Probable Questions for CA-Final November, 2013 Examination

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Chapter No. 1	Wealth tax Act, 1957

1.1 Mr. Pradumna aged 45 years has a property in trust giving whole life interest. The average income from property during 3 years is ` 70,000 and related year average expenses are ` 3,500 (being 5% of average income).

Solution: (Refer Page No. 8 for detailed provision)

- ✓ Net average annual income is ` 66,500 (` 70,000 – ` 3,500)
- ✓ So, value of life interest worked out as ` 66,500 x 9.267 (life factor for 45 years) = ` 6,16,255.

1.2 Whether the following constitute assets chargeable to wealth tax on the valuation date 31.03.2013 in an each independent situation. (Refer Page No. 2 - 7 for detailed provision)

(a) Residential house owned by X Ltd and allotted to an employee drawing a gross salary of ` 9 lakhs pa.

- ✓ Residential house owned by company and allotted to an employee drawing gross salary of less than ` 10 lakhs is specifically excluded from the definition of asset u/s 2(ea)(i).

(b) Silver and gold in the jeweller shop.

- ✓ Jewellery used as stock in trade shall be excluded from chargeability of wealth tax u/s 2(ea)(iii)

(c) Cash balance of ` 5 lakhs with Mr. M

- ✓ Cash in hand in excess of ` 50,000 is considered as an asset u/s 2(ea)(vi) in case of an individual and HUF.

(d) Aircraft used for the purpose of transportation of goods for the business of P Ltd.

- ✓ The definition of asset u/s 2(ea)(iv) specifically excluded those used by the assessee for commercial purpose. Aircraft held by company and used for transportation of its goods is considered as used for "commercial purpose", since it is used for the business of the company.

(e) Motor car used in the business of running on hire by Mr. C

- ✓ Motor cars other than those used by the assessee in the business of running them on hire or as stock in trade is an asset u/s 2(ea)(ii). Hence, it does not constitute an asset u/s 2(ea)(ii).

(f) Dr. V, a dentist who has his own clinic, is in possession of surgical instruments used for his professional activity. The value of all such instruments was ` 10 lakhs.

- ✓ Surgical instruments held on the valuation date used for the purpose of profession are not assets to levy wealth tax, since such instruments are used for his professional activity.

(g) Fixed deposit held by Mr. P with State Bank of India ` 2 lakhs

- ✓ Fixed deposit with bank is not an asset u/s 2(ea). Hence, wealth tax is not leviable in respect of value of fixed deposit held by Mr.P with SBI.

(h) Urban land located at Coimbatore, purchased by Mr. M for ` 2 lakhs in August 2010, in the name of his son who is suffering from a disability specified u/s 80U of the income tax Act, 1961. The age of his son on 31.03.2013 was 17 years and value of land was ` 5 lakhs.

- ✓ Urban land is an asset u/s 2(ea)(v). However, since the same is in the name of Mr. M's minor son who suffers from a disability u/s 80-U of the income tax Act, 1961, the clubbing provisions are not applicable u/s 4(1)(a)(ii).

(i) The house property owned by Prakashan was transferred without consideration to Miss Gayatri on 11.1.2012. Subsequently, Miss Gayatri got married to his son on 18.04.2012. The value of house on 31.03.2013 is ` 50 lakhs.

- ✓ Miss Gayatri cannot be treated as son's wife on the date of transfer.
- ✓ The property so transferred cannot be clubbed with net wealth of Mr. Prakashan by invoking section 4(1)(a). Hence, it can be included in the hands of net wealth of Ms. Gayatri, who can opt to claim exemption u/s 5(vi) in respect of the same.

(j) Agricultural farm house situated 50 kms outside the municipal limits of Chennai, but within 18 kms of Alandur Municipal Corporation.

- ✓ As per section 2(ea) , farm house situated within 25 kms from the local limits of a Alandur municipality shall be considered as an asset and chargeable to wealth tax.

1.3 What are the cases where it is deemed that net wealth chargeable to tax has escaped assessment u/s 17 of the wealth tax Act, 1957?

Solution: **(Refer Page No. 11 for detailed provision)**

- ✓ Return of net wealth is **not furnished even** his net wealth **exceeds** the basic exemption limit. i.e. ` 30,00,000
- ✓ Return of net wealth **is furnished** and the **assessment not** made and assessing officer notices that the assessee has **(a)** under stated the net wealth or **(b)** claimed excessive exemption or deduction in return.

1.4 'P' filed his return of net wealth for AY 2009-10. Penalty proceedings u/s 18 for concealment was initiated by the initiated in 2010. 'P' died in January, 2012. The estate of 'P' devolved on his wife, 'W', who also died in October, 2012. Thereafter, the estate devolved on their daughter 'D'. Penalty order passed on 28th February, 2013 on 'D'. Is the action of assessing offer valid in law?

Solution: **(Refer Page No. 12 for detailed provision)**

- ✓ Penalty proceedings initiated against an assessee cannot be continued on the legal heirs on the demise of such assessee. **{(In re Late Shrimant F.P. Gaekwad)(2009)(Guj)}.** Hence, the action of the assessing officer is not valid in law.

1.5 Determine the Net Wealth of Mr. Ram, a non resident for the AY 2013-14.

(i) He own a commercial complex and had earned a rental income of ` 12,00,000 during the year from it. It is valued at ` 6 crores. Loan taken for the same is ` 4.5 crores.

(ii) He has jewellery worth ` 1.5 crores which he has pledged and taken a loan of ` 1 crore. This was used to buy a land in Mumbai, which was later transferred as gift to his wife on 30th March, 2013 on their wedding anniversary

(iii) He also has a foreign make motor car purchased outside India. He had ordered it to be transported to India and is expected to reach by April 7, 2013. The ship was on international waters on 31st March, 2013.

(iv) He bought a land 12 kms away from Chennai for ` 50 lakhs. He planned to construct a residential house property at an estimate of ` 2 crores. 50% of the work was completed on 31st March, 2013.

(v) He has a residential house property at Washington, USA, valued at ` 8 crores.

(vi) He has another house property at Chicago, USA, valued at ` 6crores for which a loan of ` 4 crores has been taken.

Solution: **(Refer Page No. 2 - 11 for detailed provision)**

Computation of Net Wealth of Mr. Ram as on 31-03-2013				
	Particulars		**(` In Crores)**	**(` In Crores)**
➔	Assets u/s 2(ea)			
(i)	Commercial Complex – Not an asset		Nil	
(ii)	Jewellery		1.50	
(ii)	Land in Mumbai – Deemed Asset		1.00	
(iii)	Motor Car in International Waters – Not an Asset for Non-Resident		Nil	
(iv)	Land in Chennai – Under construction – Not an Asset		Nil	
(v)	Residential House Property at Washington – Not an Asset		Nil	
(vi)	Residential House Property at Chicago – Not an Asset		Nil	2.50
➔	Debt incurred to acquire an asset			
(i)	Loans for Commercial Complex – Asset Exempted		Nil	
(ii)	Loan for land in Mumbai		1.00	1.00
	Taxable net wealth			**1.50**

1.6 A firm has assets located in India ` 35 lakhs and assets located outside India ` 15 lakhs. The firm has two partners Mr. P & Mr. Q, their capital contribution ` 7.50 lakhs, and ` 2.50 lakhs respectively. Their profit sharing ratio 3:1.

Solution: **(Refer Page No. 8 for detailed provision)**

- ✓ Valuation as per Rule 15, 16 of Schedule III of Wealth tax Act.
- ✓ The value of net wealth of firm is ` 50 lakhs (` 35 lakhs + ` 15 lakhs)
- ✓ The value of interest of partner is determined as Mr. P = ` 7.50 lakhs + ` 40 lakhs x $^{3}/_{4}$= ` 37, 50,000 and for Mr. Q = ` 2.50 lakhs + ` 40 lakhs x $^{1}/_{4}$ = ` 12,50,000

Chapter No. 2 Introduction – Basic understanding of income tax Act, 1961

2.1 Corporate membership fee paid by a company to the golf club, if the membership is for limited period of six years.

- ❖ The aim and object of the expenditure would determine the character of the expenditure. The corporate membership fees obtained for running the business to earn profit and the membership was for a limited period of six years. Such membership does not bring into existence an asset or an advantage for the enduring benefit of the business. Hence, treated as revenue in nature. **{(In re Groz Beckert Asia Ltd)(2013)(P&H)}**

2.2 Discuss the power subsidy was given as a part of an incentive scheme after commencement of production is capital or revenue in nature?

- ❖ The purpose for which the subsidy is given should determine the nature of the receipt. The production incentive scheme is different from the scheme giving subsidy for setting up industries in the backward areas. The power subsidy was given as a part of an incentive scheme after commencement of production, which is linked to production and therefore, has to be treated as a revenue receipt. **{(In re Rassi Cement Ltd)(2013)(AP)}**

2.3 Enumerate Severance cost paid to the employees in respect of suspension of one of the business activities is treated as capital expenditure or not?

- One of the business activities was suspended, it cannot be construed that the assessee has closed down its entire business. Severance cost paid to the employees in respect of suspension of one of the activities is treated as revenue in nature. **{(In re KJS India P. Ltd)(2012)(Del)}**

2.4 Security deposits given to the landlord is a tenancy right and treated as capital in nature. Discuss.

- Security deposits given to the landlord is in the nature of a right to use the property, i.e., tenancy right, which is a capital asset. **{(In re Triveni Engg. & Industries Ltd.)(2012)(Del)}**

Chapter No. 3 Return of Income and Procedure for Assessment

3.1 Mr. X, an employee of ABC (P) ltd, draws a salary of ` 498,000 and has income from fixed deposit with the bank ` 2000. State whether he is required to file return of income.

Solution: **(Refer Page No. 12 for detailed provision)**

As per section 139(1), every person who's Income without giving effect to provisions of chapter VI-A exceeds the 'maximum amount not chargeable to tax', is required to furnish return of income for the relevant assessment year on or before the due date.

3.2 State the persons who are not permitted to file return through tax return preparer.

Solution:

Only specified classes of person as notified by CBDT are permitted to file return through tax return preparers. Specified persons defined to mean any person, **other than** a company **(or)** a person whose accounts are required to be audited u/s 44AB or under any other law, is not permitted to file return of income through tax return preparer.

3.3 Discuss Notification No.9/2012 in brief.

Solution: **(Refer Page No. 24 Para No. 3.3.1(a) for detailed provision)**

- An **individual** whose total income **does not exceed** ` **500,000** and his income consists of income chargeable under the head **(i)** salaries **(ii)** Income from other sources which consists of interest from a saving account in a bank **not exceeding** ` 10,000.
- He has **reported his PAN** to his employer and interest income accrued from saving account and tax liability is discharged by employer by way of TDS.
- He is in receipt of salary from **only one** employer for relevant AY.
- An individual **shall not be exempt** from filing ROI, if notice is served u/s 142(1) or 148 or 153A or 153C by the assessing officer for such AY.

3.4 Whether doctrine of merger is applied for order of re-assessment. Explain with decided case law.

Solution: **(Refer Page No. 39 Para No. 3.25 for detailed provision)**

- The doctrine of merger cannot be applied for order of re-assessment. The order u/s 143(3) cannot stand merged with the order of re-assessment in respect of those issues which did not form the subject matter of the reassessment. Therefore, period of limitation in respect of the order of Commissioner u/s 263 in respect of a matter which does not form the subject matter of re-assessment shall be reckoned from the date of the original order u/s 143(3) and not from the date of the re-assessment order u/s 147. **{(In re ICICI Bank Ltd)(2012)(Bom)}**

3.5 What is the time limit for completion of assessment in the following cases:-

(a) Best judgement assessment u/s 144 in respect of AY 2012-13

- ✓ 31st March, 2015, being two years from the end of the Relevant AY (AY 2012-13), which is the AY in which the income was first assessable.

(b) Assessment u/s 143(3) in respect of AY 2011-12, where reference u/s 92CA (1) is made on 01.12.2012.

- ✓ 31st March, 2013, being one years from the end of the financial year (FY 2011-12), the year in which notice u/s 148 was served.

(c) Reassessment u/s 147, in respect of which notice u/s 148 was served on 01.05.2011

- ✓ 31st March, 2015, being three years from the end of the Relevant AY (AY 2011-12), which is the AY in which the income was first assessable.

Chapter No. 4 Search and Seizure

4.1 Who are all the authority to issue summon u/s 131. Discuss amendment made by Fin. Act, 2012 in this section.

Solution: Solution: **(Refer Page No. 24 Para No. 4.1 for detailed provision)**

- ❖ (i) The assessing officer, Commissioner, Commissioner (appeals), Chief Commissioner, Dispute Resolution Panel.
  - ✓ The **authority has reason to suspect** that any **income has been concealed or is likely to be concealed**, proceedings pending before authority or not, summon u/s 131 will be initiated.
- (ii) The assessing officer except ITO, Commissioner, Commissioner (appeals), Chief Commissioner.
  - ✓ For facilitating quick collection of information **on request from tax authorities outside India**, notified income-tax authorities as mentioned above to make an inquiry or investigation in respect of any person or class of persons relating to DTAA **for exchange of information u/s 90 or 90A**, even if no proceeding is pending before it (or) any other income-tax authority with respect to the concerned person or class of persons. Such notified authorities to also have the powers u/s 131(3) to **impound and retain** in their custody for **such period** as they think fit, **any books of account or other documents** produced before them in any proceeding under the Act.

4.2 The premises of Vignesh were subjected to a search u/s 132 of the Act. The search was authorized and the warrant was signed by the Joint Commissioner having jurisdiction over the assessee. Decide the correctness of the warrant.

Solution: **(Refer Page No. 43 Para 4.2 for detailed provision)**

- ❖ First **warrant of authorization** need to be issued only when "**reason to believe"** found.
  - ➔ Chief commissioner, Commissioner – **on own motion**
  - ➔ Additional Commissioner, Joint Commissioner – **Specifically empowered to do so by CBDT**.

4.3 The Director General of Income Tax (Chief Commissioner) after getting the information that Mr. Mogambo is in possession of unaccounted cash of ` 50 lakhs, issued orders by invoking powers vested in him as per section 131(1A), for its seizure. Does the Director General of Income Tax have power to seize such cash?

Solution: **(Refer Page No. 42 Para 4.1 for detailed provision)**

- The powers under section 131 (1A) deals with power of discovery and production of evidence. They do not confer the power of seizure of cash or any asset. The powers specified u/s 131(1) are **(i)** Discovery and inspection **(ii)** Enforcing the attendance of any person including officer of bank and examining him on oath **(iii)** Compelling the production of books of accounts and other documents **(iv)** Issuing commissions.
- However, u/s 132(1), the Director General has the power to authorize any Additional Commissioner or Joint Commissioner etc. to seize money found as a result of search, if he has reason to believe that any person is in possession of any money which represents wholly or partly income which has not been disclosed Therefore, the proper course open to the Director General is to exercise his power u/s 132(1) and authorize the Officers concerned to enter the premises where the cash is kept by Mr. Mogambo and seize such unaccounted cash.

