1 lac
- (iii) Transfer to General Reserve : ₹ 2 lacs
- (iv) Provision for deferred tax : ₹ 10 lacs
- (v) Proposed Dividend : ₹ 6 lacs
- (vi) Preference Dividend: ₹ 2 lacs
- (vii) Provision for permanent diminution in value of investments : ₹ 3 lacs
- (viii) Provision for gratuity based on actuarial valuation: ₹ 2 lacs
- (ix) Depreciation debited to Profit & Loss Account is ₹ 14 lacs. This includes depreciation on revaluation of assets to the tune of ₹ 3 lacs.
- (x) Agricultural income: ₹ 4 lacs (Expenditure to earn agricultural income : ₹ 1 lac)
- (xi) Long term capital gains exempt under section 10(38) : ₹ 6 lacs (Expenditure to earn long-term capital gains : ₹ 1 lac)
- (xii) Profit from unit established in Special Economic Zone : ₹ 22 lacs

Brought forward losses and unabsorbed depreciation as per books of the company are as follows:

Previous year	Brought forward loss (₹ in lacs)	Unabsorbed Depreciation (₹ in lacs)
2009-10	3	4
2010-11	2	-
2011-12	8	5

Compute the book profit of Omicron Ltd. under section 115JB for the A.Y. 2013-14.

14. "The Finance Act, 2012 has introduced special scheme of taxation in case of conversion of an Indian branch of a foreign company engaged in banking business in India into an Indian subsidiary company" – Elucidate.

Assessment Procedure

15. Mr. X, aged 61 years, is a resident and ordinarily resident in India for the A.Y.2013-14. He owns a house property in Singapore and he has a bank account in the Bank of Singapore. He contends that since his total income of ₹ 1,50,000 for the P.Y.2012-13, comprising of income from house property and bank interest, is less than the basic exemption limit, he need not file his return of income for A.Y.2013-14. You are required to discuss -
- (a) the correctness of contention of Mr. X.

- (b) whether the income of Mr. X can be deemed to have escaped assessment for the purpose of section 147? If so, what is the time limit for issue of notice under section 148?

Appeals and Revision

16. An order of assessment was passed under section 143(3) in respect of X Ltd. for A.Y.2006-07 on 21.5.2008, allowing the deduction under section 36(1)(vii) and 36(1)(iii). Thereafter, a notice of reassessment issued under section 148 on 28.3.2011 and an order of reassessment was passed under section 147 on 30.12.2011, which did not deal with the above deductions.

On 21.3.2013, the Commissioner passed an order under section 263 disallowing the deductions under section 36(1)(vii) and section 36(1)(iii).

X Ltd. contended that the order passed by the Commissioner under section 263 is barred by limitation since the period of 2 years from the end of the financial year in which the order sought to be revised was passed, had lapsed. However, the Commissioner contended that the period of limitation shall be reckoned from the date of order under section 147 and not from the date of the original assessment order under section 143(3), applying the doctrine of merger. Discuss the correctness of contention of the Commissioner.

Transfer Pricing

17. Are transfer pricing provisions under the Income-tax Act, 1961 attracted in respect of the following cases? Explain.
- (i) Ms. Poorna, a resident Indian, is a director of Sigma Ltd, an Indian company. Sigma Ltd. pays salary of ₹ 60 lakh per annum to Mr. Pranav, who is Ms. Poorna's son.
 - (ii) Omicron Ltd., an Indian company, has two units Phi & Rho. Phi, which commenced business three years back, is engaged in the development of a highway project, for which purpose an agreement has been entered into with the Central Government. Rho is carrying on the business of trading in steel. Rho transfers steel to the value of ₹ 70 lakh to Phi for ₹ 40 lakh.
 - (iii) Transfer of process patents by Omega Ltd. to Theta Inc., an Australian company, which guarantees 20% of the borrowings of Omega Ltd.
 - (iv) Legal services provided by Alpha Inc., USA to Beta Ltd., an Indian company. Alpha Inc. is a "specified foreign company" as defined in section 115BBD, in relation to Beta Ltd.
 - (v) Sale of tools and equipment by Gamma Ltd., an Indian company, to Delta Inc., a Danish company. Gamma Ltd. is the subsidiary of Delta Inc.

Penalties

18. (a) XYZ Ltd. is a public limited company, registered as a Category-I merchant banker with SEBI. It is engaged in the business of stock broking, investment and trading in shares and securities. The company had taken a loan from the Investment Trust of India. During the previous year 2012-13, XYZ Ltd. had transferred shares of ABC Ltd. held by it to the Investment Trust of India. Therefore, in the assessment year 2013-14, XYZ Ltd. was liable to pay the loan amount to the Investment Trust of India and it also had a right to receive the sale price of the shares of ABC Ltd. transferred to Investment Trust of India. In order to avoid the unnecessary circular transfer of shares, both the parties agreed to set-off the amount payable and receivable by way of passing journal entries and the balance loan amount was paid by XYZ Ltd. by way of an account payee cheque. The amount of loan settled by way of passing journal entries exceeded ₹ 20,000.

The Assessing Officer passed the assessment order levying penalty under section 271E for the contravention of the provisions of section 269T on the argument that since section 269T put an obligation on XYZ Ltd. to repay loan only by way of an account payee cheque or an account payee draft, the settlement of a portion of the loan by passing journal entry would be a mode otherwise than by way of an account payee cheque or an account payee draft and therefore, the penal provisions under section 271E were attracted.

XYZ Ltd. argued that the transaction of repayment of loan or deposit by way of adjustment through book entries was carried out in the ordinary course of business and it is a bonafide transaction. XYZ Ltd. further contended that section 269T mentions that in a case where the loan or deposit is repaid by an outflow of funds, the same has to be by an account payee cheque or an account payee demand draft. However, in case the discharge of loan or deposit is in a manner otherwise than by an outflow of funds, as is the situation in the present case, the provisions of section 269T would not apply.

Discuss the correctness of contention of XYZ Ltd.

- (b) "The Finance Act, 2012 has made penal provisions more stringent to deter delay in furnishing of TDS/TCS statement and/or for furnishing incorrect information in the TDS/TCS statement" – Discuss the correctness or otherwise of this statement.

