

MOCK TEST PAPER – 2
FINAL COURSE: GROUP – II
PAPER – 7: DIRECT TAX LAWS
SUGGESTED ANSWERS / HINTS

1. (a) Computation of eligible deduction under section 80C for A.Y.2011-12

Particulars	Amount (₹)
Life Insurance Premium (See Note 1)	80,000
Contribution to Public Provident fund (See Note 2)	Nil
Tuition fee of his daughter pursuing B.Sc in Hans Raj College (See Note 3)	30,000
Housing loan principal repayment (See Notes 4 & 5)	Nil
Gross amount eligible for deduction under section 80C	1,10,000

However, deduction is to be restricted to ₹ 1,00,000 as per section 80CCE

Deduction under section 80CCF: Amount invested in notified long-term infrastructure bonds is eligible for deduction subject to a maximum of ₹ 20,000.

Total deduction under Chapter VI-A, assuming that he is not eligible for deduction under any other section, is ₹ 1,20,000 (₹ 1,00,000 + ₹ 20,000).

Notes:

- Any amount of life insurance premium paid in excess of 20% of actual capital sum assured shall be ignored for deduction under section 80C. In the given case, 20% of actual capital sum assured is ₹ 80,000, whereas, the premium paid during the year is ₹ 90,000. Therefore, the excess premium of ₹ 10,000 would not qualify for deduction.
- In the case of an individual, contribution to PPF can be made in his name, or in the name of his spouse or children to qualify for deduction under section 80C. **As the contribution was made in the name of his father, deduction is not allowable.**
- Tuition fee paid for the purpose of full-time education of any two children of the individual is eligible for deduction under section 80C. However, tuition fee paid to an educational institution situated outside India is not eligible for deduction. Therefore, only ₹ 30,000, being tuition fees paid for his daughter pursuing B.Sc in Hans Raj College shall be allowed as deduction.
- In order to claim the principal repayment on loan borrowed for house property as deduction, the construction of such property should have been completed and

should be chargeable to tax under the head "Income from house property". In the given case, since the property is under construction, principal repayment does not qualify for deduction.

5. Repayment of principal on housing loan is not allowed as deduction in case the loan is borrowed from friends, relatives etc. In order to qualify for deduction, the loan should have been obtained from Central Government / State Government / bank / specified employer / LIC / National Housing Bank.
- (b) (i) Section 192 requires deduction of tax from salary at the time of payment. Thus the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. XYZ Ltd., therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee E which is not paid.
- (ii) In its *Circular No. 726 dated 18.10.1995*, the Board considered such a situation and having regard to the practical difficulties involved, decided that any fees paid through regular banking channels to any chartered account, lawyer, advocate or solicitor who is resident in India by the non-residents who do not have any agent or business connection or permanent establishment in India may not be subject to the provisions of tax deduction at source under section 194J of the Income-tax Act, 1961. Therefore, the foreign company is not required to deduct tax at source on the payment made to the Indian law and accountancy firm.
- (c) In the given case, Tushar is the owner of two residential houses for self-occupation, one at Delhi and another at Jaipur.

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

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

This benefit of pegging down of value is available only if the house is self-occupied by the assessee throughout the period of 12 months immediately preceding the valuation date. Therefore, such benefit of pegging down of value cannot be availed for the house situated at Delhi since the house was occupied by the Tushar's relative for a part of the year. The value of such house would be the Schedule III

value as on 31st March, 2012 or the cost of acquisition, whichever is higher. Therefore, the Schedule III value of the flat at Delhi as on the valuation date 31st March, 2012, being ₹ 28 lacs, or the cost of acquisition of ₹ 12 lacs, whichever is higher, is to be adopted as the value for wealth-tax purpose. Accordingly, ₹ 28 lacs is the value of the Delhi house for wealth-tax purpose.

The benefit of pegging down of value can be opted for the flat situated at Jaipur, as it was self-occupied by Mr. Tushar throughout the 12 months immediately preceding the valuation date of 31st March, 2012 for his residential purposes. In case of the house at Jaipur, the Schedule III value as on 31st March, 2006, being the first valuation date after he became the owner, i.e. ₹ 7 lacs can be adopted, since its cost of acquisition does not exceed ₹ 50 lacs. Therefore, ₹ 7 lacs is the value of the Jaipur house for wealth-tax purposes.