4.4 During the course of survey operations u/s 133A, carried on 5th March, 2013, the income-tax authority, impounded the books of account and other documents inspected by him, relating to the assessee and retained the same in his custody. Is the action of the officer justified under law?

Solution: **(Refer Page No. 45 Para No. 4.4 for detailed provision)**

- Impound books of accounts or other documents for a period exceeding 10 days after recording reasons (and) with prior approval of Chief Commissioner. To conclude impound for a period of 10 days, recording reasons sufficient.

4.5 Discuss whether Sleep deprivation method is treated as violation of human rights by department?

- Interrogation till late night amounts to "torture" & violation of "human rights". Officers are held liable to pay compensation from their salary. The search and seizure manual does not prescribe any time limit for search and survey operation and the same may continue for days if required, but it has to be in keeping with the basic human rights and dignity of an individual. Sleep deprivation method of interrogation amounts to inhuman treatment and violation of Article 3 of the European Convention on Human Rights. Accordingly, the department is guilty of violating human rights even though the operations were conducted in best interest of revenue and good faith. **{(In re State of Bihar ,Through Chief Secretary (Rajendra Singh)(2012)(Patna)}**

4.6 Discuss the significance of panchnama with recent case law.

- Block assessment u/s 158BE prescribes the time limit for completion of the block assessment with reference to the end of the month in which the last of the authorisations for search was executed. Explanation 2 provides that the authorisation shall be deemed to have been executed on the conclusion of search as recorded in the last panchnama drawn. The panchnama, which documents the conclusion of a search. If a panchnama does not reveal that a search was at all carried out on the day to which it relates, it was merely a release order and could not extend the period of limitation. Consequently, the section 158BC assessment order is barred by limitation. **{(In re Shree Ram Lime Products Ltd)(2012)(ITAT)}**

4.7 The Central Government issued notification no 42/ 2012 to notify class or classes of cases in which the assessing officer shall not be required to issue notice for six AY for search was conducted or requisition was made. Discuss in brief.

Solution: **(Refer Page No. 44 Para No. 4.3 for detailed provision)**

- **Notification No.42/2012:**
  - Where a search u/s 132(1) or a requisition u/s 132A, is conducted in the territorial area of the assembly or parliamentary constituency during ongoing election and a person is in possession of any money, bullion, jewellery or other valuable article, whether or not he is the actual owner of the same
  - Note: 42/2012 notification is not applicable Section 132(1) or 132A has taken place after the hours of poll so notified.

4.8 Cash of ` 20 lakhs was seized on 12.09.2012 in a search conducted u/s 132. The assessee submitted an application on 27.10.2012 to release such cash after explaining the source. Explain the validity of application.

Solution: (Refer Page No. 43 Para No. 4.2 Source of acquisition for detailed provision)

- An application is made within 30days from the end of the month in which assets was seized.
- Within 120 days with prior approval of Chief Commissioner after recovering existing liability under income tax Act and wealth tax Act, release an asset.

Chapter No. 5 Appeals and Revision

5.1 Whether indefinite stay is possible, if delay in disposal of the appeal is not attributable to it.

- It has to be held that the assessee is entitled to a stay of the demand even after the expiry of the period of 365 days if the delay in disposal of the appeal is not exclusively attributable to it. **{(In re Qualcomm Incorporated)(2012)(ITAT)}**

5.2 Whether third member order is treated as final order.

- The Tribunal held that the decision of the third member order is not a final order disposing of the entire appeal as contemplated by section 254(1); therefore application under section 254(2) would not lie against the order of third member. **{(In re Telco Dadajee Dhackjee Ltd)(2012)(ITAT)}**

5.3 Whether the Assessing Officer take advantage of the assessee's mistake. Discuss as per decided case law.

- The High Court observed that the entire object of administration of tax is to secure the revenue for the development of the country and not to charge the assessee more tax than which is due and payable by the assessee. As per CBDT Circular, the Assessing Officer not to take advantage of the assessee's mistake. Circular should always be borne in mind by the officers of the Revenue while administering the Act. Therefore, this was an error on the face of the order and hence, the same was not sustainable. **{(In re Sanchit Software and Solutions Pvt. Ltd)(2012)(Bom)}**

Chapter No. 9 Profits and Gains of Business or Profession and Presumption taxation

9.1 Southern distribution power Ltd engaged in the business of generation of power, furnishes the following information for computing depreciation eligible u/s 32 for the AY 2013-14.

Opening WDV of plant and machinery on 01.04.2012 (purchase value ` 8 lakhs) (15% block)	` 578,000
Purchase of second hand machinery on 29.12.2012 (15% block)	` 200,000
Machine Y purchased and installed on 12.07.2012 for power generation (15% block)	` 800,000
Acquired and installed for use of a new air pollution equipment on 30.07.2012	` 250,000
New air conditioner purchased and installed in office premises on 08.09.2012	` 300,000
New machinery Z acquired and installed on 23.11.2012 for generation of power	` 325,000
Sale value of machinery X (purchase value ` 480,000 and WDV on 01.04.2012 ` 346,800)	` 310,000

Solution: **(Refer Page No. 83 - 87 for detailed provision)**

Computation of depreciation allowance u/s 32 for the AY 2013-14			
Particulars	**Ref.**	**P&M (15%)**	**P&M (100%)**
Opening WDV on 01.04.2012		578,000	-
Add: Purchased during the year	(a)	16,25,000	250,000
		22,03,000	250,000
Less: Asset sold during the year		310,000	-
WDV as on 31.03.2013		18,93,000	250,000
Less: Depreciation during the year	(b)	**437,075**	**250,000**
Opening WDV on 01.04.2013		14,55,925	-

(a) Purchased during the year :

Particulars	P&M (15%)	P&M (100%)
Second hand machinery	200,000	-
Machinery Y	800,000	-
Air conditioner for officer	300,000	-
Machinery Z	325,000	-
Air pollution control equipment	-	250,000
Total purchases during the year	**16,25,000**	**250,000**

(b) Depreciation during the year:

	Particulars	Computation	P&M (15%)	P&M (100%)
➔	Put to use less than 180 days:			
	Second hand machinery	200,000 x 7.50%	15,000	-
	Machinery Z	325,000 x 7.50%	24,375	
➔	Put to use more than 180 days:	(18,93,000 – 525,000) x 15%	205,200	
	Air pollution control equipment	250,000 x 100%	-	250,000
➔	Additional depreciation:			
	Machinery Y	800,000 x 20%	160,000	
	Machinery Z	325,000 x 20% x $^{1}/_{2}$	32,500	
	Depreciation allowance during the year		**437,075**	**250,000**

9.2 Mr. Madhu commenced operation of business of setting up a warehousing facility for storage of food grains, sugar and edible oil on 01.04.2012. Compute the income under the head profit and gains of business or profession for the AY 2013-14.

Particular	Food Grains	Sugar	Edible oil
Net profit before claiming u/s 35AD and u/s 32	**16,00,000**	**14,00,000**	**31,00,000**
Capital expenditure as per books before 01.04.2012	**80,00,000**	**60,00,000**	**50,00,000**
Cost of land value included in above	**50,00,000**	**40,00,000**	**30,00,000**
Capital expenditure during the year	**20,00,000**	**15,00,000**	**10,00,000**

Solution: (Refer Page No. 91 Para No. 9.14 for detailed provision)

Computation of profit and gain of business or profession for AY 2013-14				
Particular		**Food Grains**	**Sugar**	**Edible oil**
➔	Applicability	Section 35AD	Section 35AD	Normal provision
(a)	**Net profit before claiming u/s 35AD and u/s 32**	**16,00,000**	**14,00,000**	**31,00,000**
(b)	Capital expenditure excluding land before 1st April	30,00,000	20,00,000	-
(c)	Capital expenditure during the year	20,00,000	15,00,000	-
(d)	Total capital expenditure (b + C)	50,00,000	35,00,000	
(e)	Deduction:			
	Section 35AD: 50,00,000 x 150%	(75,00,000)	-	-
	Section 35AD: 35,00,000 x 100%	-	(35,00,000)	-
	Section 32: (50 – 30 + 10) x 10%	-	-	(300,000)
	Total deduction u/s 32 and 35AD	**(75,00,000)**	**(35,00,000)**	**(300,000)**
(f)	**Income from profit and gains (a – e)**	**(59,00,000)**	**(21,00,000)**	**28,00,000**
		(80,00,000)		

Guidelines for solution

➔ Loss from specified business u/s 35AD can be set off against profit from specified business. So, loss from business of food grains and sugar cannot be set off against from edible oil business.

➔ Specified business loss can be carried forward indenfitely for set-off against profit of the any other specified business.

9.3 AMA Ltd is a company engaged in business of biotechnology. The net profit for the FY ended 31.03.2013 is ` 15,25,890 after debiting the following items.

(i)	**Purchase of raw material for in-house research and development ` 180,000**			
(ii)	**Assets purchased for in-house research wrongly debited to P&I a/c**			
	(a)	**Land – ` 500,000**	**(b)**	**Building – ` 300,000**
(iii)	**Expenditure on notified skill development project**			
	(a)	**Land – ` 200,000**	**(b)**	**Training expenditure – ` 250,000**
(iv)	**Expenditure on notified agricultural extension project ` 150,000**			
(v)	**Expenditure on advertisement in the souvenir published by a political party ` 75,000**			

Solution: (Refer Page No. 94 Para No. 9.18 for detailed provision)

Computation of Income under the head Profit and gains of business or profession for AY 2013-14					
Particulars			**Ref.**	**Amount**	**Amount**
➔	Net profit as per profit and loss account				15,25,890
	Add: Items debited to P&I a/c but to be disallowed				
	(a)	in-house research – value of land	(a)	500,000	
	(b)	notified agricultural extension project – separately considered	(b)	150,000	
	(c)	notified skill development project - value of land	(c)	200,000	
	(d)	notified skill development project - separately considered	(c)	250,000	
	(e)	advertisement in the souvenir published by a political party	(e)	75,000	11,75,000

	Less: Deduction allowed				
	(f)	raw material for in-house research	(d)	180,000	
	(g)	notified agricultural extension project	(b)	225,000	
	(h)	notified skill development project	(c)	375,000	(780,000)
	Income under the head Profit and gains of business or profession				**19,20,890**

Guidelines for solution

(a) As per section 35 purchase price of land is not allowed as deduction.

(b) As per section 35CCC expenditure incurred on notified agricultural project qualify for 150% deduction.

(c) As per section 35CCD expenditure incurred on notified skill development qualify for 150% deduction.

(d) As per section 35(2AB) purchase price of raw material used for in-house qualify for 200% deduction. Since, it is already debited to P&L a/c balance 100% is deducted.

(e) Expenditure incurred on advertisement in the souvenir is disallowed u/s 37(2B). But, same would be allowed as deduction u/s 80GGB from the gross total income.

9.4 A Ltd, an Indian company, received following dividend during the PY 2012-13.

	Shares held in	Type of company	Dividend received	Expenses incurred
(i)	XYZ Inc. – holding 25% nominal value	Foreign company	80,000	4,000
(ii)	PQR Inc. - holding 30% nominal value	Foreign company	185,000	9,000
(iii)	LMN Ltd	Indian company	90,000	5,000

➔ **The business income of A ltd. Computed under income tax Act is ` 40,00,000. Computed tax liability.**

Solution: **(Refer Page No. 141 for detailed provision)**

		Particulars	Ref.	Amount	Amount
➔	Profit and gains of business or profession				40,00,000
➔	Income from other sources		(a)		261,000
	Total Income				**42,61,000**
➔	Tax liability				
	(i)	Section 115BBD – 185,000 x 15%		**27,750**	
	(ii)	Balance 40,76,000 x 30%		**12,22,800**	
				12,50,550	
		Add: EC + SHEC – 12,50,550 x 3%		**37,517**	
	Total tax liability under normal provision			**12,88,067**	

(a)

Particulars	Computation	Amount	Amount
XYZ Inc – net dividend	80,000-4,000		76,000
PQR Inc – gross dividend u/s 115BBD	185,000- Nil		185,000
Indian company – exempt u/s 10(34)			Nil
			261,000

9.5(a) Mr. Prabin has income of ` 45 lakhs under the head "PGBP". One of his business profit is ` 20 lakhs, which is eligible for 100% deduction u/s 80-IB for AY 2013-14. Compute tax liability for AY 2013-14.

Solution: **(Refer Page No. 172 for detailed provision)**

Tax liability as per normal provision

	Particulars	Amount (`)
→	Income from business	45,00,000
	Less: Deduction u/s 80-IB	20,00,000
	Total income under normal provision	25,00,000
→	Tax liability as per slab rate	5,97,400

Tax liability as per AMT provision

	Particulars	Amount (`)
→	Total income	25,00,000
	Add: Deduction u/s 80-IB	20,00,000
	Adjusted Total Income	45,00,000
→	Tax liability at 19.055%	8,57,475

→ Mr. Prabin would be eligible for credit to the extent of ` 260,075. Such credit can be carried forward For succeeding 10 assessment year.

9.5(b) Mr. Naveen, a resident individual aged 65, has the following income for the AY 2013-14. Compute tax liability for AY 2013-14.

(i)	**Rental income**	**` 15,000 p.m.**
(ii)	**Computed business income (eligible business income u/s 80-IA is ` 28 lakhs)**	**` 45 lakhs**
(iii)	**Computed long term capital gain u/s 112**	**` 5 lakhs**
(iv)	**Interest on bank fixed deposit**	**` 28,000**

Solution: **(Refer Page No. 172 for detailed provision)**

Computation of Gross Total Income

	Particulars	Section	Amount	Amount
→	Net rental income		180,000	
	Less: Standard deduction u/s 24		54,000	126,000
→	Eligible business income u/s 80-IA		28,00,000	
	Other business income		17,00,000	45,00,000
→	Computed long term capital gain			500,000
→	Interest on fixed deposit			28,000
	Gross Total Income			**51,54,000**

Tax liability under normal provision of Act, 1961

	Particulars			Amount
	Gross Total Income			**51,54,000**
→	**Chapter VI-A -** Investment in PPF	80C	100,000	
	Specified eligible business income	80-IA	28,00,000	29,00,000
	Total Income			**22,54,000**
→	Tax on long term capital gain	20%	100,000	
→	Tax on balance income	Slab rate	351,200	
→	EC + SHEC on 451,200 x 3%		13,536	**464,736**

Tax liability as per AMT provision

	Particulars	Amount (`)
→	Total income	22,54,000
	Add: Deduction u/s 80-IA	28,00,000
	Adjusted Total Income	50,54,000
→	Tax liability at 19.055%	**963,040**

→ Mr. Naveen would be eligible for credit to the extent of ` 4,98,304. Such credit can be carried forward For succeeding 10 assessment year.