Wealth-tax

19. State, with reasons, whether the following constitute assets chargeable to wealth tax on the valuation date 31.3.2013:
- (i) Residential house owned by A Ltd. and allotted to an employee drawing a gross salary of ₹8 lakh per annum
 - (ii) Guest house owned by B Ltd. in a rural area

- (iii) Silver and gold in the jeweller Mr. C's shop.
 - (iv) Cash balance of ₹ 4 lacs with Mr. D.
 - (v) Shares of various companies worth ₹ 2,00,000 purchased by Mr. E in the name of his daughter-in-law.
 - (vi) Aircraft used for the purpose of transportation of goods for the business of F Ltd.
 - (vii) Motor car used in the business of running on hire by Mr. G.
 - (viii) Dr. H, a dentist who has his own clinic, is in possession of surgical instruments used for his professional activity. The value of all such instruments was ₹ 10 lacs.
 - (ix) Urban land located at Jaipur, purchased by Mr. I for ₹ 2 lacs in August 2010, in the name of his son who is suffering from a disability specified under section 80U of the Income-tax Act, 1961. The age of his son on 31.3.2013 was 17 years and value of land was ₹ 5 lacs.
 - (x) Fixed Deposits held by Mr. J with Bank of India ₹ 2 lacs.
20. A firm consists of three partners Anirudh, Anish and Aarush, having a capital contribution of ₹ 8,00,000, ₹ 7,00,000 and ₹ 5,00,000, respectively, and profit sharing ratio of 1:2:3. The value of assets and liabilities of the firm as on 31.3.2013 is as under:

	₹
(i) Value of assets located outside India	30,00,000
(ii) Value of assets located in India	70,00,000
(iii) Debts incurred in relation to assets in India	20,00,000

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

SUGGESTED ANSWERS/HINTS

1. If any expenditure is incurred by an assessee in any financial year in respect of which he is not able to offer explanation about the source of such expenditure or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such unexplained expenditure may be deemed as income of the assessee for such financial year as per section 69C.

Therefore, in this case, since the Assessing Officer is not satisfied with the explanation offered by Mr. Hariharan, the expenditure of ₹ 20 lakh incurred by him in hosting a grand cruise party may be deemed as his income as per section 69C.

Further, such unexplained expenditure which is deemed as the income of Mr. Hariharan shall not be allowed as deduction under any head of income.

Where the total income of Mr. Hariharan includes such unexplained expenditure of ₹ 20 lakh, which is deemed as his income under section 69C, such deemed income would be

taxed at the maximum marginal rate of 30% as per section 115BBE (plus education cess@2% and secondary and higher education cess@1%).

Further, no basic exemption or allowance or expenditure shall be allowed to him under any provision of the Income-tax Act, 1961 in computing such deemed income.

Penalty under 271(1)(c) is also leviable for concealment of income.

2. (i) Chapter III, comprising sections 10 to 13B, deals with incomes which do not form part of total income. As per section 14A(1), for the purposes of computing the total income under Chapter IV, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act, 1961. Therefore, from a plain reading of section 14A, it is apparent that the intention of the section is to disallow expenditure in relation to income which does not form part of total income i.e., expenditure in relation to income exempt under section 10 to 13B.

Further, the Delhi High Court, in *CIT v. Kribhco (2012) 209 Taxman 252*, observed that section 14A is not applicable for deductions, which are permissible and allowed under Chapter VIA. Section 14A is applicable only if an income is not included in the total income as per the provisions of Chapter III of the Income-tax Act, 1961. Deductions under Chapter VIA are different from the exclusions/exemptions provided under Chapter III.

The words “do not form part of the total income under this Act” used in section 14A are significant and important. Income which qualifies for deductions under section 80C to 80U has to be first included in the total income of the assessee and then allowed as a deduction. However, income referred to in Chapter III do not form part of the total income and therefore, as per section 14A, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to such income which does not form part of the total income.

Therefore, the Delhi High Court held that no disallowance can be made under section 14A in respect of income included in total income in respect of which deduction is allowable under section 80C to 80U.

- (ii) The contention of the charitable institution is not correct.

Under sections 11 and 12, income of any charitable institution is exempt if such income is applied for charitable purposes in India and such institution is registered under section 12AA.

The definition of “charitable purpose” under section 2(15) includes “advancement of any other object of general public utility” as charitable purpose provided that the institution does not involve carrying on of any activity in the nature of trade, commerce or business.

However, as per the second proviso to section 2(15), “advancement of any other

object of general public utility” would continue to be a “charitable purpose” in the relevant previous year even if the institution carries on a trading activity, if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business does not exceed ₹ 25 lakh in that year. However, if such receipts exceed ₹ 25 lakh in the next year, then the institution will lose its charitable status for that year.

Thus, an institution pursuing “advancement of object of general public utility” may be a charitable institution in one year and not a charitable institution in another year depending on the aggregate value of receipts from commercial activities.

Therefore, no exemption would be available to an institution for the previous year in which the receipts from commercial activities exceed ₹ 25 lakh. However, this temporary excess in one year may not be treated as altering the very nature of the institution so as to lead to cancellation of its registration.

The denial of exemption where the trading receipts exceed the specified threshold of ₹ 25 lakh would be compulsory by operation of law and would not be dependent on the registration being cancelled. Accordingly, section 13 has been amended by the Finance Act, 2012 to ensure that such institution does not get benefit of tax exemption under section 11 or 12 in the year in which its receipts from commercial activities exceed the specified threshold of ₹ 25 lakh, whether or not the registration is cancelled.

Therefore, in this case, the charitable institution whose main object is “advancement of general public utility” would not be entitled to tax exemption under section 11 for A.Y.2013-14, since its receipts from commercial activities for the P.Y.2012-13 exceeded ₹ 25 lakh, irrespective of the fact that it continues to be registered under section 12AA.

Note – The threshold limit in respect of trading receipts under section 2(15) was ₹ 10 lakh for P.Y.2010-11 and ₹ 25 lakh for P.Y.2011-12. In this case, the trading receipts of the charitable institution for the P.Y.2010-11 was less than ₹ 10 lakh and P.Y.2011-12 was less than ₹ 25 lakh. Therefore, it was entitled to benefit of exemption under section 11 in those years.

3. Section 43B allows deduction only on “payment” basis in respect of certain expenditure specified therein, irrespective of the method of accounting followed by the assessee. Such expenditure would be allowed as deduction in the previous year in which the liability to pay such sum was incurred only if the payment is made on or before the due date for filing the return of income under section 139(1). If the payment is made after the stipulated due date, deduction can be claimed only in the year of actual payment. Such specified expenditure include, *inter alia*,
 - (1) interest on loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation; and

(2) interest on any loan or advances from a scheduled bank.

A clarification has been given by way of *Explanations 3C and 3D* below section 43B. These explanations clarify that if any sum payable by the assessee as interest on any such loan or borrowing or advance is converted into a loan or borrowing or advance, the interest so converted and not "actually paid" shall not be deemed as actual payment, and hence, would not be allowed as deduction. The clarificatory explanations reiterate the rationale that conversion of interest into a loan or borrowing or advance does not amount to actual payment. Therefore, ₹ 75,00,000, being the aggregate of interest on loan (from a State Financial Corporation and a scheduled bank) converted into loan during the P.Y.2012-13 will not be allowed as deduction in that year. Consequently, the claim of Mr. Ganesh is not valid.