It would be more beneficial for Mr. Tushar to claim exemption under section 5(vi) in respect of the Delhi house since the value of the Delhi house (₹ 28 lacs) is higher than the value of the Jaipur house (₹ 7 lacs) as on the valuation date 31st March, 2012.

- (d) This issue came up before the Punjab & Haryana High Court in *CIT v. Smt. Neena Jain (2011) 330 ITR 157*.

As per section 2(ea), “assets” mean, *inter alia*, any building, whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within 25 kms from local limits of any municipality or a cantonment board. The definition of “assets” under section 2(ea) also includes urban land.

The High Court opined that the words “any building” could not be read in isolation and had to be harmoniously construed with the remaining portion of section 2(ea) i.e., whether the building was used for residential or commercial purposes or for the purpose of maintaining a guest house, because an incomplete building could not possibly either be used for residential or commercial purposes or for the purposes of maintaining a guest house. Therefore, the word “building” has to be interpreted to mean a completely built structure having a roof, dwelling place, walls, doors, windows, electric and sanitary fittings etc.

In this case, the assessee was constructing the building after obtaining sanction from the appropriate authorities. *Explanation 1(b)* under section 2(ea) defining “urban land” for levy of wealth-tax, specifically excludes from its scope, the land occupied by any building which has been constructed with the approval of the appropriate authority. Therefore, the incomplete building of the assessee neither fell within the meaning of a “building” nor within the purview of “urban land” under section 2(ea). Consequently, the incomplete building is not an asset chargeable to wealth-tax.

2. **Computation of Book Profit under section 115JB of JMC Ltd.**

Particulars	₹	₹
Net profit as per profit and loss account		44,74,000
Add: Net Profit to be increased by the following amounts as per <i>Explanation 1</i> to section 115JB -		
Provision for income-tax	9,18,000	
Provision for diminution in the value of investment	72,000	
Transfer to General Reserve	2,10,000	
Provision for losses of subsidiary company	1,40,000	
Expenditure to earn agricultural income [exempt under section 10(1)]	50,000	
Depreciation	3,50,000	17,40,000
		62,14,000
Less: Net Profit to be reduced by the following amounts as per <i>Explanation 1</i> to section 115JB		
Amount credited to profit and loss account from special reserve	1,00,000	
Depreciation (excluding depreciation on account of revaluation of fixed assets) (i.e. ₹ 3,50,000 – ₹ 1,50,000)	2,00,000	
Amount credited to profit and loss account from revaluation reserve (to the extent of depreciation on revaluation)	1,50,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less, taken on cumulative basis	7,00,000	
Agricultural Income [since it is exempt under section 10(1)]	2,50,000	
		14,00,000
Book Profit		48,14,000
18.50% of book profit		8,90,590
Add: Education cess @ 2%	17,812	
Secondary and higher education cess @ 1%	8,906	26,718
Tax liability under section 115JB		9,17,308

Total income computed as per the provisions of the Income-tax Act, 1961	25,00,000	
Tax payable @ 30%		7,50,000
Add: Education cess @ 2%	15,000	
Secondary and higher education cess @ 1%	7,500	22,500
Tax Payable as per the Income-tax Act, 1961		7,72,500

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 18.50% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 18.50% thereof plus education cess @ 2% and secondary and higher education cess @ 1%. Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 18.50% of book profit, the book profit of ₹ 48,14,000 is deemed to be the total income and income-tax is payable @ 18.50% thereof plus education cess @2% and secondary and higher education cess @1%. The tax liability, therefore, works out to ₹ 9,17,308.

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income-tax Act, 1961, will be allowed as tax credit in the subsequent years. The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the other provisions of the Act. This tax credit is allowed to be carried forward for ten assessment years succeeding the assessment year in which the credit became allowable. Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act, other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

Particulars	₹
Tax on book profit under section 115JB	9,17,308
Less: Tax on total income computed as per the other provisions of the Act	7,72,500
Tax credit to be carried forward	1,44,808

Notes:

- (1) Wealth-tax and securities transaction tax do not form part of income-tax and hence, should not be added back to net profit for computing book profit.

