

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

1. (a) Computation of business income of M/s. Popat Industries for the A.Y 2013-14

Particulars	₹	₹
Net Profit as per Profit & Loss Account		1,50,000
Add : Remuneration to partners (considered separately)		<u>2,50,000</u>
		4,00,000
Add: Inadmissible expenses :		
Interest [₹ 54,000 – ₹ 36,000 (calculated@12%)]	18,000	
Provident fund payment outstanding as on due date of filing of return - disallowed under section 43B	12,500	
Cash purchases [disallowed under section 40A(3)]	<u>80,000</u>	<u>1,10,500</u>
		5,10,500
Less : Amount credited but exempt :		
Dividend from UTI [exempt under section 10(35)]		<u>15,000</u>
Book Profit		4,95,500
Less : Remuneration to partners deductible (see note below)		<u>2,50,000</u>
Taxable business income		<u>2,45,500</u>

Note: Computation of remuneration allowable as deduction as per 40(b)(v)

Particulars	Percentage allowable	₹
On first 3,00,000 of book profit	90%	2,70,000
On the balance book profit of ₹ 1,95,500	60%	<u>1,17,300</u>
Remuneration allowable as per 40(b)(v)		<u>3,87,300</u>

Since the actual remuneration of ₹ 2,50,000 is less than the maximum limit of ₹ 3,87,300, the entire remuneration of ₹ 2,50,000 is deductible.

(b) Computation of net wealth of Pitbull Constructions Ltd. as on valuation date 31.03.2013

Particulars	₹ in lacs
Assets [as per the definition of assets under section 2(ea)]	
(i) Land in urban area (held as stock in trade since 2001) – taxable since it is held as stock-in-trade for more than 10 years	59
(ii) Motor cars (excluding imported car not being an asset since it is used for hiring) [₹ 34 Lacs – ₹ 23 Lacs]	11
(iii) Land at Ghaziabad township – Since the assessee is engaged in construction business, land and building would form part of his stock-in-trade. Hence, not taxable.	Nil
(iv) (a) Residential flats provided to an employee drawing salary less than ₹ 10 lacs per annum – not an asset	Nil

	(b) Residential flat provided to an employee drawing salary exceeding ₹ 10 lacs per annum is an asset $[30 \times 1/2]$	15	
(v)	Farm house at a remote village is not an asset assuming it is not situated within 25 km of any municipality	Nil	
(vi)	Cash in hand as per cash book is not an asset since it represents cash recorded in the books	Nil	
			85
Less: Liabilities			
(i)	Loan for purchase of land in urban area – deductible since it is incurred in relation to land in urban area, which is an asset chargeable to wealth-tax.	39	
(ii)	Loan for purchase of land at Ghaziabad – not deductible since the land, being stock-in-trade, is not an asset under section 2(ea).	Nil	
(iii)	Wealth-tax liability for A.Y.2012-13 – wealth tax liability is not deductible	Nil	
(iv)	Loan for construction of residential flats - the portion relating to taxable asset is deductible i.e. $\frac{1}{2} \times 18 \text{ lacs}$	9	48
	Net Wealth		37

2. Computation of Book Profit of Topaz Ltd. under section 115JB for A.Y.2013-14

Particulars	₹	₹
Net Profit as per Profit & Loss Account		48,25,000
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 ₹ 7,45,000		
- Dividend distribution tax ₹ <u>1,20,000</u>	8,65,000	
Provision for deferred tax	65,000	
Transfer to General Reserve	1,82,000	
Provision for losses of subsidiary company	1,00,000	
Dividend paid or proposed		
- Proposed dividend ₹ 1,90,000		
- Preference dividend ₹ <u>1,30,500</u>	3,20,500	
Expenditure to earn income exempt under section 10 [except section 10(38)]		
- Expenditure to earn agricultural income [exempt under section 10(1)] ₹ 85,500		
- Expenditure to earn dividend income [exempt under section 10(34)] ₹ <u>40,000</u>	1,25,500	
Depreciation	4,50,000	21,08,000
		69,33,000