9.6 Two vessels are (i) operated for 360 days with 47,549 tons and 800 kgs and (ii) operated for 200 days with 25,759 tons and 400 kgs respectively. Compute tonnage income.

Solution: **(Refer Page No. 112 for detailed provision)**

Capacity	Applicable rate – per day	Ship-1 (`)	Ship-2 (`)
Up to 100 tons	` 70 for each 100 tons	700	700
1000 to 10,000 tons	` 53 for each 100 tons exceeding 1000 tons	4770	4770
10,000 to 25,000 tons	` 42 for each 100 tons exceeding 10,000 tons	6300	6300
Exceeding 25,000 tons	` 29 for each 100 tons exceeding 25,000 tons	$(22{,}500 \times {}^{29}/_{100})$6,525	232
		18,295	12,002
Number of days vessel is in operation		360	200
Tonnage income		**65,86,200**	**24,00,400**

9.7 Mogambo, a non-resident, operates an aircraft between Dubai and Chennai. He received the following amounts in the course of operation of aircraft during the year ending 31.3.2013.

			` (lakhs)
➔	**Amount received in India:**		
	(a)	**carriage of passengers from Chennai**	**200**
	(b)	**carriage of goods from Chennai**	**100**
	(c)	**carriage of passengers from Singapore**	**300**
➔	**Amount received in Singapore**		
	(d)	**carriage of passengers from Chennai**	**100**

The total expenditure incurred by Mr. Mogambo during the year ending was ` 6.75 crores.

Compute the income chargeable to tax in India under the head PGBP for the assessment year 2013-14.

Solution: **(Refer Page No. 114 for detailed provision)**

➔ Section 44BBA incorporates special provisions for computing profits and gains of the business of operation of aircraft in the case of non-residents.

➔ A sum equal to 5% of the aggregate of the amounts specified deemed to be the profit.

(a) Paid or payable **(in India or out of India) to** the assessee or to any person for the carriage of passengers, livestock, mail or goods **from** any place in India **(and)**

(b) Received or deemed to be received **(in India)** by or on behalf of the assessee for carriage of passengers, livestock, mail or goods **from** any place outside India.

Particulars			` (lakhs)
➔	Amount received in India:		
	(a)	carriage of passengers from Chennai	200
	(b)	carriage of goods from Chennai	100
	(c)	carriage of passengers from Singapore	300
➔	Amount received in Singapore		
	(d)	carriage of passengers from Chennai	100
	Total amount received during the year		**700**
➔	% of the aggregate of the amounts		**5%**
➔	Income from business under section 44BBA		**35**

9.8 A partnership firm consisting of three partners X, Y and Z is engaged in the business of manufacturing and selling teddy bear. Turnover of the business for the year ended 31.03.2013 amounts to ` 95 lakhs. Bad debts written off in the books are ` 75,000. Interest at 12% is provided to partner Z on his capital of ` 6 lakhs as authorized by the partnership deed.

The firm had business loss of ` 50,000 and unabsorbed depreciation of ` 1,50,000 carried forward from Assessment Year 2012-13. The firm did not pay tax under presumptive tax system in AY 2012-13. The firm opts for presumptive taxation under section 44AD for AY 2013-14.

(i) Compute the income of the firm chargeable under the head "Profits and gains of business or profession."

(ii) What would be the liability for interest under section 234B and 234C, if the firm has not paid any advance tax?

Solution: **(Refer Page No. 111 for detailed provision)**

(i) Computation of business income of the firm.

Particulars	Ref	`
Presumptive income under section 44AD (` 95 lakh x 8%)	(a)	7,60,000
Less: Interest @ 12% to Z (` 6 lakh x 12%)	(a)	72,000
		6,88,000
Less: Brought forward business loss u/s 72	(a)	50,000
		6,38,000

(a) A partnership firm falls within the definition of eligible assessee u/s 44AD. The threshold limit of turnover for applicability of presumptive taxation scheme under section 44AD is ` 100 lakhs.

- ✓ 8% of the total turnover would be deemed to be the business income of the firm.
- ✓ No deduction shall be allowed for bad debts since the same is deductible u/s 36(1)(vii) and unabsorbed depreciation since the same is deductible u/s 32(2).
- ✓ All deductions allowable u/s 30 to 38 shall be deemed to have been fully allowed.
- ✓ Business loss of PY 2011-12 can be set-off against current year business income as per section 72.

(ii) An assessee opting for presumptive taxation scheme u/s 44AD is relieved from the requirement of advance tax payments. The firm is not required to make advance tax payments. Accordingly, there would be no liability for interest u/s 234B and 234C.

9.9 Amount collected by an assessee on ad-hoc basis to protect itself against disputed sales tax liability is not chargeable to tax. Discuss with the aid the recent case law.

❖ The amount collected by an assessee on ad- hoc basis as contingent deposit from its customers, to protect itself against disputed sales tax liability. The said amount was not kept in a separate interest bearing bank account but it formed part of the business turnover. By applying the substance over form test, the Apex Court held that the said sum would constitute the income of the assessee. **{(In re Sundaram Finance Ltd.)(2012)(SC)}**

9.10 In order to claim depreciation u/s 32 of the income tax Act by the leasing company actual usage by the assessee does not mandate. Discuss with the aid of the recent case law.

❖ The assessee is a non-banking finance company engaged in the business of leasing and hire purchase. Section 32 imposes a twin requirement of **"ownership" and "usage for business"** as conditions for claim of depreciation there under. The term usage refers the asset must be used in the course of business. It does not mandate actual usage by the assessee itself. Lessor would be the owner of the asset in the eyes of law, if the assessee is the exclusive owner of the vehicle at all points of time **(and)** the assessee is empowered to repossess the vehicle, in case the lessee committed a default **(and)** at the end of the lease period, the lessee was obliged to return the vehicle to the assessee **(and)** the assessee had a right of inspection of the vehicle at all times. It can be seen that the proof of ownership lies in the lease agreement itself, which clearly points in favour of the assessee. The assessee was entitled to claim depreciation in respect of vehicles leased out since it has satisfied both the requirements of section 32. **{(In re I.C.D.S. Ltd.)(2013)(SC)}**

9.11 Specific Intangible assets acquired under the slump sale are treated as goodwill. Discuss with the aid the recent case law.

- The use of the general words after the specified intangible assets such as ***Know-how, patents, copyright, licenses*** clearly demonstrates that the Legislature did not intend to provide for depreciation only in respect of specified intangible assets but also to other categories of intangible assets, which were neither feasible nor possible to exhaustively enumerate. Specified intangible assets (goodwill) acquired under the slump sale agreement by the assessee are in the nature of intangible asset under the category "***other business or commercial rights of similar nature"*** specified in section 32(1)(ii) and are accordingly good will eligible for depreciation. **{(In re Areva T and D India Ltd)(2012)(Del)}**

9.12 Explanation 10 to section 43(1) covers only a case of subsidy, grant or reimbursement but not a case of waiver of loan. Discuss with the aid of the decided case law.

- Explanation 10 to section 43(1) covers only a case of subsidy, grant or reimbursement but not a case of waiver of loan. The term actual cost u/s 43(1) refers the actual cost of the assets to the assessee, as reduced by that portion of the cost, if any, as has been met directly or indirectly by any other person or authority. Waiver of loan given to the assessee by the Government of India from Steel Development Fund (SDF) to meet the capital cost of asset is reduced to arrive at the actual cost as per section 43(1) for computing depreciation u/s 32. **{(In re Steel Authority of India Ltd)(2012)(Del)}**

9.13 Air Voice Ltd. obtained a telecom licence on 15.6.2009 for a period of 8 years ending on 31.3.2017 against a fee of ` 30 crores to be paid in four installments of ` 12 crores, ` 7 crores, ` 6 crores, ` 5 crores by June 2008, June 2010, June 2011 and June 2012 respectively. Explain how the payment for licence fee shall be dealt under the Income Tax Act, 1961.

Solution: **(Refer Page No. 90 for detailed provision)**

Previous year	Actual payment (` crores)	Unexpired period of license	Amount of deduction (` crores)
2009-10	12.00	8 years	$^{12}/_{8}$ = 1.50
2010-11	07.00	7 years	(1.50 + $^{7}/_{7}$) = 2.50
2011-12	06.00	6 years	(2.50 + $^{6}/_{6}$) = 3.50
2012-13	05.00	5 years	(3.50 + $^{5}/_{5}$) = 4.50

Guidelines for solution

- U/s 35ABB, expenditure incurred for the purpose of acquiring any right to operate telecommunication services is allowed equally as deduction throughout the unexpired life of the licence. Deduction shall be allowed only for the actual payment made.
- If only part payment is made, amortization is based on the amount paid and not on the basis of total consideration. For any further payments, deduction/amortization is allowed equally for the remaining unexpired useful life.

9.15 Whether the provision of section 14A disallowing expenditure in respect of exempt income, would be applicable in case of expenditure incurred on income, in respect of Chapter-VI-A deduction.

- The assessee is in the money lending business and he is entitled to receive interest from the loan advanced and is also entitled to take loan for running the money lending business. Therefore, the assessee is lawfully entitled to deduct interest paid on the funds borrowed as business expenditure, subject to section 14A. In other words, if any loan has been taken by the assessee in relation to the income which does not form part of his total income under the Act, the assessee will not get deduction of interest paid on that amount. **{(In re Rajendra Kumar Dabriwala)(2012)(Cal)}**

9.16 Whether assessee has to establish that bad debt become irrecoverable. Discuss with the aid of case law.

- In order to obtain deduction in relation to bad debts under section 36(1)(vii), it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debts are **written off as irrecoverable in the accounts** of the assessee for the relevant previous year. **{(In re T.R.F. Ltd.)(2010)(SC)}**

9.17 Whether company said to have set up its business from date when one of categories of its business is commenced. Discuss with the aid of case law.

- A company can be said to have set up its business from date when one of categories of its business is started and it is not necessary that all categories of its business activities must start. Business of assessees should be considered to be set up from date when water was supplied through main canals during current year and all revenue expenditure after that date had to be allowed as deduction. **{(In re Sardar Sarovar Narmada Nigam Ltd)(2012)(ITAT)}**

9.18 Whether commission paid to doctors for referring patients for diagnosis is allowed as deduction. Discuss with the aid of decided case law.

- Commission paid to doctors for referring patients for diagnosis is not allowable as business expenditure. Such payments are illegal or opposed to public policy or have pernicious consequences to the society as a whole. **{(In re Kap Scan and Diagnostic Centre P Ltd)(2012)(P&H)}**

9.19 Whether foreign travel and education expenses of regular employee to gain advance knowledge is allowed as deduction. Discuss with the aid of decided case law.

- Expenses incurred by the assessee on the foreign travel and education of a regular employee outside India for gaining advanced knowledge of the latest printing technology is allowable under section 37(1). **{(In re Naidunia News and Networking (P) Ltd)(2012)(MP)}**

9.20 What is the year of accounting, where spare parts acquired from outside India before 31st March but goods reached to India in August of next year. Discuss with the aid of case law.

- The second hand machinery purchased from outside India by the assessee is for use as spare parts for the existing old machinery, the same had to be allowed as revenue expenditure**.** For determining year of accounting due consideration is given on transfer of ownership of an asset. Since the entire sale consideration was paid on 31st March of the relevant previous year and the machinery was also dispatched by the vendor from USA, the sale transaction was complete on that date, though the goods reached India only in August next year*.* **{(In re Dr. Aswath N. Rao)(2010)(Kar)}**

9.21 Find out whether assessee has violated any provision of the income tax Act.

S.No	Date	Transaction	Term	Mode	Amount
(i)	01.05.2009	Deposited in certificate of deposit	48 months	Bearer cheque	` 15,000
(ii)	30.06.2012	Deposited in certificate of deposit	48 months	Cash	` 15,000
(iii)	23.03.2013	Premature withdrawal of 1st deposit		Bearer cheque	` 16,500
(iv)	25.03.2013	Premature withdrawal of 2nd deposit		Cash	` 15,500

Solution: **(Refer Page No. 102 for detailed provision)**

- ➔ There is no violation of Section 269SS in respect of first transaction since it is less than threshold limit of ` 20,000
- ➔ There is a violation of second transaction since on that date, already an outstanding deposit of ` 15,000 and aggregated to ` 30,000 which is in excess of threshold limit of ` 20,000. So penalty u/s 271D imposed which is a sum equal to amount of deposit.
- ➔ There is a violation of third transaction since on that date, the aggregate amount of deposit held is more than ` 20,000. So penalty u/s 271E imposed which is a sum equal to amount of deposit so repaid.
- ➔ There is no violation of Section 269T in respect of fourth transaction since neither the amount of deposit with interest nor the aggregate amount of deposit held does not exceed ` 20,000

9.22 Whether bank situated in rural area can claim bad debts u/s 36(1)(vii). Discuss with the aid of case law.

- ❖ where the provision **u/s 36(1) (viia)** is in respect of **rural** advances **and** the bad debts write off under section 36(1)(vii) is in respect of **urban** advances. The benefit of deduction u/s 36(1)(vii) in respect of urban advances would be available to the bank, subject to provisions of section 36(2). **{(In re Catholic Syrian Bank Ltd.)(2012)(SC)}**

9.23 Explain in brief, in respect of following independent situation, the tax treatment under the provisions of the income tax Act, 1961.

1. The company remitted ` 5 lakhs as interest to a company incorporated in UAE on a loan taken two years ago. Tax deducted u/s 195 from such interest and same was deposited on 15th July 2013. The said interest was debited to profit and loss account.

- ➔ Deduction can be availed in the financial year of actual deposit as per section 40(a)(i). The assessee can claim deduction only in the FY 2013-14.

2. Indian Overseas Bank sanctioned and disbursed a term loan in the financial year 2009-10 for a sum of ` 50 lakhs. Interest of ` 8 lakhs was in arrears. The bank was converted the arrear interest into a new loan repayable in ten equal installments. During the year, the company has paid two installments and the amount so paid has been reduced from funded interest in the balance sheet.

- U/s 43B, interest on loan due to any schedule bank is allowed as deduction, if such interest is actually paid irrespective of the method of accounting followed. Conversion of arrear interest into a fresh loan by a bank cannot be considered as actual payment of interest. However, converted loan actually paid is allowed as deduction, being two installments of ` 160,000 actually paid is deductible.