- (2) Provision for gratuity based on actuarial valuation is a provision for meeting an ascertained liability. Therefore, it should not be added back for computing book profit.
- (3) Long-term capital gains on sale of equity shares through a recognized stock exchange on which securities transaction tax (STT) is paid is exempt under section 10(38). One of the adjustments to the book profit is that exempt income under section 10, which is credited to profit and loss account, would be deducted in arriving at the book profit.

However, deduction of such long-term capital gains is not allowed for computing book profit. Consequently, expenditure to earn such income should not be added back to arrive at the book profit. Section 10(38) also provides that such long term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

3. (a) Section 44BBA incorporates special provisions for computing profits and gains of the business of operation of aircraft in the case of non-residents. Section 44BBA starts with a non-obstante clause. Therefore, section 44BBA overrides the provisions contained in sections 28 to 43A. As such, the business income of Mr. Joseph is required to be computed in accordance with the provisions of section 44BBA.

Under section 44BBA(1), a sum equal to 5% of the aggregate of the amounts specified in sub-section (2) is deemed to be the profits and gains chargeable to tax under the head "Profits and gains of business or profession". Sub-section (2) specifies the following amounts -

- (a) the amount paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and
- (b) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Keeping in view the provisions of section 44BBA, the income of Mr. Joseph chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder -

Particulars	₹
Amount received in India on account of carriage of passengers from Bangalore	2,00,00,000
Amount received in India on account of carriage of goods from Bangalore	4,00,00,000
Amount received in India on account of carriage of passengers	1,00,00,000

from New York	
Amount received in New York on account of carriage of passengers from Bangalore	3,00,00,000
	10,00,00,000

Income from business under section 44BBA at 5% of ₹ 10,00,00,000 is ₹ 50,00,000, which is the income of Mr. Joseph chargeable to tax in India under the head "Profits and gains of business or profession" for the A.Y.2012-13.

- (b) In order to give a fillip to infrastructure and encourage inflow of long-term foreign funds to this sector, the Finance Act, 2011 has provided enabling power to the Central Government to notify any infrastructure debt fund which is set up in accordance with the prescribed guidelines. Once notified, the income of such infrastructure debt fund would be exempt from tax under section 10(47).

Such infrastructure debt fund is required to furnish its return of income for the previous year in the prescribed form within the period specified under section 139(1), if its total income, without giving effect to the exemption under section 10(47), exceeds the basic exemption limit.

Interest income received by a non-resident or a foreign company from such fund would be subject to tax at a concessional rate of 5% under section 115A on the gross amount of such interest income as compared to tax @ 20% on other interest income of non-resident.

Accordingly, tax would be deductible @ 5% on interest paid/credited by such fund to a non-resident/foreign company. The person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @5%. This is provided for in new section 194LB.

- (c) As per section 115-O, dividend distribution tax at the rate of 15% (plus surcharge @ 5%, education cess @ 2% and secondary and higher education cess @ 1%) is levied on dividend, declared, distributed or paid by a domestic company. As per section 115-O(1A), a holding company receiving dividend from its subsidiary company can reduce the same from dividends declared, distributed or paid by it. For this purpose, the matching principle does not apply. This means that even if the dividend received and dividend distributed relate to different periods, the same can be adjusted for the purpose of computing dividend distribution tax of the holding company. Such dividend shall not be considered for reduction more than once.

The conditions to be fulfilled for this purpose are as follows:

- (1) The subsidiary company should have actually paid the dividend distribution tax;

- (2) The holding company should be a domestic company;
- (3) The holding company should not be a subsidiary company of any other company.

For this purpose, a holding company is a company which holds more than 50% of the nominal value of equity shares of another company. Therefore, in this case, Alpha Ltd., is a holding company since it holds 55% shares in Beta Ltd.

On the basis of the above, dividend distribution tax payable by Alpha Ltd. shall be 16.2225% of $[(₹ 45,00,000 - (₹ 25,00,000 \times 55\%)]$ i.e. ₹ 5,06,953.

