

MOCK TEST PAPER – 1
FINAL COURSE: GROUP – II
PAPER – 7: DIRECT TAX LAWS
SUGGESTED ANSWERS / HINTS

1. (a) Computation of total income of Mr. Tarun for the Assessment Year 2012-13

Particulars	₹	₹
Income from business:		
Net profit as per profit and loss account	3,60,000	
Add: Depreciation debited to profit and loss account ₹ 48,000 but eligible depreciation works out to ₹ 43,000, the excess in profit and loss account is added back.	5,000	
Interest paid to father @ 19% when the market rate for such borrowing is 10%, the excess 9% to be disallowed under section 40A(2)	<u>9,000</u>	3,74,000
Long-term Capital Gains:		
Sale consideration (21.01.2012)	40,00,000	
Less: Brokerage @ 1.625%	<u>65,000</u>	
Net Sale consideration	39,35,000	
Less: Indexed cost of acquisition ₹ 4,26,000 × 785/426	<u>7,85,000</u>	
Capital Gain	31,50,000	
Less Exemption under section 54F in respect of residential apartment acquired at Delhi for ₹ 20,00,000 in August, 2011 (₹ 31,50,000 × 20,00,000/39,35,000)	<u>16,01,017</u>	15,48,983
Income from other sources:		
Bank interest earned by wife out of the gift when given by the assessee (₹ 10,00,000 × 10% × 6/12)		<u>50,000</u>
Gross Total Income		19,72,983
Less: Deduction under Chapter VI-A		
Deduction under section 80C		
Insurance premium of brother's policy (not allowed)	Nil	
Tax saver deposit on own name	50,000	

Tax saver deposit in the name of minor son (not allowed)	Nil	
Deposit in Public Provident Fund with State Bank of India	8,300	
Deduction under section 80D		
Health insurance premium limited to	15,000	
Deduction under section 80CCF		
Infrastructure bonds subscribed but limited to	<u>20,000</u>	<u>93,300</u>
Total Income		<u>18,79,683</u>
Total Income (Rounded off)		<u>18,79,680</u>

Notes :

1. Bank term loan – paid in August, 2012 is eligible for deduction as per section 43B, since it is paid before the due date of filing return of income, hence no adjustment is required.
2. Bad debts written off allowed by the Assessing Officer in the financial year 2008-09 will be taxed on its recovery in the current year. Since, it is already credited to profit and loss account, no adjustment is required for the same.

(b) Computation of net wealth and wealth tax liability of ABC Ltd. as on valuation date 31.3.2012

Particulars		₹
Land for industrial purpose (Note 1)		27,00,000
Interest in the assets of partnership firm (Note 2)		44,00,000
Building (Note 3)		<u>1,30,40,625</u>
Net Wealth		<u>2,01,40,625</u>
Wealth-tax@1% of ₹ 1,71,40,625, being the net wealth in excess of ₹ 30 lacs		1,71,406
1.	Unused land held for industrial purpose for more than two years from the date of acquisition is an asset under section 2(ea). As such, wealth tax incidence is attracted	
	Market value of land as on 31.3.2012	45,00,000
	Less: 45% of the unearned increase payable to the lessor [i.e. 45% of (₹ 45 lacs – ₹ 5 lacs)]	<u>18,00,000</u>
	Value for wealth tax purpose	<u>27,00,000</u>
2.	Interest in assets of the firm of which the assessee is a partner is deemed to be asset of the partner under section	