3. Liquidated damages of ` 3 lakhs received from Flux Ltd for delay in supply of plant and machinery has been shown under the head "other income" in profit & loss account.

- Liquidated damages received by a company from the supplier of plant for failure to supply machinery in time is a compensation for sterilization of the profit earning source and treated as a capital receipt. As the amount has been wrongly credited to the profit and loss account, the same should be deducted.

4. The company paid the full consideration for building and occupied the same, but registration is under process as on the end of the previous year.

- Section 32 specifies that the assessee should be the owner of the asset. The very concept of depreciation suggests that tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset and is utilised the capital asset. So, depreciation can be claimed even through registration has not yet taken place.

5. The subscription receipt for the year ended 31st March, 2013 was ` 360,000 and related expenditure was ` 385,000. Other income of association governing u/s 44A is ` 175,000.

- As per section 44A the income from subscriptions shall be set off against expenditure incurred solely for the protection or advancement of the interest of its member. Excess of expenditure over subscription shall be first be set off against other income of associations. However, deduction admissible by way of deficiency shall not exceed one-half of the income of association.

6. Mr. Vignesh was a partner in a firm as the kartha of his HUF. On the amount deposited by the partners, the firm paid interest to Mr. Vignesh, in his individual capacity had made deposits in the same firm in which he was a partner.

- Section 40(b) specifies that where an individual is a partner in a firm, in a representative capacity, interest paid by the firm to such individual in his individual capacity shall not be taken into account for section 40(b).

7. Mr. Aditya succeeded to his father's business in the year 2010. During the previous year Mr. Aditya has written off the balance in the name of Mr. Ashish which relates to supply made by his father, when he carried on business.

- Section 36(1) specifies that bad debts is allowed as deduction if it is written off in the books of accounts of the assessee, even though the debt represents the amount due for the supplies made by previous owner.

8. Sale proceeds of import entitlement amounting to ` 1 lakh has been credited to profit & loss account, which the company claims as capital receipt not chargeable to tax.

- Section 28 charging section clearly specifies that the sale of the rights gives rise to profit or gain taxable under the head profit and gain from business or profession.

9. A sum of ` 6,000 on account of liability foregone by a creditor has been taken to general reserve. The same was charged to the revenue account in the AY 2010-11.

- Liability foregone by the creditor is taxable u/s 41(1) and treated as business income.

10. The refund of excise duty has been obtained by the assessee on the basis of a decision of the CESTAT and the matter has been taken up further appeal to the Court by department.

➔ Where expenditure is actually incurred by reason of payment of duty on goods and a deduction or allowance is given in the assessment of an earlier year, the assessee is liable to discharge that benefit as and when he obtains refund of the amount so paid. Once the assessee gets back the amount which was claimed and allowed as business expenditure during the earlier year, the deemed provision in section 41(1) comes into play. Therefore, refund of excise duty subject to tax u/s 41(1) and it is not necessary to await the verdict of a Higher Court.

11. PVR Ltd incurred expenditure amounting to ` 500,000 in connection with the issue of rights shares and ` 400,000 in connection with the issue of bonus shares.

➔ Expenditure incurred by a company in connection with issue of shares with a view increase its capital base constitutes a capital expenditure. Hence right issue expenditure is not allowed as business expenditure. On the other hand, the issue of bonus shares does not result in inflow of fresh funds or increase in the capital employed. It is merely capitalisation of reserve. Total funds available with the company remain same on issue of bonus shares. Hence, ` 400,000 is deductible from business profit.

12. Clause for payment of salary to working partners through appears in the deed, but the same is silent as to quantum and manner of distribution.

➔ As per section 40(b), if the partnership deed contains a clause for payment of salary to working partners without specifying the manner of quantification or manner of distribution of such salary, the payment of salary to the working partners cannot be construed to be authorised by partnership deed. Hence no deduction is allowed.

13. Interest of ` 5,000 paid an overdraft of ` 2 lakhs taken for making payment of installment of advance tax of ` 1.25 lakhs.

➔ Interest on overdraft taken for making payment of installment of advance tax is not an expenditure wholly and exclusively incurred for the purpose of business u/s 37(1).

14. Income tax refund includes amount of ` 5,500 of interest allowed thereon.

➔ Interest on income tax refund is chargeable under the head income from other sources.

15. Sales tax demand paid includes an amount of ` 3500 charged as penalty for delayed filing of return and ` 14,800 towards interest for delay in deposit of tax.

➔ Interest paid on the delayed deposit of sales tax - breach of **contract** - hence allowed as deduction. Penalty for delay in filing of return - breach of **law** - hence not allowed as deduction.

16. Amount received towards power subsidy with a stipulation that the same is to be adjusted in the electricity bills.

➔ Power subsidy received by the assessee is revenue in nature as it goes towards reduction of electricity bills. Hence, subsidy taxable as business income.

17. Interest received by a contractor on the amount of compensation awarded by an arbitrator resolving the dispute relating to the work done.

➔ Receipt relating to the business of the contractor and assessable as business income.

18. Royalty of ` 1 lakh paid to partner Mr. Dev, who is a author, for use of his authored book as per agreement between the firm and Mr. Dev.

➔ Any payment of salary, bonus, commission or remuneration, by whatever name called, made to a working partner is subject to limit specified u/s 40(b)(v). Hence, royalty would also be subject to limit specified u/s 40(b)(v).

19. An amount of ` 3 lakhs provided as gratuity for the year on the basis of actuarial valuation.

➔ As per section 40A(7), any provision made for payment of gratuity to employees on their retirement or on termination of employment for any reason is disallowed. However, any provision is made for the purpose of contribution to approved gratuity fund or payment of gratuity during the previous year shall be allowed as deduction.

20. Opening stock in trade worth ` 50 lakhs were confiscated by the excise authority therefore written off during the year.

➔ Loss of stock-in-trade has to be considered as a trading loss and not business expenditure as per section 37(1). Trading loss is allowed on ordinary commercial principles.

21. Partnership firm incurred ` 50,000 for the purpose of promoting family planning among its employees.

➔ Section 36(1)(ix) is applicable only to a company hence such expenditure is not allowed as deduction

22. Fees paid to architect for valuation of building in the course of sale of building by assessee.

➔ Fees for valuation of building are deductible if valuation is required in the course of carrying on business. But, valuation is made for the purpose of selling of building is not deductible.

23. Dividend of ` 5 lakhs received from foreign company in which this company holds 28% in nominal value of the equity share capital of the company. ` 15,000 expanded on earning this income.

➔ As per section 115BBD dividend received by an Indian company from a specified foreign company would be subject to a concessional tax rate of 15% as against the tax rate of 30% applicable to other income of a domestic company. The rate of 15% would be applied on gross dividend; hence no expenditure would be allowable in respect of such dividend.

24. Secret commission of ` 4 lakhs was paid during the year and debited to commission account.

➔ As per explanation to 37(1), any expenditure incurred by an assessee for any purpose which is an offence or prohibited by law, shall not be deemed to incur for business purpose.

25. PQR Pvt. Ltd has obtained a loan of ` 2 lakh from XYZ Pvt. Ltd in which it holds 16% voting power. The accumulated profits of XYZ Pvt. Ltd on the date of receipt of loan were ` 50,000.

➔ As per section 2(22)(e), any payment by a company in which the public are not substantially interested by way of loan to a shareholder, who is the beneficial owner of share holding not less than 10% of voting power, is deemed as dividend to the extent to which to company possesses accumulated profits. Accordingly, ` 50,000 deemed as dividend.

26. Employer's share to the EPF for the month of March, 2013 of ` 55,000. The amount was deposited with the PF commissioner on 29th July 2013.

➔ As per section 43B, amount deposited before the due date of filing return u/s 139(1), is allowed as deduction.

27. Profit arising ` 200,000 from a hedging contract entered into for meeting out the loss in foreign currency payments towards imported machinery of ` 100 lakhs installed on 01.03.2013.

➔ Hedging contract is entered into for safeguarding any loss that may arise due to currency fluctuation. The profit from such contract entered into for meeting loss is to be adjusted against the cost of plant and machinery. The same will have impact on depreciation and additional depreciation.

28. A criminal case was filed against a director of the company, in his official capacity. The company spent legal expenses of ` 1.50 lakhs defending him in the proceedings. The director was acquitted of the charges at the end.

➔ Section 37(1) does not make any distinction between expenditure incurred in respect of civil litigation and criminal litigation. If expenditure is bona fide for the purpose of business, is allowed as deduction.

29. A company was generating electricity privately for its factory. Later, at its expense, electric lines were laid from the trunk road to the factory. It paid ` 5,00,000 to the State Electricity Board as its contribution for this purpose. The ownership of the power-line was to vest with the State Electricity Board.

➔ The new electric power lines were laid to run the factory efficiently but since the ownership of the power lines was to vest with the State Electricity Board, the contribution of ` 5,00,000 paid to the State Electricity Board shall be allowable as revenue expenditure under section 37(1).

30 X and Y are two shareholders of Pooja Ltd., a closely held company. X holds 55% share capital on 30-1-2012, X transfers his shares to A. Pooja Ltd. wants to set of brought forward loss of ` 4,00,000 (business loss ` 1,00,000; unadjusted depreciation ` 3,00,000) of the Previous Year 2011-12 against the income of the previous year 2012-13 ` 9,00,000.

➔ According to section 79 the losses of a closely held company can be carried forward and set off in the subsequent assessment year only when two conditions are satisfied. They are **(i)** at least 51% of the shares of the company carrying voting rights are held by the same persons as on the last day of the Previous Year in which the loss was incurred and **(ii)** the last day of the previous year in which the losses are set off. In this case business loss will not be allowed to be set off but unabsorbed depreciation is not a loss and shall be allowed to be set off.

31. Expenses on income tax proceeding include ` 1,000 paid for the preparation of return of income.

➔ Expenses in income-tax proceedings are wholly deductible [Sec. 37(1)].

32. ` 15 lakh, being sales tax dues of earlier years determined during the year on disposal of appeals by the appellate authority, for which the company has furnished a bank guarantee to the commercial tax authority.

➔ Furnishing of bank guarantee is not treated as payment u/s 43B, hence not deductible as per section 43B.

Chapter No. 11 Capital Gains and Security Transaction Tax

11.1 Investment in purchase and sale of plots by builder is treated as stock in trade. Discuss the statement with decided case law.

❖ The essential requirement u/s 50C is that the building and land transferred should be a capital asset. Further, section 2(14) specifies that capital asset does not include stock-in-trade. Investment in purchase and sale of plots by builder is treated as stock in trade. Hence, profit on sale of land will be treated a business income. **{(In re Kan Construction and Colonizers (P) Ltd)(2012)(All)}**

11.2 CGP, a company incorporated in the Cayman Islands held through a stream of subsidiaries 67% effective control in an Indian company - HEL. VIH, a company tax resident in the Netherlands, acquired control of the Indian company by virtue of purchase of the share of CGP from HTIL, a Honkong based company. The consideration of $ 11.08 billion for the transfer was fixed on the basis of the assets and the business potential

of the Indian company - HEL. The said transfer of the share is not chargeable to tax in India on the following grounds:

- **(i) The transfer is not a case of a "transfer of any capital asset situated in India".**
- **(ii) Such indirect transfers are not provided for taxation in the income tax Act.**
- **(iii) Section 9 cannot be applied on the basis that the valuation of the shares of CGP was done on the basis of the business assets held in India.**

Solution: **(Refer Page No. 116, 161, 204 for detailed provision)**

➔ **Combined analysis of Section 2(14), Section 9(1)(i), Section 2(47) and Section 195(1)**

Explanation to section 2(14): The definition of property amended by Finance Act, 2012 by inserting an explanation, to clarify **"property"** includes **(and)** shall be deemed to have always included any right in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Section 2(47): Transfer includes and shall be deemed to have always included,

- ❖ **Disposing of** or parting with an asset or any interest therein **(or)**
- ❖ **Creating** any interest in any asset in any manner whatsoever.
  - ➔ The aforesaid **disposal or creation** may be done **(i)** directly or indirectly or **(ii)** absolutely or conditionally or **(iii)** voluntarily or involuntarily **by way of an agreement** whether entered in India or outside India or otherwise.

Hence, transfer of any capital asset situated in India shall be deemed as transfer and said transfer of the share is chargeable to tax in India.

Section 9(1)(i) : income deemed to accrue or arise in India

- ❖ Certain income is deemed to accrue or arise in India, even though it may actually accrue or arises outside India. This includes

  Income, directly or indirectly, **(i)** through or from any "business connection in India", or **(ii)** through or from any property in India, or **(iii)** through or from any asset or source of income in India or **(iv)** through the transfer of capital asset situated in India. Business connection shall include any business activity carried on through a dependent agent.

  - ✓ No income shall be deemed to accrue in India to him from operations which are confined to the purchase of goods in India for the purpose of export.
  - ✓ No income shall be deemed to accrue in India to him from engaged in business of running a news agency or publishing news paper or journals, which are confined to the collection of news and views in India for transmission out of India.

Section 195(1): Tax from interest and other payment to a non-resident.

- ❖ as per explanation 2, this section extended to all persons, resident or non-resident, whether or not the non-resident has **(i)** a residence or place of business or business connection in India or **(ii)** any other presence in any manner whatsoever in India.

11.3 Section 55: The situation where cost of acquisition shall be taken as 'NIL'

- **(i)** Self generated goodwill of a business (ii) Right to subscribe to rights issues (iii) Bonus shares (iv) Tenancy rights (v) Stage carriage permits (vi) Loom hours (vii) A trademark or brand name associated with the business (viii) Any right to manufacture, produce or process any article or thing. **Note:** If above items are purchased or acquired from previous owner in the mode specified u/s 49(1) then amount of purchase price to the assessee or the previous owner, whichever is beneficial is treated as cost of acquisition. (FMV on 1-4-1981 not allowed even if it acquired before 1-4-1981).