Note: Surcharge is payable on dividend distribution tax and hence, the rate of dividend distribution tax would be 16.2225%, being 15% plus surcharge@5% plus education cess @ 2% plus secondary and higher education cess@1%.

4. (a) This issue came up before the Kerala High Court in *Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011) 332 ITR 255*.

On this issue, the Kerala High Court observed that it was the SIM card which linked the mobile subscriber to the assessee's network. Therefore, supply of SIM card by the assessee-telecom company was only for the purpose of rendering continued services to the subscriber of the mobile phone. The position was the same so far as recharge coupons or e-top ups were concerned which were only air time charges collected from the subscribers in advance under a prepaid scheme.

There was no sale of any goods involved as claimed by Connecting India Ltd. and the entire charges collected by them from the distributors at the time of delivery of SIM cards or recharge coupons were only for rendering services to ultimate subscribers. Connecting India Ltd. was accountable to the subscribers for failure to render prompt services pursuant to connections given by the distributor. Therefore, the distributor only acted as a middleman on behalf of Connecting India Ltd. for procuring and retaining customers and therefore, the discount given to him was within the meaning of commission under section 194H on which tax was deductible.

- (b) This issue came up before the Karnataka High Court in *CIT v. D.Ananda Bassappa (2009) 309 ITR 329*. The Court observed that the assessee had shown that the flats were situated side by side and the builder had also certified that he had effected modification of the flats to make them one unit by opening the door between the apartments. Therefore, it was immaterial that the flats were occupied by two different tenants prior to sale or that it was purchased through different sale deeds. The Court observed that these were not the ground to hold that the assessee did not have the intention to purchase the two flats as one unit. The Court held that the assessee was entitled to exemption under section 54 in respect of both the flats to form one residential unit.

Applying the ratio of the above decision to the case on hand, Mr. Rajiv is entitled to exemption under section 54 in respect of purchase of two flats to form one apartment. Therefore, the contention of the Assessing Officer is not correct.

- (c) This issue came up before the Rajasthan High Court in *CIT v. Hindustan Zinc Ltd. (2010) 322 ITR 478*.

On this issue, the Tribunal was of the view that since the object and effect of the expenditure incurred by the assessee is to facilitate its trade operations and enable the management to conduct business more efficiently and profitably, the expenditure is revenue in nature and hence, allowable as deduction.

The High Court observed that the expenditure incurred by the assessee for commercial expediency relates to carrying on of business. The expenditure is of such nature which a prudent businessman may incur for the purpose of smooth running of his business. The operational expenses incurred by the assessee solely intended for the furtherance of the enterprise can by no means be treated as expenditure of capital nature.

Therefore, applying the rationale of the above decision, the stand taken by the Assessing Officer in disallowing the expenditure on the ground that it was of capital nature is incorrect.

- (d) The facts of the case are similar to the facts of *Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441*, where the Delhi High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income, which cannot be attributable to fault on part of the assessee. If the delay is not condoned, it would cause genuine hardship to the petitioner. Therefore, the Court held that the delay of one day in filing of the return has to be condoned.

Note – Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or **any other relief under the Act** after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of a loss return is relatable to a claim arising under the category of any other relief available under the Act. Therefore, the CBDT has the power to condone delay in filing of such loss return due to bona fide reasons to avoid genuine hardship to the assessee.

5. (a) M, N, O and P are the four shareholders of a private limited company. The shareholding pattern of the company in the last three financial years are given below:

As on 31 st day of March	M	N	O	P	X	Y
	%	%	%	%	%	%
2010	25	25	25	25	-	-
2011	-	25	25	25	25	-
2012	-	-	25	25	25	25

Section 79 provides that, in case of a closely held company, no loss incurred in the previous year shall be carried forward and set off against the income of the subsequent previous year unless the shares carrying at least 51% of the voting power of the company are beneficially held on the last day of the previous year in which the loss is sought to be set off, by the same shareholders, who beneficially held the shares carrying at least 51% of the voting power on the last day of the previous year in which the loss was incurred.