	4(1)(b) of the Wealth-tax Act, 1957	
	Value of interest in the firm as per Rule 15 of Schedule III: ₹ 20,00,000 + [(₹ 150 lacs – ₹ 70 lacs) x 30%] = [20,00,000 + 24,00,000, being 30% of 80,00,000]	44,00,000
3.	Value of Building [Rule 3 to 5 of Part-B of Schedule III]:	
	Actual Rent (₹ 1,00,000 x 6)	6,00,000
	Interest on deposit@15% p.a. for 6 months	22,500
	Corporation tax borne by tenant (for 6 months)	<u>50,000</u>
		<u>6,72,500</u>
	Annual Rent (6,72,500 x 12/6)	13,45,000
	Gross Maintainable Rent (GMR)	13,45,000
	Less: Corporation Tax 1,00,000	
	15% of GMR <u>2,01,750</u>	<u>3,01,750</u>
	Net Maintainable Rent	<u>10,43,250</u>
	Capitalised value for wealth tax purpose of a building on a freehold land. (₹ 10,43,250 x 12.5)	1,30,40,625
	Note - As per Rule 14, relating to valuation of assets of a business, the value of a depreciable asset disclosed in the balance sheet shall be taken to be its written down value. In this case, written down value of the building is ₹ 80 lacs. However, if the value of the asset determined in accordance with the relevant rule of Schedule III which is applicable to the asset, exceeds the above value by more than 20%, the higher value shall be taken to be the value of the asset. In this case, the capitalized value of ₹ 1,30,40,625 exceeds ₹ 80,00,000 by 63%. Therefore, ₹ 1,30,40,625 should be taken as the value of the building. It is presumed that building is disclosed in the Balance Sheet.	

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

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

vs. *Late Shrimant F.P. Gaekwad (2009) 313 ITR 192*. Therefore, penalty cannot be levied under the Wealth-tax Act, 1957 on the legal representatives for defaults committed by the deceased for which penalty proceedings have been initiated against the deceased prior to his death.

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

2. (a) (i) Computation of total income of the association of persons for A.Y.2012-13

Particulars	₹	₹
Profit & gains of business (See Working Note below)		3,12,300
Long term capital gain		6,40,000
Income from other sources [Dividend is exempt under section 10(34)]		-
Total income		9,52,300

Working Note -

Computation of profits and gains of business		
Net profit as per profit & loss account		5,24,300
Add: Inadmissible payments		
Interest to members Hari & Mohan (₹ 60,000 + ₹ 24,000)	84,000	
Advertising [Disallowance under section 40A(3) (100% of ₹ 26,000 being a cash payment)]	26,000	
Remuneration to members Hari & Mohan (₹ 2,06,000 + ₹ 1,21,000)	3,27,000	
Sales tax penalty (See Note 3 below)	16,000	4,53,000
		9,77,300
Less: Income not taxable under this head		
Dividend from Indian companies	25,000	
Long term capital gain	6,40,000	6,65,000
Profits and gains of business		3,12,300

(ii) Computation of tax liability of the association of persons for A.Y.2012-13

Particulars	₹
Long-term capital gain (₹ 6,40,000 @ 20%)	1,28,000
Other income (₹ 3,12,300 @ 30%)	93,690
Tax on total income	2,21,690
Add: Education cess@2% and secondary and higher secondary cess@1%	6,651
Total tax due	2,28,341

Notes –

- (1) Since one of the members has individual income more than the basic exemption limit, the AOP will be assessed at the maximum marginal rate.
Since the AOP is taxed at maximum marginal rate, the share income of members is not taxable in their hands individually.
 - (2) Since the employer's contribution to provident fund has been paid during the previous year itself, it is allowable as deduction.
 - (3) Penalty imposed for delay in filing sales tax return is not deductible since it is on account of infraction of the law requiring filing of the return within the specified period. – *CIT v. Ratanchand Bholanath (S.S) (1986) 160 ITR 500 (M.P.)*
 - (4) Mobile phones given to dealers is allowable as a business expense.
 - (5) Dividend from Indian companies is exempt from tax by virtue of provision of section 10(34).
- (iii) Members of the association of persons, i.e. Hari & Mohan, have to pay tax on their total income taking in to account savings/ investments etc. The share income from association of persons is not taxable in their personal assessment.

(b) Computation of book profit of SSG Ltd. under section 115JB for A.Y. 2012-13

Particulars	₹ (in lacs)	
Net profit as per profit and loss account		100
Add: Net profit to be increased by the following amounts as per Explanation 1 to section 115JB		
Provision for income tax	15	
Provision for deferred tax	8	
Proposed dividend	20	
Depreciation	12	
Provision for diminution in value of investment	<u>2</u>	<u>57</u>
		157
Less: Net profit to be reduced by the following amounts as per Explanation 1 to section 115JB and sub-section (6) of section 115JB		
Depreciation (excluding depreciation on revaluation of assets)	10	
Lower of brought forward loss or unabsorbed depreciation, as per books (on overall basis)	<u>10</u>	<u>20</u>
Book Profit		<u>137</u>

Note- 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.