The manner in which the converted interest will be allowed as deduction has been clarified in *Circular No.7/2006 dated 17th July, 2006*. The unpaid interest, whenever actually paid to the bank or financial institution, will be in the nature of revenue expenditure deserving deduction in the computation of income. Therefore, irrespective of the nomenclature, the deduction will be allowed in the previous year in which the converted interest is actually paid.

Hence, the repayment of ₹ 10,05,000 during the financial the year 2012-13, as detailed hereunder, will be allowed as deduction while computing the business income of Mr. Ganesh in the assessment year 2013-14.

Particulars	₹
Paid to Tamil Nadu State Financial Corporation (₹ 27,00,000 x 9/60)	4,05,000
Paid to United Bank of India (₹ 48,00,000 x 6/48)	6,00,000
	10,05,000

4. (i) Revenue Expenditure

This issue came up in *CIT v. Groz Beckert Asia Ltd. (2013) 351 ITR 196 (P & H) (FB)*, wherein the High Court made the following observations –

- (1) The corporate membership was obtained for running the business to earn profit and the membership was for a limited period of six years;
- (2) By such membership, a privilege to use facilities of a club alone are conferred on the assessee and that too for a limited period.
- (3) Such expenses were incurred for running the business with a view to provide benefits to the assessee.
- (4) Such membership does not bring into existence an asset or an advantage for the enduring benefit of the business.

The High Court, therefore, held that by subscribing to the membership of a club for a limited period, no capital asset is created or comes into existence and consequently, the corporate membership fees cannot be treated as capital in nature.

(ii) Revenue Expenditure

This issue came up before the Karnataka High Court in *Dr. Aswath N. Rao v. ACIT (2010) 326 ITR 188*, wherein it was held that since the second hand machinery purchased by the assessee was for use as spare parts for the existing old machinery, the amount paid as purchase price is allowable as revenue expenditure under section 37.

(iii) Revenue Expenditure

This issue came up before the Rajasthan High Court in *CIT v. Hindustan Zinc Ltd. (2010) 322 ITR 478*. The High Court observed that the expenditure incurred by the assessee for commercial expediency relates to carrying on of its business. The expenditure is of such nature which a prudent businessman may incur for the purpose of his business. The operational expenses incurred by the assessee solely intended for furtherance of the enterprise cannot be treated as a capital expenditure.

(iv) Capital Expenditure

This issue came up before the Delhi High Court in *Bharat Gears Ltd. v. CIT (2011) 337 ITR 368*, wherein the Court made the following observations –

- (1) The machinery which was repaired had outlived its utility and was lying idle in broken down condition, totally unfit for production;
- (2) Total reconditioning and overhauling of machinery was undertaken;
- (3) The expenditure was of such nature that it brought into existence a new machinery altogether;
- (4) Consequently, there was a benefit of enduring nature to the assessee.

Therefore, the Delhi High Court held that such expenditure is in the nature of capital expenditure on which depreciation can be claimed.

(v) Revenue Expenditure

On this issue, the Delhi High Court, in *CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)*, observed that whether or not a new business/asset comes into existence would become a relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature. In this case, since the feasibility studies were conducted by the assessee for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of revenue nature.

5. Taxability in case of succession of Abhinav Textiles by ABV Textiles Private Limited

As per provisions of section 47(xiv), in case a proprietorship concern is succeeded by a company in the business carried by it and as a result of which any capital asset is transferred to the company, then the same shall not be treated as transfer and will not be chargeable to capital gains tax in case the following conditions are satisfied:

- (1) all the assets and liabilities of sole proprietary concern becomes the assets and liabilities of the company.
- (2) the shareholding of the sole proprietor in the company is not less than 50% of the total voting power of the company and continues to so remain as such for a period of 5 years from the date of succession.
- (3) the sole proprietor does not receive any consideration or benefit in any form from the company other than by way of allotment of shares in the company.

In the present case, all the conditions mentioned above are satisfied. Therefore, the transfer of capital assets by Abhinav Textiles to ABV Textiles Private Limited shall not attract capital gain tax provided Mr. Abhinav continues to hold 50% or more of voting power of ABV Textiles Private Limited for a minimum period of 5 years.

Taxability in case of transfer of land by ABV Textiles Private Limited

As per the provisions of section 49(1) and *Explanation 1* to section 2(42A), in case a capital asset is transferred in the circumstances mentioned in section 47(xiv), the cost of the asset in the hands of the company shall be the cost of the asset in the hands of the sole proprietor. Consequently, for the determining the period of holding of the asset, the period for which the asset is held by the sole proprietor shall also be considered.

Therefore, in the present case, the urban land shall be a long-term capital asset since it is held for more than 36 months by ABV Textile Private Limited and Abhinav Textiles taken together. Cost of acquisition of land in the hands of the company shall be ₹ 7,40,000 i.e., the purchase cost of the land in the hands of Mr. Abhinav.

Computation of capital gain chargeable to tax in the hands of ABV Textile Private Ltd.

Particulars	₹
Net Sale Consideration	12,00,000
Less: Indexed cost of acquisition $7,40,000 \times \frac{852}{852}$ (Refer Note 2)	<u>7,40,000</u>
Long-term capital gain	<u>4,60,000</u>

Note: The year of transfer and the year in which the company first held the asset are the same in this case, which is the reason why the numerator and the denominator for calculating the indexed cost of acquisition is the same. Therefore, in effect, there is no benefit of indexation in this case. However, as per the view expressed by Bombay High Court in *CIT v. Manjula J. Shah (2012) 249 CTR 270*, in case the cost of acquisition of

the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would have to be calculated by taking the CII of F.Y.2009-10, being the year in which the capital asset was acquired by the previous owner, Mr. Abhinav, as the denominator. The indexed cost of acquisition would be ₹ 9,97,595

$\left[\frac{852}{632} \times 740000 \right]$ and the capital gains chargeable to tax would be ₹ 2,02,405 (₹ 12,00,000 – ₹ 9,97,595).

6. The statement is not correct.

Section 55A has been amended by the Finance Act, 2012, with effect from 1st July, 2012, to provide that the Assessing Officer may refer to the Valuation Officer in a case where the value of asset, as claimed by the assessee, is in accordance with the estimate made by a registered valuer, and the Assessing Officer is of the opinion that the value so claimed is **at variance** with the fair market value of the asset.