Less: Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB		
Amount credited to P& L A/c from Special Reserve	2,00,000	
Depreciation (excluding depreciation on account of revaluation of fixed assets) (i.e. ₹ 4,50,000 – ₹ 2,00,000)	2,50,000	
Amount credited to P& L A/c from Revaluation Reserve (to the extent of depreciation on revaluation)	2,00,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less taken on cumulative basis	6,50,000	
Income exempt under section 10 [except section 10(38)]		
Agricultural Income [since it is exempt under section 10(1)]	2,80,000	
Dividend income [since it is an income exempt under section 10(34)]	2,20,000	18,00,000
Book Profit		51,33,000
18.50% of book profit		9,49,605
Add: Education cess @ 2%	18,992	
Secondary and higher education cess @ 1%	9,496	28,488
Tax liability under section 115JB		9,78,093
Total income computed as per the provisions of the Income-tax Act, 1961	27,50,000	
Tax payable @ 30%		8,25,000
Add: Education cess @ 2%	16,500	
Secondary and higher education cess @ 1%	8,250	24,750
Tax Payable as per the Income-tax Act, 1961		8,49,750

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 ₹ 51,33,000 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 ₹ 9,78,093.

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	9,78,093
Less: Tax on total income computed as per the other provisions of the Act	8,49,750
Tax credit to be carried forward	1,28,343

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) Any income arising from an international transaction, where two or more “associated enterprises” enter into a mutual agreement or arrangement, shall be computed having regard to arm’s length price as per the provisions of Chapter X of the Act.

Section 92A defines an “associated enterprise” and sub-section (2) of this section speaks of the situations when the two enterprises shall be deemed to associated enterprises. Applying the provisions of section 92A(2)(a) to (m) to the given facts, it is clear that “Prakash Motors Ltd.” is associated with :-

- (i) Meena Ltd. as per section 92A(2)(a), because this company holds shares carrying more than 26% of the voting power in Prakash Motors Ltd.;
- (ii) Komo Ltd. as per section 92A(2)(g), since this company is the sole owner of the technology used by Prakash Motors Ltd. in its manufacturing process;
- (iii) Henken Ltd. as per section 92A(2)(c), since this company has financed an amount which is more than 51% of the book value of total assets of Prakash Motors Ltd.

The transactions entered into by Prakash Motors Ltd. with different companies are, therefore, to be adjusted accordingly to work out the income chargeable to tax for the A.Y. 2013-14.

	Particulars	₹ (in crores)
	Income of Prakash Motors Ltd. as computed under Chapter IV-D, prior to adjustments as per Chapter – X	300
<i>Add:</i>	Difference on account of adjustment in the value of international transactions:	

(i)	Difference in price of car @ \$ 200 each for 10,000 cars (\$ 200 x 10,000 x 65)	13
(ii)	Difference for excess payment of royalty of \$ 30,00,000 (\$ 30,00,000 x 65) [See Note below]	19.5
(iii)	Difference for excess interest paid on loan of EURO 1000 crores [92 x 1,000 x 1/100]	920
	Total Income	<u>1,252.50</u>

Note – The difference for excess payment of royalty has been added back presuming that the manufacture of cars by Prakash Motors Ltd is wholly dependent on the use of know-how owned by Komo Ltd.

- (b) Under section 44BBA, a sum equal to 5% of the aggregate of the following amount is deemed to be the profits and gains chargeable to tax under the head "Profits and gains of business or profession" in respect of a non-resident, engaged in the business of operation of aircraft -
- 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
 - 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.

In the present case, the income chargeable to tax of M/s Midair Atlantic is as follows

Particulars	Fare booked from India to outside India whether received in India or not (₹)	Fare booked from New York to Mumbai	
		If received in India (₹)	If not received in India (₹)
Fare	80,00,000 (2,25,00,000 – 1,45,00,000)	1,45,00,000	1,45,00,000
Deemed income @5% under section 44BBA	4,00,000 (80,00,000 × 5%)	7,25,000 (1,45,00,000 × 5%)	Nil

- (c) Microsoft Inc, the foreign company and Nano Ltd., the Indian company are associated enterprises since Microsoft Inc holds not less than 26% voting rights in Nano Ltd. (being a subsidiary of Microsoft Inc, more than 50% of its voting rights would be held by Microsoft Inc). Microsoft Inc sells computer monitors to Nano Ltd. for resale in India. Microsoft Inc also sells identical computer monitors to NET Ltd., which is not an associated enterprise. The price charged by Microsoft Inc 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 Microsoft Inc and Nano Ltd.) and uncontrolled transaction (i.e. transaction between Microsoft Inc and NET Ltd.) and the price so adjusted shall be the arm's length price for the international transaction.