3. (a) (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, Sakshi 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) 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 *CIT vs. Sterling Foods (1999) 237 ITR 579 (SC)* and *Liberty India vs. CIT (2009) 317 ITR 218 (SC)*, it was held that sale of import entitlement and duty drawback cannot be construed as income derived from industrial undertaking. Therefore, such income cannot be included in computing income for the purpose of deduction under section 80-IB.

Interest income derived by an undertaking on delayed collection of sale proceeds shall be treated as income derived from the industrial undertaking, and therefore, the same would be eligible for deduction under section 80-IB. [*Phatela Cotgin Industries Private Limited vs CIT (2008) 303 ITR 411 (P & H)*].

(b) Computation of taxable income of Gangaram Charitable Trust for A.Y. 2012-13

Particulars	Amount in ₹	
Income from running of institution	15,50,000	
Donation other than anonymous donation	<u>1,50,000</u>	17,00,000
Less: 15% of income of ₹ 17 lacs accumulated or set apart under section 11(1)(a)	2,55,000	
Amount applied for the purposes of institution	<u>13,00,000</u>	<u>15,55,000</u>
		1,45,000
Add: Amount accumulated for extension of a school but not spent deemed to be income under section		

11(3) (₹ 10.50 lacs – ₹ 9 lacs) (See Note 1 below)		<u>1,50,000</u>
		2,95,000
Add: Anonymous donation taxable @30% under section 115BBC (See Note 2 below)		<u>3,00,000</u>
Total Income		<u>5,95,000</u>
Tax on above:		
Tax on anonymous donation = 30% of ₹ 2 lacs (See Note 2 below)		60,000
Tax on other income of ₹ 2,95,000 at normal rates		
Upto ₹ 1,80,000	Nil	
Over ₹ 1,80,000 up to ₹ 2,95,000 @ 10%	<u>11,500</u>	<u>11,500</u>
		71,500
Education cess @2%		1,430
Secondary and higher education cess@1%		<u>715</u>
Tax payable		<u>73,645</u>

Notes:

- (1) Section 11(3) provides that if the income accumulated for certain purpose is not utilized for the said purpose within the period (not exceeding 5 years) for which it was accumulated, or in the year immediately following the expiry thereof, then the unutilised amount is deemed to be the income of the charitable institution for the previous year immediately following the expiry of the period of accumulation. In this case, Gangaram Charitable Trust accumulated ₹ 10,50,000 in the previous year 2005-06 for extension of one of its schools for a period of 5 years. Period of accumulation thus expired on 31.3.2011. The assessee has spent ₹ 9,00,000 out of accumulated sum of ₹ 10,50,000 up to 31.3.2011. Therefore, the unutilised amount of ₹ 1,50,000 is deemed to be income of the previous year 2011-12 (A.Y. 2012-13). It is assumed that the amount of ₹ 1,50,000 was not utilized during the P.Y.2011-12 also.

- (2) Only the anonymous donations in excess of the exemption limit specified below would be subject to tax@30% under section 115BBC.

The exemption limit is the higher of the following –

- (1) 5% of the total donations received by the assessee [i.e., ₹ 22,500 (5% x 4.50 lacs)]; or
- (2) ₹ 1 lacs.

Therefore, in this case the exemption would be ₹ 1 lacs.

The total tax payable by such institution would be –

- (1) tax@30% on the anonymous donations exceeding the exemption limit as calculated above [i.e., tax@30% on ₹ 2,00,000, being ₹ 3,00,000 – ₹ 1,00,000)]; and
- (2) tax on the balance income i.e., total income as reduced by the aggregate of anonymous donations received.