As a result, the Assessing Officer can now make a reference to the Valuation Officer even in a case where the fair market value of the asset as on 01.04.1981 is taken as the cost of the asset, if he is of the view that there is any variation between the value as on 01.04.1981 claimed by the assessee in accordance with the estimate made by a registered valuer and the fair market value of the asset on that date.

7. Tax implications under section 56(2)

(i)	The provisions of section 56(2)(viib) are attracted in this case since the shares of a closely held company are issued at a premium (i.e., the issue price of ₹ 17 per share exceeds the face value of ₹ 10 per share) and the issue price exceeds the fair market value of such shares. The consideration received by the company in excess of the fair market value of the shares would be taxable under section 56(2)(viib). Therefore, ₹ 1,00,000 {i.e., (₹ 17 – ₹ 15) × 50,000 shares} shall be the income chargeable under section 56(2)(viib) in the hands of A (P) Ltd.
(ii)	The difference between the aggregate fair market value of shares of a closely held company and the consideration paid for purchase of such shares is deemed as income in the hands of the purchasing company under section 56(2)(viiia), if the difference exceeds ₹ 50,000. Accordingly, in this case, the difference of ₹ 1,00,000 [i.e., (₹ 35 – ₹ 25) × 10,000] is taxable under section 56(2)(viiia) in the hands of B (P) Ltd.
(iii)	Immovable property, being land or building or both, received without consideration by a HUF from its relative is not taxable under section 56(2)(vii). Since D's son is a member of D HUF, he is a "relative" of the HUF. Therefore, if D HUF receives a house property from its member, i.e., D's son, without

	consideration, then, the stamp duty value of such property will not be chargeable to tax in the hands of the HUF, since such receipt from a "relative" is excluded from the scope of section 56(2)(vii).
(iv)	Since bullion is included in the definition of "property", therefore, when bullion is received without consideration, the same is taxable under section 56(2)(vii), as the aggregate fair market value of bullion exceeds ₹ 50,000. Therefore, ₹ 75,000 would be taxable under section 56(2)(vii) in the hands of Miss E.
(v)	Interest received during the year on enhanced compensation is taxable under section 145A in the year of receipt, i.e., P.Y.2012-13, irrespective of the method of accounting followed by Mr. F. The interest is taxable under section 56(2)(viii). (₹ 15,000 + ₹ 1,25,000 + ₹ 1,30,000) ₹ 2,70,000 Less: Deduction under section 57@50% of ₹ 2,70,000 <u>₹ 1,35,000</u> <u>₹ 1,35,000</u>

8. (i) Section 80-IB(13) provides that the provisions contained in section 80-IA(5) shall, so far as may be, apply to the eligible business under section 80-IB. Accordingly, for the purpose of computing the deduction under section 80-IB, the profits and gains of an eligible business shall be computed as if such eligible business was the only source of income of the assessee.

Therefore, ABC Limited should claim deduction under section 80-IB on profit from the eligible unit without setting off loss suffered in the other unit. It may be noted that the aggregate deduction under Chapter VIA, however, cannot exceed the gross total income of the assessee.

- (ii) On this issue, the Delhi High Court, in *Praveen Soni v. CIT (2011) 333 ITR 324*, held that the provisions of section 80-IB nowhere stipulated a condition that the claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility. Therefore, the deduction under section 80-IB should be allowed to the assessee for the remaining years up to the period for which his entitlement would accrue, provided the conditions mentioned under section 80-IB are fulfilled.

Accordingly, ABC Ltd. can claim deduction for the remaining years during the period of eligibility, even if it has not claimed deduction in the first three years, subject to fulfilment of conditions mentioned in section 80-IB.

- (iii) Under section 80-IB, where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking referred to in the section, there shall be allowed, in computing the total income of the assessee, a deduction from such profits and gains at the specified percentage and for such number of years as specified in the section.

In *Liberty India vs. CIT* (2009) 317 ITR 218 (SC), it was held that incentive profits are not profits derived from eligible business under section 80-IB. They belong to the category of ancillary profits of such undertaking.

Incentive profits such as DEPB/Duty drawback cannot be credited against the cost of manufacture of goods debited in the profit and loss account and they do not fall within the expression "profits derived from industrial undertaking" under section 80-IB. Hence, duty drawback receipts and DEPB benefits do not form part of the profits derived from the eligible business for the purpose of deduction under section 80-IB.

Therefore, ABC Ltd. cannot treat DEPB benefit and duty drawback as "profit derived from the industrial undertaking" for claiming benefit of deduction under section 80-IB.

- (iv) On this issue, the Bombay High Court, in *CIT v. Jyoti Plastic Works Private Limited* (2011) 339 ITR 491, observed that the expression "worker" is neither defined under section 2 of the Income-tax Act, 1961, nor under section 80-IB(2)(iv) of the Act. 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.

Further, the Delhi High Court has, in *CIT v. Nanda Mint and Pine Chemicals Ltd.* (2012) 345 ITR 60, observed that for compliance with the condition of employment of ten or more workers stipulated in section 80-IB(2)(iv), the casual and contractual workers who were working under the direct supervision and control of the assessee and were paid salary by the assessee, are also to be considered.

Therefore, ABC Ltd. can treat the persons employed by it on casual or contractual basis as "workers" to satisfy the condition of employment of ten or more workers as required under section 80-IB(2)(iv) for availing the benefit of deduction under section 80-IB.

9. (i) **Computation of tax liability of Mr. Frank Lampard for the A.Y.2013-14**

	₹	₹
Income taxable under section 115BBA		
Income from participation in football tournaments in India	25,00,000	
Contribution of article in a magazine in India	25,000	
	25,25,000	
Tax@20% under section 115BBA on ₹ 25,25,000		5,05,000
Tax@30% under section 115BB on income of ₹ 50,000 (₹ 34,550 + ₹ 15,450) by way of winnings from horse races		15,000
		5,20,000

Add: Education cess@2% and Secondary and higher education cess@1%

15,600

Total tax liability of Mr. Frank Lampard

5,35,600

Ms. Eva Lampard is a non-resident entertainer, whose income of ₹ 3 lakh from a magic show is taxable@20% under section 115BBA. Therefore, her tax liability is ₹ 61,800 (being 20% of ₹ 3 lakh plus education cess@2% and secondary and higher education cess@1%)

- (ii) Yes, the above income are subject to deduction of tax at source.

Income referred to in section 115BBA is subject to deduction of tax at source@20% under section 194E.

Income referred to in section 115BB (i.e., winnings from horse races) is subject to deduction of tax at source@30% under section 194BB.

Since Mr. Frank Lampard and Ms. Eva Lampard are non-residents, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by education cess@2% and secondary and higher education cess@1%.

- (iii) Section 115BBA provides that if the total income of the non-resident sportsman or non-resident entertainer comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income.