For sale of monitors by NET Ltd., Microsoft Inc is responsible for warranty for 3 months. The price charged by Microsoft Inc to NET Ltd. includes the charge for

warranty for 3 months. Hence, the arm's length price for computer monitors being sold by Microsoft Inc to Nano Ltd. would be:

Particulars	No.	₹
Sale price charged by Microsoft Inc to NET Ltd.		10,000
Less: Cost of warranty included in the price charged to NET Ltd. (₹ 1,000 x 3 /12)		250
Arm's length price		9,750
Actual price paid by Nano Ltd. to Microsoft Inc.		11,000
Difference per unit		1,250
No. of units supplied by Microsoft Inc to Nano Ltd.	50,000	
Addition required to be made in the computation of total income of Nano Ltd. (1,250 × 50,000)		6,25,00,000

No deduction under chapter VI-A would be allowable in respect of the enhanced income of ₹ 6.25 crores.

4. (a) Computation of "Income from other sources" of Mr. Gaba for the A.Y.2013-14

	Particulars	₹
(i)	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	55,000
(ii)	Since car is not included in the definition of "property", therefore the difference of ₹ 4 lakh between fair market value and purchase price of car is not taxable under section 56(2)(vii)	Nil
(iii)	Cash gift received from friends is taxable under section 56(2)(vii), since its aggregate value exceeds ₹ 50,000 (₹ 25,000 × 3)	75,000
(iv)	Immovable property purchased for inadequate consideration is outside the scope of section 56(2)(vii) for A.Y.2013-14. Therefore the difference of ₹ 10 lakh between stamp duty value and purchase price of building is not taxable under section 56(2)(vii).	Nil
(v)	Interest received during the year on enhanced compensation is taxable under section 145A in the year of receipt, irrespective of the method of accounting followed by Mr. Gaba. The interest is taxable under section 56(2)(viii).	
	(₹ 1,55,000 + ₹ 1,98,000 + ₹ 1,27,000)	₹ 4,80,000
	Less: Deduction under section 57 @50% of ₹ 4,80,000	<u>₹ 2,40,000</u>
	Income from Other Sources	<u>2,40,000</u> <u>3,70,000</u>

- (b) (i)** As per section 50B, any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain. Indexation benefit is not available in case of slump sale as per section 50B(2).

Ascertainment of tax liability of Angle Ltd. from slump sale of Unit-II

Particulars	₹
Slump sale consideration	3,05,00,000
Less :Cost of acquisition (net worth) [See Working Note below]	<u>1,34,00,000</u>
Long-term capital gain (as Unit-II is held for more than 36 months)	<u>1,71,00,000</u>
Calculation of tax liability	
Income tax @ 20% (Being long term capital gain under section 112)	34,20,000
Surcharge @ 5%	<u>1,71,000</u>
	35,91,000
Education Cess @ 2% and Secondary and higher education cess@1%	<u>1,07,730</u>
Total tax liability	<u>36,98,730</u>

Working Note: Net worth of Unit II

Particulars	₹
WDV of block of assets	90,00,000
Debtors	57,00,000
Inventories	<u>38,00,000</u>
	1,85,00,000
Less : Liabilities	<u>51,00,000</u>
Net worth	<u>1,34,00,000</u>

(ii) Tax Advice

- (a) Transfer of any capital asset by a holding company to its 100% Indian subsidiary company is exempted from tax under section 47(iv). Therefore, if it is possible for Angle Ltd. should try to acquire the entire shareholding of Triangle Ltd. and thereafter make a slump sale, then the resultant capital gain shall not attract tax liability. However, in such case also, Angle Ltd. should not transfer any shares in Triangle Ltd. for 8 years from the date of slump sale.
- (b) Alternatively, if acquisition of 15% share is not feasible, Angle Ltd. may think about demerger plan of Unit-II to get benefit of section 47(vib) of the Income-tax Act, 1961.

5. (a) The issue under consideration is whether the expenditure incurred on demolition and re-erection of a cell room, representing a part of a building used for business purposes and expenditure incurred on purchase of pumping set, mono block pump and transformers, which were part of a bigger plant, are capital or revenue in nature.

On the issue of whether expenditure on demolition and re-erection of a cell room is revenue or capital in nature, the Delhi High Court, in *CIT v. Modi Industries Ltd. (2011) 339 ITR 467*, referred to the Supreme Court ruling in *CIT v. Saravana Spinning Mills P. Ltd. (2007) 293 ITR 201*, wherein it was observed that "current repairs" under section 31 refer to expenditure effected to preserve and maintain an already existing asset and the object of expenditure must not be to bring a new asset into existence or to obtain a new advantage.