4. (a) Japan Ltd., the foreign company and Bharat Ltd., the Indian company are associated enterprises since Japan Ltd holds not less than 26% voting rights in Bharat Ltd. (being a subsidiary of Japan Ltd., more than 50% of its voting rights would be held by Japan Ltd.). Japan Ltd. sells mobile phones to Bharat Ltd. for resale in India. Japan Ltd also sells identical mobile phones to PRK Ltd, which is not an associated enterprise. The price charged by Japan Ltd. for a similar product transferred in comparable uncontrolled transaction is, therefore, identifiable. Therefore, Comparable Uncontrolled Price (CUP) method for determining arm's length price can be applied.

While applying CUP method, the price in comparable uncontrolled transaction needs to be adjusted to account for difference, if any, between the international transaction (i.e. transaction between Japan Ltd. and Bharat Ltd.) and uncontrolled transaction (i.e. transaction between Japan Ltd. and PRK Ltd.) and the price so adjusted shall be the arm's length price for the international transaction.

For sale of mobile phones by PRK Ltd., Japan Ltd. is responsible for warranty for 3 months. The price charged by Japan Ltd. to PRK Ltd. includes the charge for warranty for 3 months. Hence arm's length price for mobile phones being sold by Japan Ltd. to Bharat Ltd. would be:

Particulars	No.	₹
Sale price charged by Japan Ltd. to PRK Ltd.		9,500
Less: Cost of warranty included in the price charged to PRK Ltd. (₹ 2,000 x 3 /12)		<u>500</u>
Arm's length price		9,000
Actual price paid by Bharat Ltd. to Japan Ltd.		<u>12,500</u>
Difference per unit		<u>3,500</u>
No. of units supplied by Japan Ltd. to Bharat Ltd.	20,000	
Addition required to be made in the computation of total income of Bharat Ltd. (₹ 3,500 x 20,000)		7,00,00,000

No deduction under chapter VI-A would be allowable in respect of the enhanced income of ₹ 7 crores.

- (b) The proviso to section 92C(2) provides that where more than one price is determined by the most appropriate method, the arm's length price (ALP) shall be taken to be the arithmetical mean of such prices.

However, if the arithmetical mean, so determined, is within such percentage of the transfer price notified by the central government, then the transfer price shall be deemed to be the arm's length price and no adjustment is required to be made.

The arithmetical mean of the prices = $(₹ 96 + ₹ 112) / 2 = ₹ 104$ lacs.

The rate of permissible variation prescribed by the Central Government is 6%

= ₹ 6 lacs (₹ 100 lacs x 6%).

Since the variation between the arm's length price of ₹ 104 lacs and the transfer price of ₹ 100 lacs is within 6% of transfer price (i.e., ₹ 6 lacs), no adjustment is required and the transfer price of ₹ 100 lacs shall be deemed to be the arm's length price.

- (c) Mr. Mehta is entitled to relief under section 91, since :-

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

Therefore, he is entitled to the deduction under section 91, from the Indian income-tax payable by him, of a sum, calculated on such doubly taxed income at the Indian rate of tax or at the China rate of tax, whichever is lower.

Computation of total income and tax liability of Mr. Mehta for A.Y.2012-13

Particulars	₹
Salary income earned in India	1,50,000
Income from business in India	1,00,000
Commission received from a company in China	3,00,000
Dividend received from a company in China	90,000
Cash gifts from non-relative in India	<u>2,00,000</u>
Total Income	<u>8,40,000</u>

Tax on the above:		
Upto ₹ 2,50,000	Nil	
Over ₹ 2,50,000 & upto ₹ 5,00,000 @ 10%	25,000	
Over ₹ 5,00,000 & upto ₹ 8,00,000 @ 20%	60,000	
Over ₹ 8,00,000 @ 30%	<u>12,000</u>	97,000
Education cess @ 2% and secondary and higher education cess @ 1%		<u>2,910</u>
Total tax liability		99,910
Average rate of income-tax in India: (99,910/8,40,000 x 100)	11.89%	
Average rate of income-tax in China (78,000/3,90,000 x 100)	20%	
Double tax relief under section 91 shall be @11.89% or 20% of foreign income, whichever is less [i.e., 3,90,000 x 11.89%]		<u>46,371</u>
Net tax liability (₹ 99,910 – ₹ 46,371)		<u>53,539</u>