In this case, although Mr. Frank Lampard is a non-resident sportsman, he has winnings from horse races as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for A.Y.2013-14.

However, since Ms. Eva Lampard's income comprises of only income referred to in section 115BBA, in respect of which tax is deductible under section 194E, she need not file her return of income for A.Y.2013-14, if tax has been so deducted.

10. Computation of income-tax payable under the normal provisions of the Act

Particulars	₹	₹
Income from house property		
Net Annual Value (₹ 15,000 × 12) ¹	1,80,000	
Less: Deduction under section 24(a)		
30% of NAV	<u>54,000</u>	1,26,000

¹ Rental income is taken as the Annual Value in the absence of information relating to Municipal value, fair rent and standard rent.

Profits and gains of business or profession		45,00,000
Long-term capital gains		5,00,000
Interest on bank fixed deposits		<u>23,000</u>
Gross Total Income		51,49,000
Less: Deduction under Chapter VI-A		
Under section 80C [Investment in PPF]	1,00,000	
Under section 80-IA	<u>28,00,000</u>	<u>29,00,000</u>
Total Income		<u>22,49,000</u>
Tax payable under the normal provisions of the Income-tax Act, 1961		
Particulars	₹	₹
Tax@20% on long term capital gains of ₹ 5,00,000		1,00,000
Tax on other income of ₹ 17,49,000 at the applicable slab rates		
Up to ₹ 2,50,000	Nil	
10% on next ₹ 2,50,000	25,000	
20% on next ₹ 5,00,000	1,00,000	
30% on balance ₹ 7,49,000	<u>2,24,700</u>	
		<u>3,49,700</u>
		4,49,700
Add: Education cess@2% and secondary and higher education cess@1%		<u>13,491</u>
		<u>4,63,191</u>

Computation of Alternate Minimum Tax (AMT)

Particulars	₹
Total Income as per the Income-tax Act, 1961	22,49,000
Add: Deduction under section 80-IA	<u>28,00,000</u>
Adjusted Total Income	<u>50,49,000</u>
AMT = 18.5% × 50,49,000 =	9,34,065
Add: Education cess@2% and secondary and higher education cess@1%	<u>28,022</u>
	<u>9,62,087</u>

Since the income-tax payable as per the normal provisions of the Act is less than the AMT, the adjusted total income of ₹ 50.49 lakhs would be deemed to be the total income of Mr. Vaibhav and he would be liable to pay tax @18.5% thereof. The tax payable by Mr. Vaibhav for the A.Y.2013-14 would, therefore, be ₹ 9,62,087.

Note - Mr. Vaibhav would be eligible for credit to the extent of ₹ 4,98,896 [₹ 9,62,087 – ₹ 4,63,191] to be set-off in the year in which tax on total income computed under the normal provisions of the Act exceeds the AMT. Such credit can be carried forward for the succeeding 10 assessment years.

11. Computation of total income of M/s. XYZ for the A.Y. 2013-14

Particulars	₹	₹
Net profit as per profit & loss account		2,75,000
Add: Interest to partners on capital accounts for the period from 1.4.2012 to 30.9.2012 (₹ 75,000 but deduction limited to 6 months only hence 50% thereof is deductible and the balance is disallowed)	37,500	
Interest to partners on current accounts from 1.4.2012 to 31.3.2013 – not authorized by the deed, hence disallowed.	25,000	
100% of ₹ 40,000 paid towards purchase of smart phones otherwise than by way of account payee cheque (being stock in trade, hence disallowed)	40,000	
Difference on account of valuation of closing stock-in-trade at market value (₹ 52,000 less ₹ 45,000)	7,000	
Salary paid to working partners considered separately	4,20,000	
		5,29,500
		8,04,500
Less: Additional depreciation on new machinery (₹ 5,00,000 × 20%) = ₹ 1,00,000. Only 50% is allowable as deduction.		50,000
		7,54,500
Less: Interest received from bank on fixed deposits considered separately		32,000
		7,22,500
Less: Salary to working partners -		
(i) As per limit in section 40(b)		
On first ₹ 3,00,000 @ 90%	2,70,000	
On the balance of ₹ 4,22,500 @ 60%	2,53,500	
	5,23,500	

(ii) Salary actually paid	4,20,000	
Deduction allowed being (i) or (ii), whichever is less		4,20,000
		3,02,500
Less: Business loss relating to A.Y. 2012-13 set off		65,000
Income from business		2,37,500
Income from other sources		
Interest received from bank on fixed deposits		32,000
Total Income		2,69,500

Explanation for the treatment of various items

- (i) Interest to partners authorised by the partnership deed will be allowed as deduction only for the period beginning with the date of the partnership deed and not for any earlier period as per section 40(b)(iv). Therefore, interest paid to the partners on the balances standing to the credit of their capital accounts from 1.10.2012 alone is eligible for deduction, since the partnership deed was executed only on 1.10.2012. Interest for the period prior to 1.10.2012 is not allowed.
- (ii) The partnership deed of 1.10.2012 provides for payment of interest on balances in capital accounts of partners only. As such, the interest paid on the balances standing to the credit of the current accounts of partners is not allowable under section 40(b). The Kerala High Court has, in *Novel Distributing Enterprises v. DCIT (2001) 251 ITR 704 (Ker)*, on identical facts, held that interest paid to the partners on their current account balances is not allowable.
- (iii) Since X is a partner in his individual capacity, interest paid to the Hindu Undivided Family of partner X does not attract disallowance under section 40(b)(iv).
- (iv) Section 40A(3) provides for disallowance @ 100% of the expenditure incurred otherwise than by an account payee cheque/account payee bank draft. Since the firm has made payment of ₹ 40,000 towards purchase of smart phones (electronic equipment, being stock-in-trade) by a crossed cheque and not by an account payee cheque, 100% of such expenditure would be disallowed.
- (v) Car worth ₹ 3,00,000 received as gift from a manufacturer for achieving sales target is taxable under section 28(iv), being a benefit arising from business. Since the same has already been credited to profit and loss account, no further adjustment is required.
- (vi) 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*.
- (vii) The firm is entitled to additional depreciation @ 20% under section 32(1)(ia) in respect of the new machinery installed for manufacture of steel furniture. Since the new machinery is put to use for less than 180 days during the relevant previous

year, the additional depreciation is restricted to 50% of the prescribed rate of 20% i.e. it is restricted to 10%.