11.4 The situations where the benefit of Indexation is not available

S.No	Section	Transaction	Assessee
(i)	48	Transfer of bonds/debentures other than capital indexed bonds issued by the Govt.	All assessee
(ii)	48	Transfer of shares or debentures acquired by a NR in foreign currency in an Indian co.	Non-resident
(iii)	50B	Transfer of undertaking or division in a slump sale	All assessee
(iv)	115AB	units of Unit Trust of India or a Mutual Fund purchased in foreign currency	Offshore-fund
(v)	115AD	Transfer of securities by Foreign Institutional Investors (FII)	FII
(vi)	115ACA	Transfer of GDR purchased in foreign currency	Non-residents/Resident
(vii)	115D	Transfer of a foreign exchange asset by a non-resident Indian	Non Resident Indian
(viii)	-	Transfer of a depreciable asset	All assessee

11.5 The balance sheet of ABC Ltd as on 30.06.2012, being the date on which unit C has been transferred by way of slump sale for a consideration of ` 920 lakhs, is given as under -

Balance sheet as on 30.06.2012			
Liabilities	**Amount (lakhs)**	**Assets**	**Amount (lakhs)**
Paid up capital	**1,800**	**Fixed assets.**	
Reserves	**650**	**Unit A – 150, B – 250, C - 550**	**950**
Liabilities:		**Other assets.**	
Unit A–40, B–120, C-80	**240**	**Unit A – 480, B – 870, C - 390**	**1,740**
	2,690		**2,690**

(a) With the help of further information given below, compute the capital gain on slump sale of Unit C-

(i) Fixed assets of unit C includes land which was purchased at ` 50 lakhs in the year 2004 and re-valued at ` 90 lakhs as on 31.03.2012

(ii) Fixed assets of unit C reflected at ` 460 lakhs (` 550 lakhs less land value ` 90 lakhs) is written down value of depreciable assets as per books. However, the written down value of these assets u/s 43(6) of the Income-tax Act, 1961 is ` 440 lakhs.

(iii) Other assets of unit C shown at ` 390 lakhs represent book value of non-depreciable assets and unit C is in existence since march, 2009.

(b) Consider all above information remain same as on 31.03.2012. The buyer has agreed with the vendor company to enhance sale consideration by 5% on agreed sale consideration, if sale is completed on or before 31.03.2012. The company now approaches you to advise best tax planning strategy by keeping provisions under income tax Act.

Solution: **(Refer Page No. 122 for detailed provision)**

(a)

Computation of capital gain on slump sale of Unit C if sale effected on 30.06.2012

Particulars	Ref	` in lakhs
Sale consideration for the slump sale of Unit C		920
Less: Net worth of Unit C	(1)	800
Long term capital gain arising on slump sale		120

(1)	Computation of net worth of Unit C				
	(a)	Book value of non-depreciable assets:			` in lakhs
		(i)	Land	50	
		(ii)	Other assets	390	440
	(b)	Written down value of depreciable assets under section 43(6)			440
		(i)	Aggregate value of total assets		880
		(ii)	*Less:* Value of liabilities of Unit C		80
	Net worth Unit C				800

- ➔ Since Unit C is held for more than 36 months, the long term capital gain of ` 120 lakhs is taxable under section 112 at 20% + SC 5% + Cess 3%.
- ➔ The indexation benefit is not available in the case of a slump sale.

(b) Comparative calculation of chargeable capital gains:

		Sale as on 31-3-2012	Sale as on 30-6-2012
➔	Sale consideration	920,00,000	920,00,000
	Add: Enhanced by 5%	46,00,000	Nil
	Net sale consideration	966,00,000	920,00,000
	Less: Net worth	800,00,000	800,00,000
	Short term capital gain	166,00,000	-
	Long term capital gain	-	120,00,000
	Tax rate	32.445%	21.63%
	Tax thereon	53,85,870	25,95,600
➔	Cash flow statement		
	Cash inflow	966,00,000	920,00,000
	Less: tax due	53,85,870	25,95,600
		912,14,130	**894,04,400**

- ➔ Since cash flow arising as on 31.03.2012 is higher, it is beneficial to accept the proposal as on 31.03.2012.

11.6 Compute the amount of capital gain chargeable to tax for Assessment Year 2013-14.

➔	**A firm, on 17.8.2012 transfers land situated in kadapa district**	**` 60,00,000**
➔	**The land, purchased on 6.3.1980 for**	**` 1,00,000**
➔	**registered on 3.4.1983 on payment of stamp duty of**	**` 20,000**
➔	**Expenses on land development in August, 1983 were**	**` 1,50,000**
➔	**The charges for broker on the sale consideration**	**2½%**

- **Fair market value of the land as on 1.4.1981 was ` 1,50,000**
- **The firm invested on 1.12.2012 in NHAI redeemable after 3 years ` 30,00,000**
- **Cost inflation index for F.Y. 1983-84 and 2012-13 of 116 and 852, respectively.**

Solution: **(Refer Page No. 129 for detailed provision)**

Computation of Capital Gains chargeable to tax for A.Y.2013-14

Particulars	Ref	`	`
Full value of consideration		60,00,000	
Less: charges for broker	(a)	1,50,000	
Net Sale Consideration		58,50,000	58,50,000
Less: Indexed cost of acquisition and improvement			
A) ` 1,50,000 x $^{852}/_{100}$	(b)	12,78,000	
B) ` 1,70,000 x $^{852}/_{116}$	(c)	12,48,621	25,26,621
Less: Section 54EC Investment in bonds of NHAI	(d)		30,00,000
Capital Gain			**3,23,379**

Guidelines for solution

(a) Brokerage paid is allowable as deduction u/s 48(i).

(b) The cost of acquisition in case of a capital asset acquired before 1.4.1981 shall be the actual cost of acquisition or the fair market value as on 1.4.1981, at the option of assessee.

(c) The cost of improvement would include the expenditure of ` 1,50,000 on land development and construction of boundary wall and expenditure of ` 20,000 on payment of stamp duty

(d) u/s 54EC, exemption is available for investment made within a period of 6 months from the date of transfer, in bonds of NHAI or RECL, redeemable after 3 years.

11.7 Discuss the amendment carried out in Fin. Act, 2012, where a reference is made to valuation officer u/s 55A.

Solution: **(Refer Page No. 124 for detailed provision)**

- Section 55A has been amended by the Finance Act, 2012, where the value of the asset, as claimed by the assessee, is in accordance with the estimate made by the registered valuer, and the assessing officer is of the opinion that value so claimed is at **variance** with the fair market value of the asset.
- Hence, if there is a variation between the value as on 01.04.1981 claimed by the assessee in accordance with the estimate made by the registered valuer and the fair market value of the asset on that date.

Chapter No. 12 Income from other Sources and dividend related issues

12.1 Compute the total income of Miss. Pravalika for the assessment year 2013-14.

(i) **She draws a salary of ` 18,500 pm along with medical reimbursement of ` 17,500.**

(ii) **` 24,000 each from her four friends on the occasion of her attaining majority on 18.04.2012.**

(iii) **Rolex wrist watch valued at ` 60,000 from his best friend on her birthday.**

(iv) **Gift of ` 150,000 on 15.08.2012 from her boyfriend on marriage proposal.**

(v) **Gift of ` 51,000 on 01.11.2012 from her father's sister.**

(vi) **Gift of ` 185,000 on 14.02.2013 from second boy friend on marriage proposal.**

(vii) **Gift of ` 51,000 each received her two boy friend's on the occasion of her marriage on 28.03.2013 as a token of remembrance.**

(viii) **Gift of ` 75,000 from her sister-in-law.**

(ix) **Gift of ` 11,000 on 28.02.2013 from her mother-in-law.**

(x) **Received 100 shares of M/S. Aditi International Ltd., the fair market value of which was ` 100,000 on his birthday from her friend Mrs. Srilekha.**

(xi) **Received BMW car worth ` 28 lakhs from her father-in-law due to acceptance of marriage proposal.**

(xii) **In respect of land of her grandmother, which was acquired by railways in the year 2010, she received ` 145,000 for PY 2010-11, ` 175,000 for PY 2011-12 and ` 110,000 for PY 2012-13 on 31.03.2013 as interest on enhanced compensation on the order of court. Grandmother died on 30.03.2013 after seeing her grand daughter marriage.**

(xiii) **She acquired a piece of land on 20.08.2012 from her friend for a consideration of ` 2 lakhs, stamp duty value of which is ` 5 lakhs.**

(xiv) **Interest from saving bank account ` 11,550.**

Solution: **(Refer Page No. 133 - 135 for detailed provision)**

Computation of gross total income of Miss. Pravalika for the year ended 31.03.2013						
	Particular		**Section**	**Ref.**	**Amount**	**Amount**
➔	Salary income (18,500 x 12) + (17,500 – 15,000)			(a)		224,500
➔	Income from other sources.					
	(i)	SB account interest			11,550	
	(ii)	Gift from friends – not relative – 24,000 x 4	56(2)(vii)	(b)	96,000	
	(iii)	Wrist watch – not property	56(2)(vii)	(b)	-	
	(iv)	Cash gift – not relative	56(2)(vii)	(b)	150,000	
	(v)	Gift from father's sister – relative	56(2)(vii)	(b)	-	
	(vi)	Cash gift – not relative	56(2)(vii)	(b)	185,000	
	(vii)	Marriage gift	56(2)(vii)	(b)	-	
	(viii)	Shares without consideration – property	56(2)(vii)	(b)	100,000	
	(ix)	Motor car – not property	56(2)(vii)	(b)	-	
	(x)	Enhanced compensation – 430,000 x 50%		(c)	215,000	
	(xi)	Immovable property – in-adequate consideration			-	757,550
	Gross total income					**982,050**
	(xii)	Chapter VI-A deduction :- SB account interest	80TTA	(d)		10,000
		Total Income				**972,050**

Guidelines for solution

(a) **Medical facility**

✓ Medical treatment expenses actually incurred up to ` 15,000 is allowed as deduction.

(b) **Section 56(2)(vii)**

✓ Any sum of money or property received without consideration or for in-adequate consideration, by an individual or HUF shall be chargeable to tax, subject to certain conditions.

✓ Aggregate amount received from one /more persons in a year exceeds ` 50,000 then **whole** of aggregate amount is taxable.

✓ Gift received from (i) relative (ii) on the occasion of marriage of an individual is exempt from tax.

(c) **Section 57**

✓ Interest on compensation or enhanced compensation is deemed to be the income for the year of receipt. A deduction of 50% of such income is allowed. No other deduction is allowed under any section.

(d) Section 80TTA

✓ An interest on saving deposits charged under IFOS and a deduction of ` 10,000 is allowable from the gross total income.

12.2 Discuss the tax treatment u/s 56(2) in respect of independent situation.

a. P (P) Ltd purchased 20,000 equity shares of Q (P) Ltd at ` 25 per share. The fair market value of the share on the date of transaction is ` 35

➔ Shares and securities are property u/s 56(2)

➔ Value= Aggregate fair market value of shares of a closely held company **less** consideration paid for purchase of such shares u/s 56(2), if the difference exceeds ` 50,000.

➔ ` 200,000 i.e. 20,000(35-25)

Chapter No. 14 Deduction from Gross Total Income applicable to Non-corporate assessee

14.1 Prof. Virus aged 63 years earned professional income of (computed) ` 10,75,000 during the year ended 31.03.2013. He has a SB account interest from Indian Overseas Bank ` 18,750.

(i) Life Insurance Premium paid to SBI-Life in cash amounting to ` 26,000 for insurance of life of his dependent mother. The insurance policy was taken on 16.08.2012 and sum assured value is ` 145,000.

(ii) Life Insurance Premium paid to Reliance-Life by cheque amounting to ` 26,000 for insurance of life of his major son who is not dependent on him. The insurance policy was taken on 16.08.2011 and sum assured value is ` 145,000.

(iii) Life Insurance Premium paid to Birla-Life through net banking on 30.03.2013 amounting to ` 26,000 for insurance of his life but amount got credited in Birla-Life on 31.03.2013. The insurance policy was signed on him on 28.03.2013 and sum assured value is ` 155,000.

(iv) A sum of ` 15,000 donated by cash an approved research association.

(v) Contribution to Public Provident Fund in the name of her daughter ` 65,000

(vi) Subscription to long term infrastructure bonds eligible for deduction u/s 80CCF ` 28,500

(vii) Interest on term loan taken from bank ` 7,500 and from relative ` 6,500 for MBA course pursued by his brother's daughter, who is dependent on assessee.

(viii) Tuition fees paid to her daughter pursuing PHD in Oxford university, London ` 45,000

(ix) A sum of ` 12,500 donated by cash to an institution approved u/s 80G

(x) Contribution of ` 10,500 made in cash to an electoral trust.

(xi) Paid medical insurance premium of ` 12,750 during the PY 2012-13 on the health of spouse aged 60 years.

(xii) He also paid medical insurance premium of ` 14,000 during the year by net-banking for the health of his father, aged 85 years, who is a Govt. Pensioner not dependent on him.

(xiii) He contributed ` 3,750 to Central Govt. Health Scheme during the year.

(xiv) He paid by cash Preventive health check-up ` 7,500 towards self and spouse and ` 8,500 towards his mother.

(xv) He annually deposited a sum of ` 16,500 with LIC for maintenance of his handicapped dependent brother.

(xvi) Profession income includes ` 210,000 towards royalty income on his book based on scientific nature.

(xvii) Housing loan principal repayment to SBI ` 95,000 and property is under construction as on 31.03.2013.

(xviii) Deposit under senior citizen saving scheme ` 15,000

(xix) Deposit in post office time deposit in the name of his wife ` 22,000

(xx) Investment in national saving certificate ` 20,000

(xxi) He is paying rent of ` 12,500 pm for his residential accommodation.

Solution: (Refer Page No. 145 - 149 for detailed provision)

Guidelines for solution

(a) **Section 80C**

- ✓ Life insurance premium can be taken for self, spouse and children. Parents are not covered. If policy is taken on or after 01.04.2012 deduction is restricted to 10% of sum assured.
- ✓ PPF account can be opened in the name of self, spouse and any children.
- ✓ Tuition fees for full time education within India are allowed as deduction.
- ✓ Principal repayment towards residential house allowed as deduction only if property is fully completed and charged under IFHP. So, if property is under construction it is outside the purview of deduction.
- ✓ Time deposit account and senior citizen saving and NSE are allowed as deduction only on self account.