5. (a) Section 292B provides that no return of income, assessment, notice or summons furnished or made or issued or taken in pursuance of any of the provisions of the Income-tax Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment or notice etc., if such return of income, assessment, notice, summons etc. is in substance and effect in conformity with or according to the intent and purpose of the Act. **Therefore, a clerical mistake cannot invalidate an otherwise valid assessment.** Thus, the typographical error in the assessment order as to assessment year and previous year does not make the same invalid unless established otherwise. Accordingly, the action of the CIT(Appeals) in not accepting the claim of the assessee is valid.
- (b) The matter relates to the admission or rejection of the application filed before the Advance Ruling Authority on the grounds specified in clause (i) of the first proviso to sub-section (2) of section 245R of the Income-tax Act, 1961.

Clause (i) of the first proviso of section 245R(2) provides that the Authority shall not allow the application where the question raised in the application is already pending before any income-tax authority or Appellate Tribunal or any court.

In the above case, no application had been filed or contention urged by the applicant (foreign company) before any income-tax authority/Appellate Tribunal/court, raising the question raised in the application filed with Authority of Advance Rulings. One of the Indian companies, however, had raised the question before the Assessing Officer, not on the applicant's behalf or with a view to benefit

the applicant, but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made to a non-resident. Although the question raised pertains to one of the payments made or to be made to the non-resident applicant, it was not one pending determination before any income-tax authority in the applicant's case.

Therefore, as held by the Authority of Advance Rulings in *Ericsson Telephone Corporation of India AB v. CIT* (1997) 224 ITR 203, the application filed by the Indian company before the Assessing Officer cannot be treated to have been filed by the non-resident. Hence, it would not be proper to reject the application of the foreign company relying on clause (i) of the proviso to sub-section (2) of section 245R of the Income-tax Act, 1961. The application is, therefore, maintainable.

- (c) The time limit for service of notice under section 143(2) is six months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2011-12 was filed by the assessee on 16th August, 2011. Therefore, the notice under section 143(2) has to be served by 30th September, 2012. However, the notice was served on the assessee only on 7th October, 2012. Hence the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry that the notice was (a) not served upon him or (b) not served upon him in time or (c) served upon him in an improper manner. However, the above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case if the assessee, Sukan Limited, had raised an objection to the proceeding, on the ground of non-service of the notice under section 143(2) upon it on time, then the validity of the assessment order can be challenged. In absence of such objection, the assessment order cannot be challenged.

- (d) The clarification regarding filing of return of income by the coffee growers being individuals covered by Rule 7B of the Income tax Rules, 1962 is given in *Circular No.10/2006 dated 16.10.06*. According to the said circular, an individual deriving income from growing, curing, roasting and grounding of coffee with or without mixing chicory, would not be required to file the return of income if the aggregate of 40% of his or her income from growing, curing, roasting and grounding of coffee with or without mixing chicory and income under all other sources liable to tax in accordance with the provisions of this Act, is equal to or less than the basic exemption limit prescribed in the First Schedule of the Finance Act of the relevant year.

In this case, Mrs. Priya has a total income of ₹ 5,20,000 from this business, which was her only source of income for P.Y.2011-12. 40% of her total income works out to ₹ 2,08,000, which is more than the basic exemption limit of ₹ 1,90,000 in respect of resident women assessee. Therefore, Mrs. Priya is required to file a return of income for the A.Y.2012-13 as per the provisions of section 139(1).

6. (a) Determination of net worth of Unit B of M/s. SKG Polymers Ltd.