- (viii) Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Hence, it is not taken into account for the purpose of computing book-profit.
- (ix) The Supreme Court has, in *A.L.A Firm v. CIT (1991) 189 ITR 285*, held that the closing stock has to be valued at market rate in the case of a dissolved firm. As such, the closing stock-in-trade of the firm has to be valued at the market rate.
- (x) Net profit shown in the profit and loss account computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners constitutes book profit as per *Explanation 3* to section 40(b). Carry forward and set off of business loss is covered under Chapter VI. Hence, set-off of brought forward business loss relating to the assessment year 2012-13 is not considered for calculation of book-profit.
- (xi) Section 45(4) is not applicable to the firm for the assessment year 2013-14, though the dissolution of the firm took place on 31.3.2013, as there was no transfer by way of distribution of capital assets during the relevant previous year. The distribution of the capital assets took place on 15.4.2013. The capital gains will be assessable in the assessment year 2014-15.

12. Computation of total income of Alpha Ltd. for A.Y. 2013-14

Particulars	₹
Profits and gains of business or profession	35,00,000
Income from other sources (<i>See Note below</i>)	<u>2,61,000</u>
Total income	<u>37.61.000</u>

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

Particulars	₹
From Beta Inc. – net dividend (i.e., ₹ 80,000 – ₹ 4,000) is taxable at normal rates	76,000
From Gamma Inc. – gross dividend is taxable@15% under section 115BBD [<i>See Note below</i>]	1,85,000
From shares in Indian subsidiaries ₹ 90,000 – exempt under section 10(34) since dividend distribution tax payable under section 115-O has been paid [As per section 14A, no deduction is allowable in respect of expenditure incurred to earn exempt income]	<u>Nil</u>
	<u>2,61,000</u>

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

Particulars	₹
Tax@15% under section 115BBD on ₹ 1,85,000 (gross dividend)	27,750
Tax @ 30% on balance income of ₹ 35,76,000	<u>10,72,800</u>
	11,00,550
Add: Education cess@2% and Secondary and higher education cess @1%	<u>33,017</u>
Tax liability	<u>11,33,567</u>

Computation of additional income-tax payable by Alpha Ltd. under section 115-O

Particulars	₹
Amount distributed by way of dividend	4,20,000
Less Dividend received from Indian subsidiaries, on which DDT : payable under section 115-O has been paid	<u>90,000</u>
	<u>3,30,000</u>
Dividend Distribution tax@15%	49,500
Add: Surcharge@5%	<u>2,475</u>
	51,975
Add: Education cess@2% and Secondary and higher education cess@1%	<u>1,559</u>
Additional income-tax payable under section 115-O	<u>53,534</u>

Note – Dividend received by an Indian company from a specified foreign company is subject to a concessional tax rate of 15% on gross dividend under section 115BBD. Specified foreign company means a foreign company in which the Indian company holds 26% or more in the nominal value of equity share capital of the company. Since Alpha Ltd. holds 30% of the nominal value of equity share capital of Gamma Inc., Gamma Inc. is a specified foreign company in relation to Alpha Ltd. Accordingly, gross dividend received from Gamma Inc. is subject to tax at a concessional rate of 15%. No deduction is allowable in respect of any expenditure as per section 115BBD(2).

13. Computation of book profit of Omicron Ltd. under section 115JB for A.Y. 2013-14

Particulars	₹ (in lacs)
Net profit as per profit and loss account	220
Add: Net profit to be increased by the following amounts as per Explanation 1 to section 115JB	

Income-tax paid or payable or provision therefor		
Provision for income-tax	12	
Dividend distribution tax	1	
		13
Transfer to General Reserve		2
Provision for deferred tax		10
Dividend paid or proposed		
Proposed dividend	6	
Preference dividend	2	
		8
Expenditure to earn agricultural income exempt under section 10(1)		1
Depreciation		14
Provision for permanent diminution in value of investments		<u>3</u>
		<u>51</u>
		271
Less: Net profit to be reduced by the following amounts as per Explanation 1 to section 115JB		
Depreciation (excluding depreciation on revaluation of assets)		11
Income exempt under section 10(1) – agricultural income		4
Lower of brought forward loss or unabsorbed depreciation, as per books (on cumulative basis)		<u>9</u>
		<u>24</u>
Book Profit		<u>247</u>

Notes:

- (1) A sunset clause has been inserted by the Finance Act, 2011 to remove MAT exemption to SEZ units and developers with effect from A.Y. 2012-13. Therefore, profit from unit established in SEZ cannot be excluded for computation of book profit.
- (2) Provision for gratuity based on actuarial valuation is a provision for meeting an ascertained liability. Therefore, it should not be added back for computing book profit.
- (3) One of the adjustments to the book profit is that exempt income under section 10, which is credited to profit and loss account, would be deducted in arriving at the book profit.

Long-term capital gains on sale of equity shares through a recognized stock exchange on which securities transaction tax (STT) is paid is exempt under section 10(38). However, deduction of such long-term capital gains is not allowed for computing book profit. Consequently, expenditure to earn such income should not be added back to arrive at the book profit.

Section 10(38) also provides that such long term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

- 14.** A new Chapter XII-BB, comprising of section 115JG, has been inserted by the Finance Act, 2012, providing for a special scheme of taxation in case of conversion of an Indian branch of foreign company engaged in banking business in India into an Indian subsidiary company in accordance with the scheme framed by RBI.

If the conditions notified by the Central Government in this behalf are satisfied, then capital gains arising from such conversion would not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place.

Also, the provisions of the Act relating to computation of income of foreign company and Indian subsidiary company would apply with such exceptions, modifications and adaptations as specified in the notification.

Further, the benefit of set-off of unabsorbed depreciation, set-off and carry forward of losses, tax credit in respect of tax paid on deemed income relating to certain companies available under the Act shall apply with such exceptions, modifications and adaptations as specified in the notification.

If the conditions specified in the scheme of RBI or notification issued by the Central Government are not complied with, then, all the provisions of the Act would apply to the foreign company and Indian subsidiary company without any benefit, exemption or relief under this section.

If the benefit, exemption or relief has been granted to the foreign company or Indian subsidiary company in any previous year and thereafter, there is a failure to comply with any of the conditions specified in the scheme or notification, then, such benefit, exemption or relief shall be deemed to have been wrongly allowed.

In such a case, the Assessing Officer is empowered to re-compute the total income of the assessee for the said previous year and make the necessary amendment. This power is notwithstanding anything contained in the Income-tax Act, 1961.

The provisions of rectification under section 154, would, accordingly, apply and the four year period within which such rectification should be made has to be reckoned from the end of the previous year in which the failure to comply with such conditions has taken place.

- 15. (a)** The contention of Mr. X is not correct.

Section 139(1) requires every resident and ordinarily resident having any asset located outside India or signing authority in any account located outside India to file a return of income compulsorily whether or not he has income chargeable to tax. Mr. X has a house property in Singapore and a bank account in the Bank of Singapore. Therefore, Mr. X has to file his return of income mandatorily for the A.Y.2013-14, even though his total income of ₹ 1,50,000, comprising solely of income from house property and bank interest, is less than the basic exemption limit.