Applying the rationale of the Apex Court ruling, the Delhi High Court observed that if a part of a structure becomes dilapidated and repairs/reinforcement of some parts of the structure is required, it would be treated as "current repairs". However, on the other hand, if a part of a building is demolished and a new structure is erected on

that place, it has to be treated as capital expenditure, as in that case, a totally new asset is created even if it may be a part of the building.

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

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

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

The Delhi High Court also observed that as far as purchase of pumping set, mono block pump and two transformers were concerned, they were not stand alone equipment, but were part of the bigger plant. Therefore, it would be treated as replacement of those parts and the expenditure incurred is revenue in nature, eligible for deduction under section 37(1).

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

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

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

In effect, the benefit of indexation as per the second proviso to section 48 would not be available in respect of depreciable assets. Further, the written down value of the block at the beginning of the year, as increased by the actual cost of the asset purchased during the year in that block will be reduced from the net sale consideration for determining the taxable capital gains.

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

Applying the above rationale of the Delhi High Court ruling to this case, Mr. Rakesh can invest the net consideration on sale of building for purchasing a new residential house and claiming exemption under section 54F, since the building is held for more

than 36 months. Thus, we can conclude that the contention of the Assessing Officer is not correct.

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

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

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

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

- (d) Section 80-IA(1) provides for 100% deduction of profits derived by an undertaking or an enterprise from an eligible business referred to in sub-section (4) for ten consecutive assessment years. Clause (i) of sub-section (4) provides that the deduction under section 80-IA(1) would be available to any enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility fulfilling the conditions mentioned therein. The *Explanation* to this clause defines "infrastructure facility" to include, *inter alia*, -
- (a) a road, including a toll road, a bridge or a rail system and
 - (b) a highway project including housing or other activities being an integral part of the highway project.

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

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

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

The Delhi High Court observed that once the tips were paid by the customers either in cash directly to the employees or by way of charge to the credit cards in the bills,

the employees gained additional income, which was by virtue of their employment. When the tips were received by the employees directly in cash, the employer hardly had any role and it may not even know the amount of tips collected by the employees. That would be out of the purview of responsibility of the employer under section 192.

However, when the tips were charged to the bill either by way of a fixed percentage on the total bill, or where no percentage was specified, the amount was indicated by the customer on the bill as a tip, the tip went into the receipt of the employer and was subsequently disbursed to the employees. As soon as such amounts were received by the employer, there was an obligation on the part of the employer to disburse them to the rightful persons, namely, the employees. Simultaneously, a right accrued to the employees to claim the tips from the employer. By virtue of the employer-employee relationship, a vested right accrued to the employee to claim the tips. The High Court, therefore, held that the tips would constitute income within the meaning of section 2(24) and are, thus, taxable under section 15. Consequently, it was obligatory upon the company to deduct tax at source from such payments under section 192.

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

6. (a) (i) According to section 50C, the Assessing Officer can refer the property to the valuation officer, only when the following two conditions are satisfied:
- (a) The value fixed by the stamp valuation authority is not disputed in appeal or revision etc.
 - (b) The assessee claims before the Assessing Officer that the value adopted or assessed by the stamp valuation authority exceeds the fair market value (FMV) of the property as on the date of transfer.

In the instant case, though the assessee paid the stamp duty as fixed by the stamp valuation authorities, he had requested the Assessing Officer to refer the property to the valuation officer for valuation. The value determined by the Valuation Officer is less than the value adopted by the stamp valuation authority. Therefore, such value only could be adopted for computing chargeable capital gains.

- (ii) The amount on which Mr. Rajesh is required to pay capital gains tax will be as under:-

Sale consideration of the house property under section 50C(1)	₹ 45,00,000
Less: Indexed cost of acquisition ₹ 22,25,000 × 852/447	<u>₹ 42,40,940</u>
Long term capital gain	<u>₹ 2,59,060</u>

- (b) (i) The proposition is correct in law. The Supreme Court has, in *CIT vs. McMillan & Co. (1958) 33 ITR 182* and *CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225*, held that in disposing of an appeal before him, the appellate authority can travel over a whole range of the assessment order. The scope of his powers is co-terminus with that of the Assessing Officer. He can do what the Assessing Officer can do and can also direct him to do, what he has failed to do. He can assess income from sources which have been considered by the Assessing Officer but not brought to tax. He can consider every aspect of the assessment order and give appropriate reliefs.

The Allahabad High Court has, in *CIT v. Kashi Nath Chandiwala (2006) 280 ITR 318*, held that the appellate authority is empowered to consider and decide

any matter arising out of the proceedings in which the order appealed against was passed notwithstanding the fact that such matter was not raised before him by the assessee. The Commissioner (Appeals) is entitled to direct additions in respect of items of income not considered by the Assessing Officer.