Particulars	₹ in lacs
Book value of fixed assets	300
Debtors	150
Stock in trade	50
	500
Less :Liabilities	100
Net worth	400

Comparative calculation of chargeable capital gains

	OPTION 1	OPTION 2
	Sale before 31.3.2012	Sale after 31.03.2012
Sale consideration	450,00,000	450,00,000
Less: Discount	4,50,000	Nil
Net sale consideration	445,50,000	450,00,000
Less: Net worth	400,00,000	400,00,000
Short term capital gain	45,50,000	N.A.
Long term capital gain	N.A.	50,00,000
Tax rate	30.9%	20.6%
Tax thereon	14,05,950	10,30,000

Since the tax liability under Option 2 is lower and net cash flow (i.e., ₹ 4,39,70,000, being ₹ 4,50,00,000- ₹ 10,30,000) is higher, the assessee is advised to effect slump sale after 31.03.2012.

- (b)** Section 133B(2) of the Income-tax Act, 1961 empowers an income-tax authority to enter any place of business during the hours at which such place is open for the conduct of business. The business premises is open from 10.00 a.m. to 8.00 p.m. for the conduct of business. The Assessing Officer entered the premises at 7.00 p.m. which falls within the working hours. The claim made by the assessee to the effect that the Assessing Officer could not enter the premises after sunset is not in accordance with law.

Section 133B(3) provides that an income tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has

entered, any books of account. In view of this clear prohibition in section 133B(3), the proposed action of the Assessing Officer to take away with him the books of account kept at the business premises is not valid in law.

- (c) Under section 115BBA, all the three items of receipts by Peterson in India are chargeable to tax. No expenditure is allowable against such receipts. The rate of tax chargeable is 10 per cent, plus education cess @2% and secondary and higher education cess @1%. The total tax liability works out to ₹ 4,32,600 being 10.3% of ₹ 42 Lacs.

Thus, Peterson will be liable to tax on the income earned in India. He is not required to file his return of income if -

- (a) his total income during the previous year consists only of income arising under section 115BBA and
- (b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

7. (a) Section 264(4) provides that the Commissioner shall not revise any order under section 264 in the following cases –

- (a) Where any appeal against the order lies to the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired or, in the case of an appeal to the Commissioner (Appeals) or the Appellate Tribunal the assessee has not waived his right of appeal ; or
- (b) Where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.

Even though the provisions of section 246A do not specifically bar an appeal being filed simultaneously along with a revision petition under section 264, it is clear from a reading of section 264 that the assessee is barred from seeking revision unless he has waived the right of appeal.

Therefore, it is clear that the assessee can either apply for revision before the Commissioner under section 264 or file an appeal before the Commissioner of Income-tax (Appeals), but cannot invoke both the remedies simultaneously.

- (b) The penalty that could be levied in each case is:-

- (i) Failure to get books of accounts audited as required under section 44AB of the Income-tax Act - a sum equal to ½% of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years, or a sum of ₹ 1,50,000, whichever is less [Section 271B].

- (ii) Failure to get books of accounts audited in response to the notice issued under section 142(2A) – a sum of ₹ 10,000 [Section 271(1)].
- (iii) Failure to furnish audit report under section 92E of the Income-tax Act - a sum of ₹ 1,00,000 [Section 271BA].
- (c) As per section 9, income of a non-resident shall be deemed to accrue or arise in India and shall be included in the total income of non-resident in the following cases:
 - (i) Income by way of **interest payable** by a resident to a non-resident for the debt incurred or moneys borrowed and used for the purposes of a business or profession carried on by such resident in India [Section 9(1)(v)(b)].
 - (ii) Income by way of **royalty payable** by a resident to non-resident in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such resident in India [Section 9(1)(vi)(b)].
 - (iii) Income by way of **fee for technical services** in respect of services utilized in a business or profession carried on by the resident in India [Section 9(1)(vii)(b)].

Taking the above provisions into account taxability in the hands of Heli Inc. would be as under:

	₹
Amount received for permitting use of logo [As per section 9(1)(vi)(b)]	70,00,000
Fees for technical services – Section 9(1)(vii)(b)	25,00,000
Interest on amounts borrowed – Section 9(1)(v)(b)	<u>55,00,000</u>
Total amount taxable in the hands of Heli Inc.	<u>1,50,00,000</u>

Regardless of whether the recipient and non-resident has a residence or place of business or business connection in India or rendered services in India, the above said incomes shall be deemed to accrue or arise in India, and hence taxable in the hands of Heli Inc.