- (b)** Income chargeable to tax shall be deemed to have escaped assessment for the purpose of section 147, where a person is found to have any asset (including financial interest in any entity) located outside India. Accordingly, the Assessing

Officer can serve a notice under section 148 on such assessee requiring him to furnish a return of income within the specified period, for the purpose of making an assessment, reassessment or re-computation under section 147.

Further, an extended time limit of sixteen years would be available for issue of notice under section 148 for an assessment or reassessment, in case income in relation to such assets located outside India has escaped assessment.

Therefore, in this case, since Mr. X has a house property and a bank account in a foreign country, income is deemed to have escaped assessment and notice under section 148 can be issued to Mr. X within the extended time limit of sixteen years from the end of the relevant assessment year i.e., A.Y.2013-14.

16. The facts of the case are similar to the case *CIT v. ICICI Bank Ltd. (2012) 343 ITR 74 (Bom.)*. In that case, the Bombay High Court observed that the order of assessment under section 143(3) allowed deduction under section 36(1)(vii), 36(1)(viii) and in respect of foreign exchange rate difference. The order of reassessment, however, had not dealt with these issues. Therefore, the Court held that the doctrine of merger cannot be applied in such a case. The order under section 143(3) cannot stand merged with the order of reassessment in respect of those issues which did not form the subject matter of the reassessment. Therefore, the period of limitation in respect of the order of Commissioner under section 263 in respect of a matter which does not form the subject matter of reassessment shall be reckoned from the date of the original order under section 143(3) and not from the date of the reassessment order under section 147.

In this case also, the order of the Commissioner under section 263 was in respect of matters relating to deduction under section 36(1)(vii) and section 36(1)(iii), which did not form the subject matter of reassessment.

Therefore, applying the rationale of the Bombay High Court ruling to the facts of this case, the contention of the Commissioner is not correct, since the two year period has to be reckoned from the end of the financial year in which the original assessment order was passed, i.e., from 31.3.2009. Since the two-year period expires on 31.3.2011, the order passed by the Commissioner on 21.3.2013 is barred by limitation.

17. (i) This transaction falls within the meaning of "specified domestic transaction" under new section 92BA, since the salary payment has been made to a related person referred to in section 40A(2)(b) i.e., relative (i.e. son) of Ms. Poorna, who is a director of Sigma Ltd. However, such a transaction would be treated as a "specified domestic transaction" to attract transfer pricing provisions only if the aggregate of such transactions as specified in section 92BA during the year by Sigma Ltd. exceeds a sum of ₹ 5 crore.
- (ii) Unit Phi is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing a highway project) under section 80-IA. However, Unit Rho is not engaged in any "eligible business". Since Unit Rho has

transferred steel to Unit Phi at a price lower than the fair market value, it is an inter-Unit transfer of goods between eligible business and other business, where the consideration for transfer does not correspond with the market value of goods. Therefore, this transaction would fall within the meaning of “specified domestic transaction” to attract transfer pricing provisions, if the aggregate value of transactions specified in section 92BA during the year exceed ₹ 5 crore.

- (iii) The scope of the term “intangible property” has been amplified to include, *inter alia*, process patents, which is a technology intangible. Transfer of intangible property falls within the scope of the term “international transaction”. Since Theta Inc. guarantees more than 10% of the borrowings of Omega Ltd., Theta Inc. and Omega Ltd. are associated enterprises. Therefore, since transfer of process patents by Omega Ltd. to Theta Inc. is an international transaction between associated enterprises, the provisions of transfer pricing are attracted in this case.
 - (iv) The scope of the term “international transaction” has been amplified by the Finance Act, 2012 by insertion of *Explanation* to section 92B. According to the said *Explanation*, international transaction includes, *inter alia*, provision of legal services. Alpha Inc. is a specified foreign company in relation to Beta Ltd. Therefore, the condition of Beta Ltd. holding shares carrying not less than 26% of the voting power in Alpha Inc is satisfied. Hence, Alpha Inc. and Beta Ltd. are associated enterprises. Since the provision of legal services by Alpha Inc. to Beta Ltd. is an “international transaction” between associated enterprises, transfer pricing provisions are attracted in this case.
 - (v) Sale of tangible property falls within the scope of “international transaction”. Tangible property includes tools and equipment. Delta Inc. and Gamma Ltd. are associated enterprises, since Delta Inc., being a holding company of Gamma Ltd., fulfils the condition of holding shares carrying not less than 26% of the voting power in Gamma Ltd. Therefore, sale of tools and equipment by Gamma Ltd., an Indian company, to Delta Inc., a Danish company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.
18. (a) The facts of the case are similar to the case *CIT v. Triumph International Finance (I.) Ltd. (2012) 345 ITR 270 (Bom.)*. In that case, the Bombay High Court observed that, the obligation to repay the loan or deposit by account payee cheque/bank draft as specified in section 269T is mandatory in nature. The contravention of the said section will attract penalty under section 271E.

The Bombay High Court further observed that the argument of the assessee cannot be accepted since section 269T does not make a distinction between a bonafide and a non-bonafide transaction. Neither does it require the fulfillment of the condition mentioned therein only in case where there is outflow of funds. It merely puts a condition that in case a loan or deposit is repaid, it should be by way of an

account payee cheque/draft. Therefore, in the present case, the assessee has repaid a portion of loan in contravention of provisions of section 269T.

However, the cause shown by the assessee for repayment of the loan otherwise than by account payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan was received by the assessee. It would have been mere formality to repay the loan amount by account payee cheque/draft and receive back almost the same amount towards the sale price of the shares. Also, neither the genuineness of the receipt of loan nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. Therefore, there is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the unaccounted money of the Investment Trust of India or the assessee and also it cannot be said that the whole transaction was entered into to avoid tax. This is accepted as a reasonable cause under section 273B, which provides that no penalty shall be imposable on the assessee, if he proves that there was reasonable cause for the said failure.

Applying the rationale of the above ruling to the case on hand, the contention of XYZ Ltd. is not correct. Penalty under section 271E would be attracted since XYZ Ltd. has violated the provisions of section 269T by repaying the loan by way of passing book entries. However, if XYZ Ltd. proves that the transaction is *bona fide* in nature, being a normal business transaction, and has not been made with a view to avoid tax, then, it would constitute reasonable cause for the failure under section 269T. In such a case, as per the provisions of section 273B, no penalty under section 271E could be imposed on XYZ Ltd. for contravening the provisions of section 269T.

(b) The statement is correct.