Further, the Apex Court has, in the case of *Jute Corporation of India Ltd. vs. CIT (1991) 187 ITR 688*, held that the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter.

Thus, the powers of the Commissioner of Income-tax (Appeals) in enhancing the assessment are very wide and plenary.

- (ii) The proposition is not correct as per law. This is because section 254(2) specifically empowers the Appellate Tribunal to amend any order passed by it, either *suo-moto* or on an application made by the assessee or Assessing Officer, with a view to rectifying any mistake apparent from record, at any time within 4 years from the date of the order sought to be amended.

The powers of the Tribunal under section 254(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the record. The mistake has to be such that for which no elaborate reasons or inquiry is necessary. Accordingly, the re-appreciation of evidence placed before the Tribunal during the course of the appeal hearing is not permitted. It cannot re-adjudicate the issue afresh under the garb of rectification. This issue came up for consideration before the Punjab & Haryana High Court in the case of *CIT vs. Vardhman Spinning (1997) 226 ITR 296*. The Court observed that the jurisdiction to review or modify orders passed by the authorities under the Act cannot be inferred on the basis of a supposed inherent right.

7. (a) Tax treatment in the hands of the seller, Mr. Bela

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, Bela sold the residential flat at Kanpur to his friend Kuhu for ₹ 12 lacs, whereas the stamp duty value was ₹ 15 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 Bela for assessment year 2013-14 will be ₹ 11.50 lacs (i.e., ₹ 15 lacs - ₹ 3.50 lacs).

Tax treatment in the hands of the buyer, Ms. Kuhu

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) for A.Y.2013-14. Accordingly, the provisions of section 56(2)(vii) would not be attracted in such a case for A.Y.2013-14. 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 Ms. Kuhu would be the actual cost of ₹ 12 lacs. Therefore, on sale of the flat by Ms. Kuhu, ₹ 8 lacs (i.e. ₹ 20 lacs – ₹ 12 lacs) would be chargeable to tax as short-term capital gains for A.Y. 2013-14.

- (b) As per section 64(1)(ii), in computing the total income of any "individual", the remuneration paid to spouse by a firm in which the individual has substantial interest shall be liable for clubbing. In the present case, Mr. Raghav is not a partner in his individual capacity, but a partner in representative capacity.

The Supreme Court has, in the case of *CIT vs. Om Prakash* (1996) 217 ITR 785, held that an individual can be a partner in a partnership firm in his individual capacity or in the capacity of the Karta of a Hindu undivided family or, for that matter, in any other capacity, e.g., as a trustee. Where a person is a partner as the Karta of a Hindu undivided family, the capacity in which he is a partner in the partnership firm is relevant as between him and the other members of the Hindu undivided family. The income the Karta receives as a partner is not his individual income; it is the income of the Hindu undivided family and he receives it on behalf of the Hindu undivided family. It is for this reason that the income of the wife arising from her membership of the partnership firm, is held not includible in the income of the Hindu undivided family since the total income of the Hindu undivided family is not the total income of the individual (husband). For section 64(1) to get attracted, it is necessary that the spouse should be a partner in a partnership firm in his individual capacity. It is not attracted where he is a partner as the Karta of the Hindu undivided family to which his wife belongs.

The action of the Assessing Officer in this case is, therefore, not correct.

- (c) (i) The definition of "work" under section 194C includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. In the instant case, Bhoomi Limited manufactures the product as per the specification given by Bhanu Limited by using the raw materials purchased from Bhanu Limited. Therefore, it falls within the definition of "work" under section 194C. Consequently, tax is to be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.
- (ii) Section 195 requires deduction of tax at source by any person responsible for making payment to a non-resident, any interest or any other sum chargeable under the provisions of the Income-tax Act, 1961 (other than income chargeable under the head "Salaries").

Section 192(1) requires "any person" responsible for paying income under the head "Salaries" to deduct tax at source. Therefore, even if the payer is a foreign company, section 192 would be applicable.

TDS provisions under section 192 are attracted, if the salary payable to a non-resident is chargeable to tax in India. Under section 9(1)(ii), income which falls under the head "Salaries" shall be deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India shall be regarded as income earned in India. Therefore, salary paid to Mr. Shashi, a non-resident, attracts tax liability in India, as he has rendered services in India and the salary is attributable to such services.

Therefore, the foreign company, Max Inc, is liable to deduct tax at source under section 192 from the salary of Mr. Shashi.