Computation of Prof. Virus Total income and tax payable Thereon, for the year ended 31.03.2013

		Particular	Section	Ref	Amount	Amount
➔	Professional Income(computed)					10,75,000
➔	Other sources:- Interest on SB account					18,750
	Gross Total Income					**10,93,750**
➔	Chapter – VI-A deduction					
	(i)	Life premium – Dependent mother – not allowed	80C	(a)	-	
	(ii)	Life premium – children – allowed	80C	(a)	26,000	
	(iii)	Life premium – self – allowed	80C	(a)	15,500	
	(iv)	PPF a/c – any child – allowed	80C	(a)	65,000	
	(v)	Tuition fees – abroad – not allowed	80C	(a)	-	
	(vi)	Principal repayment - under construction - not allowed	80C	(a)	-	
	(vii)	Senior citizen saving scheme – self – allowed	80C	(a)	15,000	
	(viii)	Post office time deposit – wife – not allowed	80C	(a)	-	
	(ix)	NSC – assumed self – allowed	80C	(a)	20,000	
	(x)	Amount restricted u/s 80C, 80CCC and 80CCD	80CCE		141,500	100,000
	(xi)	long term infrastructure bonds – not allowed	80CCF	(b)		-
	(xii)	Medical Insurance Premium	80D	(c)		35,500

	(xiii)	Handicapped dependent brother	80DD	(d)		50,000
	(xiv)	Interest on term loan for higher studies.	80E	(e)		7,500
	(xv)	Contribution to research association – cash mode	80G	(f)		-
	(xvi)	Donation to electoral trust – cash mode	80GGC	(f)		10,500
	(xvii)	Royalty income received	80QQB	(g)		210,000
	(xviii)	SB account interest	80TTA	(h)		10,000
	Total income before section 80GG deduction					**670,250**
		Rent paid	80GG	(i)		24,000
	Total Income					**646,250**
	Tax Payable thereon (Rounded off)					**55,880**

(b) Section 80CCF

✓ Subscription to notified infrastructure bonds is not allowed as deduction from AY 2013-14 onwards.

(c) Section 80D

✓

For self, spouse, dependent children		**Actual Payment**	**Deduction allowed (Alternative-1)**	**Deduction allowed (Alternative-2)**
(a)	For self and spouse	12,750	12,750	12,750
(b)	CGHS	3,750	3,750	3,750
(c)	Preventive check up	7,500	3,500	-
		24,000	**20,000**	**16,500**
For parents (dependent or not)				
(d)	For father	14,000	14,000	14,000
(e)	Preventive check up	8,500	(5,000-3,500)1,500	5,000
		22,500	**15,500**	**19,000**

(d) Section 80DD

✓ Assumed permanent dependent and certificate in Form 10-IA produced to claim deduction.

(e) Section 80E

✓ Benefit under this section is extended to any children, if assessee is a legal guardian.

(f) Section 80G & 80 GGC

✓ Donation in cash exceeding ` 10,000 shall not qualify for deduction u/s 80G.

✓ Contribution made **by an individual to** electoral trust is deductible. No ceiling limit for cash donation u/s 80GGC.

(g) Section 80QQB

✓ Royalty income received for Authorship of Scientific nature is available, provided claimed in the return of income. Royalty received or ` 300,000 whichever is lower is deductible.

(h) Section 80TTA

✓ An interest on saving account charged under IFOS and a deduction of ` 10,000 is allowable from the gross total income.

(i) 80GG

✓ An individual is not in receipt of HRA is allowed as deduction.

✓ Deduction least of following (a) Notified limit ` 2,000 pm x 12 = ` 24,000 (b) Actual expenditure Incurred – 10% of Total Income (` 12,500 x 12 – 677750 x 10%) = ` 82,225 (c) 25% of total income (` 677,750 x 25%) = ` 169,438

Chapter No. 15 Tax deducted and collected at source and Advance tax

15.1 Use of the runway by an aircraft cannot be different from the analogy of a road used by any vehicle. Discuss the correctness of statement with the decided case law.

- Payment made for the use of any land or building and the land appurtenant thereto under a lease or sub-lease or tenancy or any agreement or arrangement with reference to the use of the land, would be "rent" as per Explanation to section 194-I. Use of the runway by an aircraft cannot be different from the analogy of a road used by any vehicle. Services offered by the AAI in respect of landing and parking charges, collected from the assessee, are governed by various considerations on offering facilities to meet the requirement of passenger's safety and on safe landing and parking of the aircraft. So, TDS applicable u/s 194C and not in section 194-I. **{(In re Singapore Airlines Ltd)(2012)(Mad)}**

15.2 Whether commission received on business of arranging transportation of goods through lorries owned by other transporters, be liable to deduct tax u/s 194H. Discuss with the aid of recent case law.

- In respect of Lorry booking business, the contract is between the clients and lorry owners. The assessee acts as a facilitator or as a intermediary. His income is only the booking commission, which he retains out of the amount collected from the clients. Hence, the assessee mainly acted as intermediary or as facilitator and he was not the person responsible for making the payment u/s 194C and no tax is required to be deducted. **{(In re Hardarshan Singh)(2013)(Del)}**

15.3 Consideration paid for sale, distribution or exhibition of cinematographic films treated as royalty. Discuss the correctness of statement with the decided case law.

- Consideration paid for sale, distribution or exhibition of cinematographic films does not fall within the term " royalty" in view of explanation 2 to section 9 (1) (vi). B4U Multimedia International Ltd and B4U Broad Band Ltd. '(B)' was granted general permission by RBI to act as advertisement collecting agent of the assessee. As per the agreement the 'B' had no powers to conclude the contract nor was dependent on the assessee. The assessee did not have any PE in India. The Tribunal also held that payment has been made by one non-resident to another non-resident outside India on the basis of contract executed outside India. Hence, payments made by the assessee are not liable to deduct tax in India and provision of section 195 is not applicable. **{(In re B4U International Holdings Ltd)(2012)(ITAT)}**

15.4 Discount given to stamp vendors on purchase of stamp papers is treated as "commission or brokerage" u/s 194H. Discuss the validity of statement with decided case law.

- The ownership in the stamp papers passes to the stamp vendor when treasury officer delivers stamp papers on payment of price less discount on principal to principal basis and there is no "contract of agency" at any point of time. The discount which the licensed vendor has obtained from the Govt is on purchase of stamp papers. Hence, that discount on purchase of stamp papers does not fall within the expression "commission or brokerage" to attract the provision of tax deducted u/s 194H. **{(In re Ahmadabad Stamp Vendors Association) (2012) (SC)}**

15.5 Discuss the amendment carried out with respect to tax collected at source u/s 206C of Fin. Act, 2012

Solution:

- Sellers of certain goods are required to collect tax from the buyers at the specified rates

(i)	Alcohol liquor for human consumption(or) scrap (or) Minerals, being coal or lignite or iron ore	1.00%
(ii)	Timber from forest lease or any other mode (or) forest produce except timber or tendu leaves	2.50%
(iii)	Tendu leaves	5.00%
(iv)	**Sale of jewellery in cash exceeds ` 5 lakhs for manufacturing (or) trading (or) for personal use.**	1.00%
(v)	**Sale of bullion in cash exceeds ` 2 lakhs for manufacturing (or) trading (or) for personal use.**	1.00%

- **No tax is required to be collected if resident buyer utilised the said goods, for the purpose of manufacturing (or) processing (or) producing articles or things (or) for the purposes of generation of power (and) not for trading purposes (or) for personal consumption.** **{(Bold typed amendment w.e.f. 01.07.2012)}**

15.6 Any payment is made by transferee for acquisition of software from the resident transferor are exempt from provision of section 194J, would not be attracted tax deducted at source. Enumerate relevant provisions and notification in this issue?

Solution:

- **Explanation to section 9(1):** Consideration for **use or right to use** of computer software is royalty, the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right to use a computer software including granting of licence irrespective of the medium through which such right is transferred.
- As per **Notification No. 21/2012** the provision of section 194J would not be attracted if
  - ✓ The software is acquired in a subsequent transfer without any modification by the transferor
  - ✓ Tax has been deducted either u/s 194J or u/s 195 on payment for any previous transfer of such software
  - ✓ The transferee obtains a declaration along with PAN from the transferor that tax has been deducted.

15.7 Compute the Advance Tax payable by Mr. Ranganath from the following estimated income submitted for the Previous Year 2012-13.

Particulars		`
(i)	Income from Salary (TDS on salary ` 9,680)	364,000
(ii)	Rent from house property (per annum)	180,000
(iii)	Interest on Government securities	5,000
(iv)	Interest on bank deposits	3,000
(v)	Receipt from horse race (net)	14,000
(vi)	Agricultural Income	90,000
(vii)	Contribution towards PPF	10,000

Solution: **(Refer Page No. 164 for detailed provision)**

Computation of Estimated Total Income for the Previous Year 2012-13			
	Particulars	**Amount**	**Amount**
➔	Income from Salary		364,000
➔	Income from house property	180,000	

	Less: Section 24(a) Standard deduction 30%		54,000	126,000
➔	Income from other sources			
	Interest on Government securities		5,000	
	Interest on bank deposits		3,000	
	Horse races (Gross)		20,000	28,000
	Estimated Gross Total Income			518,000
	Less: Section 80-C			10,000
	Total Income			**508,000**
	Add: Agricultural income			90,000
➔	Total income including agricultural income			598,000
➔	Tax liability:			
	Horse races – 20,000 x 30%		6,000	
	Balance ` 578,000 based on slab rate		45,600	51,600
➔	Total income including basic exemption limit		290,000	
➔	Tax liability: based on slab rate			9,000
	Tax on non-agricultural income			42,600
	Add: EC + SHEC			1,278
	Estimated tax liability			**43,878**
➔	Tax deducted at source (9,680 + 6,000)			15,680
➔	Advance tax payable			28,198
	(i)	1st Instalment by 15.09.2012	30%	8,459
	(ii)	2nd Instalment by 15.12.2012	30%	8,459
	(iii)	Final Instalment by 15.03.2013	40%	11,280

15.8 The Finance Act, 2012 has made penal provisions more stringent to deter delay in furnishing of TDS/TCS statement and/or for furnishing incorrect information in the TDS/TCS Statement. Discuss in brief.

Solution: **(Refer Page No. 154 for detailed provision)**

Section 234E: Failure to furnish TDS return in due time – **a fee** of ` 200 for every day during which the failure continues. However, total fees do not exceed the tax deductible. **{(w.e.f. 01.07.2012)}**

Section 271H: Failure to submit (or) furnishing **incorrect statement** in quarterly TDS/TCS return – a penalty ranging from a minimum of ` 10,000 to maximum of ` 100,000. No penalty u/s 271H shall be, if TDS/TCS statement is furnished **within one year of the prescribed due date** along with applicable interest and fee. However, if the delay is beyond one year, both fees u/s 234E **(and)** penalty u/s 271H would be applicable. Penalty u/s 271H shall not be levied if there was a reasonable cause for failure. **{(w.e.f. 01.07.2012)}**

Chapter No. 16 Special deduction from business profits

16.1 Vishnu Ltd. furnishes the following particulars for its 2nd year of operations on 31.03.2013. Compute the deduction u/s 10AA of the Income-tax Act, 1961.

Particulars	Unit X in SEZ	Unit Y in FTZ
	` (In lakhs)	` (In lakhs)

Total Sales	180	120
Export Sales (Inclusive of ` 10 lakhs for onsite development of computer software outside India by Unit X)	120	10
Profit (After claim of bad debts u/s 36(1)(vii) in Unit X)	63	36

(a) Plant and machinery used in the business has been depreciated at 15% on straight line method and depreciation of ` 9 lakhs was charged to profit and loss account in the proportion of sales during the previous year.

(b) ` 100 lakhs were realized out of export sales in time and balance of ` 20 lakhs becomes irrecoverable due to bankruptcy of one of the foreign buyers in Unit-X

Solution: **(Refer Page No. 168 for detailed provision)**

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

Particulars	Ref	Amount (`)	Amount (`)
Profits and gains of business or profession Unit X	(a)	63,81,000	
Less: Deduction under section 10AA	(b)	35,45,000	28,36,000
Unit Y	(c)		36,54,000
Total Income			**64,90,000**

Deduction under section 10AA in respect of Unit X

$$= \text{Profits Unit in SEZ} \times \frac{\text{Export turnover of the undertaking (in respect of computer software)}}{\text{Total turnover of the business of the undertaking}}$$

$$= \text{Profit of Unit X} \times \frac{\text{Export turnover of Unit X}}{\text{Total turnover of Unit X}}$$

$$= \text{` }63{,}81{,}000 \times \frac{1{,}00{,}00{,}000}{1{,}80{,}00{,}000} = \text{` }35{,}45{,}000$$

(a) The unit in SEZ begins to manufacture or produce articles or things (or) providing services on or after 01.04.2005. 100% export profit in case first 5 consecutive AY beginning from unit commence production. Unit Y is not eligible for deduction u/s 10AA, since it is located in a Free Trade Zone.

(b) The term export turnover reference to amount bought into India but **does not** include **(i)** freight **(ii)** telecommunication charges **(iii)** Insurance charges outside India **(iv)** any expenses incurred in foreign exchange in providing technical services including computer software outside India. Therefore, export turnover of Unit X (in SEZ) = ` 120 lakhs – ` 20 lakhs = ` 100 lakhs.

(c) Profits from site development of computer software outside India export turnover. Since the same has already been included in the figure of export sales, no further adjustment is required.

(d) Computation of unit-wise profits of the business.

Particulars	Ref	Unit X (`)	Unit Y (`)	Total (`)
Profit earned		63,00,000	36,00,000	99,00,000
Add: Depreciation SLM basis. (3: 2 Proportion)		5,40,000	3,60,000	9,00,000
		68,40,000	**39,60,000**	**1,08,00,000**
Less: Depreciation calculated @15% on WDV (3: 2 Proportion)	**(e)**	4,59,000	3,06,000	7,65,000

Profits of the business		63,81,000	36,54,000	1,00,35,000

(e) Depreciation as per the Income-tax Rules, 1962.

Particulars	`
Actual cost of plant and machinery (` 9,00,000 / 15%)	60,00,000
Less: Depreciation @15% for P.Y.2011-12 (being the first year of operations)	9,00,000
Written down value as on 1.4.2011	51,00,000
Depreciation @ 15% on WDV for P.Y.2012-13 (` 51,00,000 × 15%)	**7,65,000**

Chapter No. 17 Assessment of Firm, Limited Liability Partnership, Association of Persons

17.1 Mr. Tushar furnishes the following particulars for the year ended 31.03.2013. Compute the tax liability by the Alternate Minimum Tax Provision.