Under section 272A, penalty of ₹ 100 per day is levied for delay in furnishing of TDS/TCS statements. This penal provision had not proved to be effective to deter late furnishing of TDS/TCS statements. Further, there was no specific penalty under the Act for furnishing of incorrect information in the TDS/TCS statements.

Therefore, the penal provisions have been made more stringent by the Finance Act, 2012 to deter delay in furnishing of TDS/TCS statement and/or furnishing incorrect information in the TDS/TCS statement –

- (i) A fee of ₹ 200 for every day would be levied under new section 234E for late furnishing of TDS/TCS statement from the due date of furnishing of TDS/TCS statement to the date of furnishing of TDS/TCS statement. However, the total amount of fee shall not exceed the total amount of tax deductible/collectible and such fee has to be paid before delivering the TDS/TCS statement. Such fees would be attracted in respect of tax deducted or collected at source on or after 01.07.2012.

- (ii) In addition to said fee, a penalty ranging from a minimum of ₹ 10,000 to a maximum of ₹ 1,00,000 shall also be levied under new section 271H for not furnishing TDS/TCS statement within the prescribed time or furnishing incorrect information in the said statements, in respect of tax deducted or collected at source on or after 01.07.2012. Consequently, with effect from 1.7.2012, penalty shall not be leviable under section 272A in respect of such failure.

Since late furnishing of TDS/TCS statements would attract levy of fees under section 234E, no penalty under section 271H shall be levied for **delay in furnishing of TDS/TCS statement**, if the TDS/TCS statement is furnished within one year of the prescribed due date after payment of tax deducted or collected along with applicable interest and fee. However, if the delay is beyond the period of one year, both fee under section 234E and penalty under section 271H would be leviable.

19. (i) Residential house owned by A Ltd. and allotted to an employee drawing gross salary of ₹ 8 lakh per annum

A house meant exclusively for residential purposes and which is allotted by a company to an employee having a gross annual salary of less than ₹ 10 lakh is specifically excluded from “building and land appurtenant thereto” falling under the definition of asset under section 2(ea)(i).

Therefore, residential house owned by A Ltd. and allotted to an employee drawing gross salary of ₹ 8 lakh per annum is not an asset chargeable to wealth-tax.

(ii) Guest house owned by B Ltd. in a rural area

“Building and land appurtenant thereto” falls within the definition of asset under section 2(ea)(i), even if it is used for the purpose of maintaining a guest house. Therefore, guest house is always an asset chargeable to wealth-tax, whether it is located in an urban area or rural area. Only a farm house situated beyond 25 kms from the local limits of a municipality is excluded from the definition of “asset”.

Therefore, guest house owned by B Ltd. in a rural area is an asset chargeable to wealth-tax.

(iii) Silver and gold used in the jeweller Mr. C's shop

Jewellery is considered as an asset within the meaning of section 2(ea)(iii) of the Wealth-tax Act, 1957. However, jewellery used as stock in trade shall be deemed to be excluded from the assets chargeable to wealth-tax. Therefore, silver and gold used in the jewellers' shop represent Mr. C's stock-in-trade and would, therefore, not be chargeable to wealth-tax in his hands.

(iv) Cash balance of ₹ 4 lacs with Mr. D

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, the cash balance in excess of ₹ 50,000 (i.e. ₹ 3.50 lacs) shall be chargeable to wealth-tax in the hands of Mr. D.

(v) Shares purchased by Mr. E in the name of his daughter-in-law

Shares purchased by Mr. E in the name of his daughter-in-law is not a deemed asset because shares do not fall within the definition of "asset" under section 2(ea) of the Wealth-tax Act, 1957.

(vi) Aircraft used for the purpose of transportation of goods for the business of F Ltd.

The definition of asset under section 2(ea) includes, *inter alia*, aircrafts, other than those used by the assessee for commercial purposes. Aircraft owned and used by F Ltd. for transportation of its goods is construed as used for "commercial purposes", since it is used for the business of the company. Hence, such aircraft is not chargeable to wealth-tax in the hands of F Ltd.

(vii) Motor car used in the business of running on hire by Mr. G.

Motor cars (other than those used by the assessee in the business of running them on hire or as stock-in-trade) is an asset under section 2(ea)(ii). Therefore, since Mr. G is using the motor car in the business of running on hire, it does not constitute an asset under section 2(ea)(ii).

(viii) Surgical instruments used for professional activity of Dr. H

Surgical instruments held on the valuation date used for the purpose of profession are not assets for the purpose of levy of wealth-tax. Therefore, Dr. H is not liable to wealth-tax in respect of the value of surgical instruments used for his professional activity.

(ix) Urban land located at Jaipur purchased by Mr. I in the name of his minor son, suffering from a disability specified under section 80U

Urban land is an asset by virtue of section 2(ea)(v). However, since the same is in the name of Mr. I's minor son who suffers from a disability specified under section 80U of the Income-tax Act, 1961, the clubbing provisions are not applicable as per section 4(1)(a)(ii).

Hence, the value of urban land is not assessable in the hands of Mr. I as on valuation date 31.3.2013.

(x) Fixed Deposits held by Mr. J with Bank of India

Fixed deposit with bank is not asset under section 2(ea). Therefore, wealth-tax is not leviable in respect of value of fixed deposits held by Mr. J with Bank of India.

20. Computation of net wealth of the firm as on 31.3.2013

Particulars	₹	₹	₹
Value of assets of the firm:			
Value of assets located outside India		30,00,000	
Value of assets located in India (₹ 70 Lacs – ₹ 20 Lacs)		<u>50,00,000</u>	
Net Wealth of the firm		<u>80,00,000</u>	

Value of partner's interest in the assets of the firm as on 31.3.2013

Particulars	₹	₹	₹
	Anirudh	Anish	Aarush
Net wealth to the extent of share capital i.e. upto ₹ 20,00,000 – to be distributed in capital ratio	8,00,000	7,00,000	5,00,000
Balance ₹ 60,00,000 in profit sharing ratio (i.e., 1:2:3)	10,00,000	20,00,000	30,00,000
Value of interest of partners in the net wealth of the firm	18,00,000	27,00,000	35,00,000

Note - As per section 4(1)(b) of the Wealth-tax Act, 1957, in computing the net wealth of an assessee, who is a partner in a firm, the value of his interest in the assets of the firm determined in the manner laid down in Schedule III shall be included.

As per Rule 16 of Schedule III, the net wealth of the firm on the valuation date shall first be determined as if it were the assessee. Thereafter, that portion of the net wealth of the firm as is equal to the amount of its capital shall be allocated amongst the partners in the proportion in which capital has been contributed by them. The remaining portion of net wealth of the firm shall be allocated amongst the partners in accordance with the agreement of partnership or, in the absence of such agreement, in the proportion in which the partners are entitled to share the profits.