Since shareholders holding at least 51% of the voting power are the same in the first and second year, the restriction imposed by section 79 is not applicable for the second year. Thus, the taxable income for the assessment year 2011-2012 would be:

Particulars	₹
Business profit	20,00,000
Less: Current year's depreciation	11,00,000
	9,00,000
Less: Brought forward business loss (as per section 72(2))	9,00,000
Taxable income	Nil

Unabsorbed depreciation relating to the earlier assessment years can be carried forward to the next assessment year i.e. 2012-13. There is no brought forward business loss and section 79 is not applicable in case of carry forward of unabsorbed depreciation. Section 32 governs the carry forward and set off of depreciation for which the shareholding pattern is not relevant at all. Consequently, the income for A.Y.2012-13 will be determined as under -

Particulars	₹	₹
Business income		51,50,000
Less: Current year's depreciation		14,00,000
		37,50,000
Less: Unabsorbed depreciation:-		
Assessment year 2008-09	18,00,000	
Assessment year 2009-10	15,00,000	
Assessment year 2010-11	3,00,000	36,00,000
Taxable Income for A.Y.2012-13		1,50,000

- (b) The Assessing Officer may, in course of proceeding under section 147, assess or reassess any other income which has escaped assessment and which comes to his notice subsequently in the course of such proceeding.

Explanation 3 to section 147 clarifies that the Assessing Officer may assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under section 147, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

Therefore, the contention of Jupiter Ltd. is not correct.

(c) Tax treatment in the hands of the seller, Mr. Sumit

Section 50C provides that where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by an authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain.

In the instant case, Sumit sold the residential flat at Kanpur to his friend Amit for ₹ 20 lacs, whereas the stamp duty value was ₹ 30 lacs. Therefore, stamp duty value shall be deemed to be the full value of consideration for sale of the property. Therefore, short-term capital gain arising to Sumit for assessment year 2012-13 will be ₹ 23 lacs (i.e. ₹ 30 lacs - ₹ 7 lacs).

Tax treatment in the hands of the buyer, Mr. Amit

Section 56(2)(vii) includes within its scope the value of any immovable property, being land or building or both, received without consideration by an individual or HUF.

Transfer of immovable property for inadequate consideration, however, does not fall within the scope of section 56(2)(vii). Accordingly, the provisions of section 56(2)(vii) would not be attracted in such a case. The provisions of section 50C are also not attracted in this case since the stamp duty value is less than the sale consideration. The cost of acquisition of the flat to Mr. Amit would be the actual cost of ₹ 20 lacs. Therefore, on sale of the flat by Mr. Amit, ₹ 20 lacs (i.e. ₹ 40 lacs – ₹ 20 lacs) would be chargeable to tax as short-term capital gains for A.Y. 2012-13.

6. (a) The interest income from deposit in the bank is assessable under the head "Income from Other Sources". The deduction admissible against this income is any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income. However, the interest paid on the borrowing of ₹ 5 Lacs does not fall in this category. This has been held by the Supreme Court in *CIT v. Dr. V. Gopinathan* (2001) 248 ITR 449. In that case, the Supreme Court observed that the interest received by the assessee

from the bank on a fixed deposit is income in his hands and there could be no deduction there from unless there is a law permitting such deduction. The interest on a loan taken by the assessee on the security of the fixed deposit would not go to reduce the income by way of interest on the fixed deposit as there is no provision for deduction of such interest on the loan.

Therefore, in this case, the full sum of ₹ 80,000 will be liable to tax under the head "Income from Other Sources".

Note: In case the assessee had deposited business funds and availed loan against such deposit for business use of such loan, the interest on loan against deposit is eligible for deduction.

- (b) Section 90(2) makes it clear that where the Central Government has entered into a Double Taxation Avoidance Agreement, then **in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee.** This means that where tax liability is imposed by the Act, the Double Taxation Avoidance Agreement may be resorted to for reducing or avoiding the tax liability.

The Supreme Court has held, in *CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654*, that in case of any conflict between the provisions of the Double Taxation Avoidance Agreement and the Income-tax Act, 1961, the provisions of the Double Taxation Avoidance Agreement would prevail over those of the Income-tax Act, 1961. Shiv is, therefore, not liable to pay tax on the income earned by him.