Particular	`
Net Profit as per Profit & Loss A/c (after deducting depreciation of ` 5,80,000)	**88,97,000**
Depreciation allowable u/s 32	**6,27,000**
Disallowable expenses	**75,000**
Deduction received u/s 10AA (as calculated)	**80,00,000**
Long Term Capital Gains (on sale of land)	**2,00,000**
Chapter VI-A Deduction received (as calculated) – section 80G	**35,000**
Chapter VI-A Deduction received (as calculated) – section 80IB	**60,000**

Solution:

Statement showing computation of Total Income

Particulars	`	`
Net Profit as per Profit & Loss A/c		88,97,000
Add: Depreciation	5,80,000	
Disallowable expenses	75,000	6,55,000
		95,52,000
Less: Depreciation allowable u/s 32 of Income Tax Act		6,27,000
		89,25,000
Less: Deduction received u/s 10AA		80,00,000
Business Profit		9,25,000
Add: Long Term Capital Gains		2,00,000
Gross Total Income		11,25,000
Chapter VI-A deduction		
Section 80G	35,000	
Section 80IB	60,000	95,000
Total Income		10,30,000

Computation of Adjusted Total Income

Particulars	`
Total Income (as computed above)	10,30,000
Add: Deduction claimed u/s 80IB	60,000
Add: Deduction claimed u/s 10AA	80,00,000

Adjusted Total Income	90,90,000

Minimum Tax for the Assessment Year 2013-14

	Particulars	Computation	Amount
(a)	Tax liability under normal provision.		
	Tax on Long Term Capital Gains – 200,000 x 20%	40,000	
	Tax on balance Total Income at Slab rate	96,000	
		1,36,000	
	Add: EC + SHEC 3%	4,080	
	Tax liability under normal provision.	**1,40,080**	**1,40,080**
(b)	Tax on Adjusted Total Income – 90,90,000 x18.5%	16,81,650	
	Add: EC + SHEC 3%	50,450	
	Alternate Minimum Tax	**17,32,100**	**17,32,100**
	Tax Payable whichever is Higher		17,32,100
	Alternate Minimum Tax credit [(a) – (b)]		15,92,020

17.2 Madumitha LLP reports the following details for the financial year 2012-13. Net Profit as per Profit and Loss account ` 54, 00,000. The following items are reflected in the Profit and Loss account.

Debits:	Amount
Working partner's salary	12,00,000
Interest on capital to partners @ 12%	15,00,000
Provision for income tax	14,00,000
Commission (TDS remitted in time)	520,000
Depreciation	12,00,000
Credits:	**Amount**
Dividend from Indian companies	100,000
Net profit from an undertaking eligible for 100% deduction u/s 80-IA	20,00,000
Profit on sale of vacant site	700,000

- **Other information.**
  - Depreciation allowable under section 32 of the Income-tax Act, 1961 is ` 8 lakhs.
  - Long-term capital gain on sale of vacant site (computed) ` 5 lakhs
  - Working partner's salary and interest on capital are authorized and subject to section 40(b)
- **Calculate.**
  - (a) Total income and regular income tax payable (as per normal provisions) for the AY 2013-14.
  - (b) Adjusted total income and alternate minimum tax payable for the AY 2013-14

Solution: **(Refer Page No. 182 for detailed provision)**

(a)

Computation of total income and tax liability of as per the normal provisions for AY 2013-14			
Particulars	**Ref.**	**Amount**	**Amount**
Net profit as per Profit and Loss A/c			54,00,000
Less: Income exempt u/s 10(34)]		100,000	
Profit on sale of vacant site (taxable under Capital -Gains)		700,000	(800,000)
			46,00,000

Add: Working partner's salary (considered separately)		12,00,000	
Provision for income-tax (not a deductible expenditure)		14,00,000	
Depreciation		12,00,000	38,00,000
			84,00,000
Less: Depreciation allowable under section 32			800,000
Book profit			**76,00,000**
Less: Working partners' salary	(i)		12,00,000
Income under the head PGBP			**64,00,000**
Long term capital gain (computed)			500,000
Gross Total Income			**69,00,000**
Less: Deduction under section 80-1A			20,00,000
Total income			49,00,000
Tax liability thereon,			
On LTCG 500,000 x 20%		100,000	
On balance amount 44,00,000 x 30%		13,20,000	14,20,000
Add: EC + SHEC 3%			42,600
Total tax liability under normal provision			**14,62,600**

(i)	First ` 3,00,000 of Book Profit	90% or ` 1,50,000, whichever is more	2,70,000
	Remaining ` 73,00,000 of Book Profit	60%	43,80,000
			46,50,000
➔	Actual salary of ` 12 lakhs is less than ` 46,50,000, actual salary is allowable as deduction		

(b)

Computation of total income and tax liability of as per the Alternate Minimum Tax under section 115JC for AY 2013-14			
Particulars	**Ref**	**Amount**	**Amount**
Total income			49,00,000
Add: Income from undertaking eligible for section 80-IA deduction			20,00,000
Adjusted total income			69,00,000
Tax liability thereon,			
On 69,00,000 x 18.50%		12,76,500	
Add: EC + SHEC 3%		38,295	13,14,795
Total tax liability under normal provision			**13,14,795**

Conclusion: Madumitha LLP has to pay tax as per the regular provisions i.e. ` 14, 62,600.

17.3 GMK are partners in a firm assessed as an association of persons. They share profit and losses in the ratio of 4:3:3. The abridged profit and loss for the Previous Year 2012-2013 is as follows:

Particulars	Amount	Particulars	Amount
Business expenses	500,000	Gross Profits	685,000
Salaries to partners:		Short-term Capital Gain	2,80,000
G-60,000, M-40,000, K-50,000	150,000	Interest on drawings	
Bonus to partners:		G-5,000, M-20,000, K-10,000	35,000

G-30,000, M-20,000	50,000		
Commission to K	40,000		
Interest to partners:			
G-20,000, M-15,000, K-25,000	60,000		
Net profit:-			
G-80,000, M-60,000, K-60,000	**10,00,000**		**10,00,000**

Business expenses include donation to Nalanda University ` 50,000.

Compute the taxable income of AOP, its tax liability and tax liability of its members in the following

Partner	Nature of income	Situation -1	Situation - II
G	Interest on bank deposits	2,40,000	1,00,000
M	Interest on Government securities	2,65,000	1,20,100
K	Income from House Property	2,50,000	1,10,000
	LIP paid by every member on a policy of ` 1,00,000.	20,000	20,000

Solution: (Refer Page No. 187 for detailed provision)

Computation of total income and tax liability of AOP				
	Particulars	**Computation**	**Amount**	**Amount**
➔	Net profit as per profit & loss account			200,000
	Add: Donation to Nalanda university		50,000	
	Salaries to partners [Sec. 40(ba)]	(60,000 + 40,000 + 50,000)	150,000	
	Bonus to partners	(30,000 + 20,000)	50,000	
	Interest on capital (Net of Interest on Drawings)	(15,000 + 15,000)	30,000	
	Commission to K		40,000	320,000
				520,000
	Less: Short-term Capital Gain			280,000
	Business Income			240,000
➔	Short-term Capital Gain			280,000
	Gross Total Income			520,000
	Less: Chapter VI-A deduction			
	Section 80G- Donation to charitable trust – 50%	50,000 (or) 520,000 x 10%		25,000
	Total income			495,000

	Particulars	Situation -1	Situation – II
(i)	Tax on Total Income at slab rates	30,385	-
(ii)	Tax on Total Income at maximum marginal rate	-	1,52,955
	Tax Payable rounded off (u/s 288 B)	30,390	1,52,960

Computation of tax liability of members of AOP						
	Particulars	**Ref**	**G**	**M**	**K**	**Total**

(i)	Salary from AOP		60,000	40,000	50,000	150,000
(ii)	Bonus from AOP		30,000	20,000	-	50,000
(iii)	Commission from AOP		-	-	40,000	40,000
(iv)	Interest from AOP		15,000	-	15,000	30,000
	Total distribution to members		105,000	60,000	105,000	270,000
(v)	Divisible loss from AOP	(a)	(22,000)	(16,500)	(16,500)	(55,000)
(vi)	Share of business profit		83,000	43,500	88,500	215,000
(vii)	Share of short term gain(4:3:3)		112,000	84,000	84,000	280,000
(viii)	**Total income of members from AOP**		**195,000**	**127,500**	**172,500**	**495,000**

➔	**Situation-I**				
Computation of tax liability of member – where AOP taxed at slab rate					
	Particulars		**G**	**M**	**K**
	(i)	Income from house property	-	-	250,000
	(ii)	Income from other sources	240,000	265,000	-
	(iii)	Share of income from AOP	195,000	127,500	172,500
		Gross Total Income	435,000	392,500	422,500
		Less: Section 80C – ULIP assumed policy before 1.04.2012	20,000	20,000	20,000
		Total income	415,000	372,500	402,500
		Tax liability thereon	22,145	17,768	20,858
		Less: Rebate on share of profit from firm at the average rate $\left(^{22,145}/_{415,000}\right)$ x 195,000	10,405	6,082	8,939
		Tax Payable rounded off (u/s 288 B)	**11,740**	**11,690**	**11,920**

➔	Situation-II				
Computation of tax liability of member – where AOP taxed at Maximum marginal rate					
	Particulars		**G**	**M**	**K**
	(i)	Income from house property	-	-	110,000
	(ii)	Income from other sources	100,000	120,100	-
	(iii)	Share of income from AOP	-	-	-
		Gross Total Income	100,000	120,100	110,000
		Less: Section 80C – ULIP assumed policy before 1.04.2012	20,000	20,000	20,000
		Total income	80,000	100,100	90,000
		Tax liability thereon	Nil	Nil	Nil

Chapter No. 18 Assessment of Charitable trust or Institution

18.1 Whether provision of section 14A disallowing expenditure in respect of exempt income, would be applicable in respect of which deductions are permissible under Chapter-VI-A. Discuss with aid of case law.

❖ At the time of registration u/s 12AA which is necessary for claiming exemption u/s 11 and 12, the

Commissioner is not required to look into the activities, where such activities have not commenced or are in the process of its initiation. Where a trust, set up to achieve its objects of establishing educational institution, is in the process of establishing such institutions, and receives donations, the registration u/s 12AA cannot be refused on the ground that the trust has not yet commenced the charitable or religious activity. The question of the exemption of the application of income received by way of donation is a separate issue which will be examined at the time of examining the return of income. **{(In re Hardayal Charitable & Educational Trust)(2013)(All)}**

18.2 Mother Theresa education centre, a charitable institution registered u/s 12AA of the income tax Act, 1961 runs schools for primary and secondary education. The following particulars pertaining to the PY 2012-13 are furnished to you by the institution to determine tax liability for AY 2013-14.

(i)	**Gross receipts from students towards admission fees, tuition fees, development fees, laboratory fees etc.**	**182,65,000**
(ii)	**Revenue expenses incurred/paid during the year**	**89,10,500**
(iii)	**Amount applied during the year**	**500,000**
(iv)	**Voluntary contributions from public including corpus donation of ` 1 lakh**	**600,000**
(v)	**Income from properties held in trust (out of this ` 30,000 was not received during the year and ` 50,000 was received only on the last day of the year)**	**250,000**
(vi)	**Donation received including anonymous donation of ` 250,000**	**10,50,000**
(vii)	**Purchase of computer and laboratory equipments**	**21,40,000**
(viii)	**Grants from State Govt. for acquisition of capital asset (including ` 210,000 for education facility to poor children)**	**725,000**
(ix)	**A sum applied for the benefit of the founder of the institution**	**350,000**
(x)	**Dividend received on units of mutual fund specified in section 10(23D)**	**16,00,000**
(xi)	**Excess of expenditure over income in the previous year 2011-12**	**35,00,000**
(xii)	**The institution accumulated ` 20 lakhs u/s 11(2) in the PY 2009-10 for a period of two years for acquiring and developing a plot of land for construction of a new school. Land was purchases for ` 15 lakhs and development was made at a cost of ` 2 lakhs in the PY 2012-13**	

Solution: **(Refer Page No. 190 - 193 for detailed provision)**

Computation of total income and tax payable thereon, of Mother Theresa education centre for the year ended 31.03.2013					
	Particular	**Section**	**Ref.**	**Amount**	**Amount**
→	Gross receipts from students			182,65,000	
→	Revenue expenses incurred/paid during the year		(a)	(89,10,500)	
				93,54,500	
	Donation excluding anonymous donation		(b)	800,000	
	Dividend received on units of mutual fund		(c)	16,00,000	
	Voluntary contributions		(d)	500,000	
	Income from properties held in trust			250,000	
	Grants from State Govt.		(e)	-	

				125,04,500	
	Less: 15% exemption without any condition	11(1)(a)		(18,75,675)	
				106,28,825	106,28,825
	Less: Applied for charitable purpose:				
	# Amount applied during the year		(a)	(500,000)	
	# Purchase of computer and laboratory equipments			(21,40,000)	
	# Excess of expenditure over income in the PY 2011-12			(35,00,000)	(61,40,000)
	Add: Not applied for charitable purpose:				
	# Applied for the benefit of the founder of the institution		(f)	350,000	
	# Amount accumulated and not spent with time limit			300,000	
	# Anonymous donation		(b)	250,000	900,000
	Less: Option exercised:	11	(g)		
	# Amount not received during the year			30,000	
	# amount received on last day of PY			50,000	(80,000)
	Total income				53,08,825
	Tax on anonymous donation – 150,000 x 30%			45,000	
	Tax on amount applied for the benefit of the founder – 350,000 x 30%			105,000	
	Tax on other income ` 48,08,825 - Individual slab rate			11,42,648	12,72,648
	Add: Education cess				25,453
	Add: Secondary & Higher education cess				12,726
	Tax liability (R.off)				**13,10,830**

Guidelines for solution

(a) The term "incurred" and "applied" has a wider meaning. Amount actually incurred during the year is taken for computation of amount set aside u/s 11(a)(i). If certain amount is earmarked and allocated for charitable purpose, is called applied for charitable purpose. The word applied does not imply actually incurred or spent.

(b) Anonymous donation in excess of exemption limit of ` 1 lakh or 5% total donation, whichever is higher is allowed as deduction u/s 115BBC and subject to maximum marginal rate of 30%.

(c) Dividend received from mutual fund is also required to apply for charitable purpose in India. There is an alternative view that dividend received, exempt u/s 10(35) hence need not be applied for charitable purpose.

(d) Voluntary contribution made with specific direction shall form part of the corpus of the trust or institution.

(e) The purpose of grant determines the nature of the grant. Hence, grant received for acquisition of capital asset is capital receipt.

(f) An amount applied for the benefit of founder of the institution is taxable u/s 12(2) read with 13(6). This amount is taxable at the maximum marginal rate of 30%.

(g) Under explanation 2 to section 11 of Act, option exercised in writing before the due date of filing return by specifying income derived will be applied during the immediately following previous year.

18.3 Navjeevan Charitable Trust created on 1.1.2011 applied for registration of trust u/s 12A of the Income-tax Act, 1961 before the Commissioner of Income-tax on 1.7.2012 and requested for condonation of delay.

(i) Explain with reasons the period for which the trust is eligible to get exemption u/s 11 and 12 of the Income-tax Act, 1961.

(ii) Can the exemption u/s 11 and 12 for AY 2013-14 be denied if the trust is holding investments in equity shares of a public sector company since 01.07.2012?

(iii) The Trust has also applied for granting exemption u/s 80G of the Income-tax Act, 1961. However, the approval for the same has been rejected by the Commissioner u/s 80G(5)(vi) of the Income-tax Act on 30.9.2012. The Trust seeks your advice on whether it can file an appeal against the said rejection before the higher authorities.

Solution: **(Refer Page No. 190 - 192 for detailed provision)**

(i) As per section 12A the exemption would be available only with effect from the assessment year relevant to the previous year in which the application is filed. The Commissioner has no power to condone the delay and accept the application. Hence, Navjeevan Charitable Trust shall be eligible to get exemption u/s 11 and 12 with effect from the financial year in which the application is made i.e. assessment year 2013-14 onwards.

(ii) A trust registered u/s 12A cannot be denied exemption for holding shares in a public sector company in view of section 13(1)(d)(iii). Hence, the exemption u/s 11 and 12 cannot be denied to the trust for holding investments in equity shares of a public sector company.

(iii) Section 253 provides that an appeal can be filed before the Appellate Tribunal against an order passed by the Commissioner under section 80G(5)(vi) rejecting the application of such trusts for the purpose of recognition under section 80G. Therefore the trust can file an appeal before Appellate Tribunal against the said rejection.

18.4 A charitable institution was registered u/s 12AA in April, 2010 with the object of "advancement of general public utility". It's trading receipts for the first two years, i.e. PY 2010-11 ` 8 lakhs and PY 2011-12 ` 22 lakhs respectively. The institute claimed exemption u/s 11 for the both years. During PY 2013-14, its trading receipts were ` 26 lakhs. The assessing officer denied the exemption u/s 11. Discuss the assessing officer denying exemption valid as per law.

Solution: **(Refer Page No. 190 for detailed provision)**

- ✓ A charitable trust or institution may be **"charitable"** in one year and not "charitable" in another year depending on the aggregate value of receipts from commercial activities. Hence, temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration.
- ✓ The denial of exemption would be compulsory by operation of law and would not require any approval.

Chapter No. 20 – 24	International Transactions

20.1 The Income-tax Act, 1961 provides for taxation of a certain income earned by X. The Double Taxation Avoidance Agreement, which applies to X, excludes the income earned by X from the purview of tax. Is X liable to pay tax on the income earned by him? Discuss.

Solution:

- The DTAA would override the provisions of income tax Act, 1961 and the assessee may choose any provision which is **more beneficial to assessee**. Any conflict between DTAA and IT Act then provision of DTAA must prevail.
- The non-resident, to whom this agreement applies, shall be allowed to claim the relief, if a **Tax Residence Certificate (TRC)** obtained from Government of that country is furnished, by declaring his residence of the country outside India. The submission of certificate containing particulars **shall be necessary but not sufficient condition** for availing benefits of the agreement. **{(w.e.f. 01.04.2012)}**
- The DTAA is for benefit of taxpayers who are liable to **pay tax twice** on the same income. where tax liability is imposed by the Act, the Double Taxation Avoidance Agreement may be resorted to for reducing or avoiding the tax liability.

20.2 Enumerate provision in brief with respect to conversion of an Indian branch of foreign company u/s 115JG.

- This section **overrides** the entire provisions of income tax Act.
- A foreign company engaged in banking business in India through its branch in India and such branch converted into an Indian subsidiary company as per scheme framed by RBI.
- Capital gain arising due to conversion is fully exempt from tax.
- The benefit of set off of unabsorbed depreciation, carry forward of losses, adjustment of tax credit shall apply as specified in the scheme framed by RBI through notification issued by CG.
- If scheme framed by RBI or notification issued by CG are not complied with, all the provisions of the Act would apply to foreign company and Indian subsidiary company without any benefit, exemption or relief under this section.
- Every notification issued under this section shall require approval of **each house of Parliament.**

20.3 What do you understand about Advance Pricing Agreement (APA). Discuss in brief.

- An agreement between a taxpayer and a taxing authority on an appropriate transfer pricing **methodology** for a set of transactions over a fixed period of time in future.
- Object of agreement is **providing certainty** and unanimity of approach.
- This section **overrides** the provision specified u/s 92C in respect of arm's length price.
- The agreement may be entered for a maximum period of **five consecutive previous years**.
- Any person, who entered into an agreement, shall necessarily have to **furnish a modified return** within a period of 3 months from the **end of the month** in which the APA is entered.
- (i) Time limit in respect of the year for which assessment is **completed** for which APA entered.
  - ✓ Within ***one year from the end of the financial year*** in which ***modified return*** is submitted.
- (ii) Time limit in respect of the year for which assessment is **pending** for which APA entered.
  - ✓ Normal period of limitation is ***extended by one year***. (apply revised return time + 12 months)

20.4 The Authority of Advance ruling should be first instance be challenged before the High Court. Explain the correctness of the statement.

❖ Binding nature of the AAR ruling does not affect the jurisdiction of the Court to entertain a challenge to the ruling under Article 136 or under Articles 226 and 227 of the Constitution. The ruling should in the first instance be challenged before the High Court. Ordinarily, an aggrieved party should not be encouraged to appeal directly to the Supreme Court unless it appears to the Court that the SLP raises substantial questions of general importance or a similar question is already pending before it for decision. **{(In re Columbia Sportswear Company)(2012)(SC)}**

20.5 Ram, Ganesh and Sham are persons ,aged 30 years, 34 years and 35 years respectively, of Indian origin, though their residential status is non-resident. During the PY their income from investment in India is as follows.

	Particulars	Received on	TDS	Ram	Ganesh	Sham
(a)	Interest on deposits with public limited companies	31.03.2013	20.60%	35,000	80,000	1,50,000
(b)	Interest on Government securities	31.12.2012	20.60%	2,25,000	2,20,000	2,70,000
(c)	Interest on deposits with private limited companies	30.09.2012	30.90%	Nil	1,00,000	8,80,000
Tax deducted at source				53,560	92,700	3,58,440

Determine the amount of tax liability/refund for the Assessment Year 2013-14. Also discuss whether the assessee should opt under section 115-I.

Solution:

(a) Tax liability if the assessee opts u/ s 115-I – normal provision

Particulars	Ram	Ganesh	Sham
Gross Total Income [(a) + (b) + (c)]	2,60,000	4,00,000	13,00,000
Less: Chapter VI-A Deduction	Nil	Nil	Nil
Total Income	2,60,000	4,00,000	13,00,000
Tax payable thereon, including cess	**6,180**	**20,600**	**2,26,600**
Less: Tax Deduction at Source	53,560	92,700	3,58,440
Final tax liability/(refund)	**(47,380)**	**(72,100)**	**(131,840)**

(b) Tax liability if the assessee not opted u/ s 115-I – Special provision

Particulars	Ram	Ganesh	Sham
Foreign exchange assets(a) + (b)	2,60,000	3,00,000	4,20,000
Tax on foreign exchange asset	53,560	61,800	86,520
Other income (c)	Nil	1,00,000	8,80,000
Gross Total Income [(a) + (b) + (c)]	Nil	1,00,000	8,80,000
Less: Chapter VI-A Deduction	Nil	Nil	Nil
Total Income	Nil	1,00,000	8,80,000
Tax payable thereon, including cess	Nil	Nil	1,09,180
Less: Tax Deduction at Source	53,560	92,700	3,58,440
Final tax liability/(refund)	Nil	(30,900)	(162,740)

(c) Conclusion

Particulars	Ram	Ganesh	Sham
Final tax liability/(refund) under normal provision	**(47,380)**	**(72,100)**	(131,840)
Final tax liability/(refund) under special provision	Nil	(30,900)	**(162,740)**

Chapter No. 25 Business re-organization

25.1 Mr. PVR was carrying on the book store business under the proprietorship concern. On 21.07.2012 the business of book store was succeeded by PVR (P) ltd and all the assets and liabilities became the assets and liabilities of PVR (P) ltd and Mr.PVR was given 52% share in share capital of company. The assets transferred to the company included an urban land which was acquired by Mr. PVR on 19.07.2009 for ` 980,000 were sold by the company on 30.03.2013 for ` 15,00,000.

Solution: **(Refer Page No. 227 for detailed provision)**

Computation of capital gain of PVR (P) ltd for the year ended 31.03.2013		
Particular	**Ref**	**Amount**
Net sale consideration		15,00,000
Less: Cost of acquisition 980,000 x $^{852}/_{632}$	(a)	13,21,140
Long term capital gain		1,78,860

(a) The indexation benefit would be available from the year in which capital asset is acquired by the previous owner. **{(In re Arun Shungloo Trust)(2012)(Del)}**

Chapter No. 26 Penalty and Prosecution

26.1 Discuss the prosecution provision u/s 276CC of the income tax Act, 1961 as amended by Fin. Act, 2012

- **Section 276CC: Willful failure** to file return of income u/s 139(1) or 148 or 153A. However, prosecution proceedings will not be attracted if the **tax payable** by the assessee on the total income as per regular assessment, as reduced by advance tax, tax deducted at source does not exceed ` 3,000.

Amount sought to be evaded		Rigorous imprisonment
≤ ` 25,00,000	➔	≥ 3 months and ≤ 2 years **and** fine
> ` 25,00,000	➔	≥ 6 months and ≤ 7 years **and** fine

26.2 Whether penalty attracted u/s 271(1)(c) in case income fell under some other head?

- merely because the Assessing Officer was of the opinion that the income fell under some other head cannot be reason enough to treat the particulars reported in the return as inaccurate particulars or as suppression of facts, to attract levy of penalty u/s 271(1)(c).**{(In re Amit Jain (2013)(Del)}**

26.3 An inadvertent and bona fide error amounts to concealment of income and attract penalty u/s 271(1)(c). Discuss with the aid of recent case law.

- The assessee is engaged in multi disciplinary management consultancy services. It had claimed deduction of provision made for payment of gratuity, though the annexure to the tax audit report in Form No. 3CD indicated that the provision towards payment of gratuity was not allowable u/s 40A(7). The contents of the tax audit report showed that there was no question of the assessee concealing the income or furnishing any inaccurate particulars. The assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. Since, there was no willful suppression of facts but a genuine mistake had been committed penalty u/s 271(1) (c) cannot be levied.

{(In re Price Waterhouse Coopers Pvt. Ltd.)(2012)(SC)}

26.4 Subsequent decision of the Supreme Court on the ground that the additions made on account of disallowance will attract penalty u/s 271(1)(C)? Discuss with the aid of decided case law.

- Penalty on the ground that the additions made on account of disallowance was neither due to the failure on the part of the assessee nor on account of furnishing in accurate particulars. There was no infirmity in the order of the Tribunal. Penalty u/s. 271(1) (c) is not permissible on the ground of subsequent decision of the Supreme Court. **{(In re Celetronix Power India P Ltd)(2013)(Bom))**

26.5 Discuss whether penalty attracted u/s 271(1)(c), if assessee income assessed u/s 115JB but reduction of loss pertaining to normal provision of the Act.

- As there was a reduction in the loss under the normal provisions owing to various additions and disallowances, the assessing officer levied penalty u/s 271(1)(c) in accordance with Explanation 4. If there was a concealment u/s 271(1)(c) with respect to the normal assessment, the same was not relevant because the assessee's income was assessed u/s 115JB. The furnishing of wrong particulars had no effect on "the amount of tax sought to be evaded" as defined in Explanation 4 to section 271(1)(c). **{(In re Nalwa Sons Investment Ltd)(2012)(SC)}**

26.6 Discuss whether penalty attracted u/s 271(1)(c), if assessee income assessed u/s 115JB but reduction of loss pertaining to normal provision of the Act.

- As there was a reduction in the loss under the normal provisions owing to various additions and disallowances, the assessing officer levied penalty u/s 271(1)(c) in accordance with Explanation 4. If there was a concealment u/s 271(1)(c) with respect to the normal assessment, the same was not relevant because the assessee's income was assessed u/s 115JB. The furnishing of wrong particulars had no effect on "the amount of tax sought to be evaded" as defined in Explanation 4 to section 271(1)(c). **{(In re Nalwa Sons Investment Ltd)(2012)(SC)}**

26.7 Undisclosed income found during the search will attract penalty u/s 271AAB. Discuss provision in brief

Solution:

- **Penalty** in case of **undisclosed income found during the course of a search**, which has been initiated on or after 1st July, 2012, which relates to specified previous year. i.e.
  - (1) The previous year ended before the date of search, but Section 139(1) due date has not expired before the date of search (and) the return has not yet been furnished. Example: Previous Year ended 31.03.2013. Date of search 25.05.2013. Due date 31.07.2013 and return is not yet furnished.
  - (2) The previous year in which search is conducted.

	Description	Rate of Penalty
(a)	Undisclosed income **is admitted** during the course of search, the assessee explains the manner of income derived and pays all dues on or before the specified date	10% of undisclosed income

(b)	Undisclosed income **is not admitted** during the course of search and the same is disclosed in the return of income filed after the date of search and pays all dues.	20% of undisclosed income
(c)	In all other cases.	30% to 90% of undisclosed income

26.8 The period of limitation for the purpose of penalty order u/s 271D was to be reckoned from the date of issue of first show cause for initiation of such penalty proceedings. Discuss the correctness of statement with decided case law.

- The assessee had accepted cash loans exceeding the limit specified u/s 269SS for which penalty proceedings were initiated u/s 271D by the Assessing Officer. On reference to the Joint Commissioner, the competent authority to impose penalty u/s 271D, he held that the assessee was liable for penalty. The period of limitation for the purpose of such penalty proceedings was to be reckoned from the date of issue of first show cause for initiation of such penalty proceedings. Hence, the penalty order was barred by period of limitation as mentioned u/s 275(1)(*c*). i.e. six months from end of the month in which penalty proceedings were initiated by the Assessing Officer. **{(In re Jitendra Singh Rathore)(2013)(Raj)}**

26.9 Whether repayment of loan by passing mere book adjustment entries is permitted. Discuss with decided case law.

- The obligation to repay the loan or deposit by account payee cheque or bank draft as specified u/s 269T is mandatory in nature. The contravention the said section will attract penalty u/s 271E.
- Section 269T does not make a distinction between a bona fide and a non-bona fide transaction. It merely put a condition that in case a loan or deposit is repaid; it should be by way of an account payee cheque/draft.
- Repayment of loan by passing mere adjusting book entries by the assessee in excess of ` 20,000 will attract penalty u/s 271E, unless such person proves that there was a reasonable cause for such book adjustment**.** Passing book entries is bona fide in nature and has not been made with a view to avoid tax, hence that there was a reasonable cause for such book adjustment and no penalty u/s 271E could be imposed. **{(In re Triumph International Finance (I) Ltd)(2012)(Bom)}**