- (c) 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 = $(₹ 24 + ₹ 28) / 2 = ₹ 26$ lacs.

The rate of permissible variation prescribed by the Central Government is 5% i.e. ₹ 1.25 lacs (₹ 25 lacs x 5%).

Since the variation between the arm's length price of ₹ 26 lacs and the transfer price of ₹ 25 lacs is within 5% of TP (i.e., ₹ 1.25 lacs), no adjustment is required and the transfer price of ₹ 25 lacs shall be deemed to be the arm's length price.

- (d) Clause (b) of section 245A has restricted the cases eligible to appear before the Settlement Commission. The term 'case' would mean any proceeding for assessment under the Act of any person in respect of any assessment year or years which is pending before the Assessing Officer and which alone shall be eligible for settlement by the settlement commission.

The following shall not be a proceeding for the purpose of filing an application under section 245C.

- (i) a proceeding for assessment or reassessment or re-computation under section 147;
- (ii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264 setting aside or cancelling an assessment.

Therefore, search cases are eligible for settlement through the Settlement Commission. However, a proceeding shall be deemed to have been commenced on the date of issue of notice initiating assessment under section 153A or section 153C and would get concluded on the date on which the assessment is made. During this period, application for settlement of the case could be filed by the assessee. The monetary limit prescribed in respect of additional amount of income-tax payable is also be kept in mind in view of proviso to section 245C(1).

7. (a) Section 245N enables a resident falling within any such class or category of persons as may be notified by the Central Government to make an application for Advance Ruling. Such notified resident applicant can seek ruling in respect of issues relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal. Such a resident applicant can make an application to seek decision on a question of law or a question of fact.

Public sector companies as defined in section 2(36A) of the Income-tax Act, 1961 have been notified as applicant for this purpose.

Further, a resident can make an application seeking advance ruling in relation to the tax liability of a non-resident arising out of a transaction undertaken or proposed to be undertaken by him with such non-resident.

- (b) (i) An assessee, aggrieved by the order passed under section 143(3) by the Assessing Officer, can file an appeal before the Commissioner of Income-tax (Appeals) under section 246A(1) within 30 days of the date of service of the notice of demand relating to the assessment. However, where the assessee does not want to prefer an appeal, then he can move a revision petition before the Commissioner of Income-tax under section 264 within a period of one year from the date of on which the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.
- (ii) An assessee, aggrieved by the order passed under section 263 by the Commissioner of Income-tax, can file an appeal to Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.
- (iii) An assessee, aggrieved by the order passed under section 272A by the

Director General, can file an appeal before the Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.

- (iv) An assessee, aggrieved by the order passed under section 254 by the Income-tax Appellate Tribunal, can file an appeal before the High Court under section 260A within 120 days from the date of receipt of order of Income-tax Appellate Tribunal, only where the order gives rise to a substantial question of law.
- (c) Jai is required to maintain books of account as per section 44AA and get them audited under section 44AB, since his gross sales exceeded ₹ 60 lacs. He is liable to pay penalty under section 271A for not maintaining his books of account as per section 44AA. Accordingly, the action of the Assessing Officer in levying penalty under section 271A is correct. However, where books of account have not been maintained, there cannot be a question of getting them audited. Audit of books of account presupposes maintenance of books of account. When admittedly Jai has not maintained books, he cannot obviously get the audit done.

In *Surajmal Parsuram Todi v. CIT (1996) 222 ITR 691*, the Gauhati High Court has held that when a person commits an offence by not maintaining books of accounts as contemplated by section 44AA, the offence is complete and after that there can be no possibility of any offence as contemplated by section 44AB and, therefore, the imposition of penalty under section 271B is erroneous.

Therefore, in this case, the Assessing Officer is not justified in levying penalty under section 271B.

- (d) The service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -
 - (1) by post or such courier services as approved by the CBDT; or
 - (2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or
 - (3) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
 - (4) by any other means of transmission as may be provided by rules made by the CBDT in this behalf.

The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.