

PAPER – 7 : DIRECT TAX LAWS
PART – III : QUESTIONS AND ANSWERS
QUESTIONS

Basic Concepts

1. Discuss, with the aid of case laws, whether the following receipts are revenue or capital in nature:
 - (a) Liquidated damages received by A Ltd. from supplier of plant and machinery for failure to supply machinery within the stipulated time.
 - (b) Power subsidy received by B Ltd., a cement manufacturing company, from the State Government, year after year, on the basis of actual power consumption.
 - (c) One-time subsidy, equivalent to 60% of sales tax paid, received by C Ltd. from the State Government under the scheme of industrial promotion for expansion of its capacities and modernisation.

Income which do not form part of total income [Charitable Trusts]

2.
 - (a) Ramji charitable trust, registered under section 12AA, earned income from mutual funds specified under section 10(23D) to the tune of ₹ 2 lakh in the P.Y. 2014-15 and claims exemption under section 10(35) in respect of such income. It also earned dividend income of ₹ 1 lakh and agricultural income of ₹ 5 lakh in the same year, and claims exemption under section 10(34) and 10(1), respectively, in respect of such income, without complying with the conditions laid down under section 11. Discuss the correctness of the claim of the Ramji charitable trust.
 - (b) Shivji charitable trust purchased a building for ₹ 25 lakh in March, 2014 for the purposes of the trust and claimed the same as application of income in the P.Y.2013-14. It also claims depreciation@10% on buildings for P.Y.2014-15, while computing income for the purpose of application. Discuss the correctness of the depreciation claim made by Shivji charitable trust.
 - (c) Ganeshji charitable trust, whose main object is relief of the poor, filed an application for registration on 1st April, 2014 and was registered under section 12AA on 1st September, 2014. The trust is in existence since May, 2012. The trust claimed the benefits of sections 11 and 12 in respect of income from property held under trust for A.Y.2013-14 to A.Y.2015-16. Discuss the correctness of the claim of the trust, if assessment proceedings for A.Y.2013-14 and A.Y.2014-15 are pending before the Assessing Officer on 1st September, 2014.

Profits and gains of business or profession

3. Discuss the deductibility of the following expenditure while computing business income –

- (a) A Ltd., a manufacturing company, has invested ₹ 35 crore (including ₹ 5 crore in computers installed in office) in new plant and machinery. The said plant and machinery was acquired and installed in April, 2014 and put to use in the same month.
- (b) B Ltd. invested ₹ 10 crore in land and ₹ 5 crore in new plant and machinery in April, 2014 for setting up and operating a semi-conductor wafer fabrication manufacturing unit which commences operations on 1st June, 2014.
- (c) C Ltd. incurred expenditure of ₹ 42 lakhs on rural development activities qualifying as a CSR activity as per section 135 of the Companies Act, 2013 read with Schedule VII thereto, and claimed the same as deduction under section 37. It also made contribution of ₹ 10 lakhs to Prime Minister's National Relief Fund as part of its CSR obligation.
- (d) D Ltd. paid salary of ₹ 25 lakh to its resident employees in the month of March, 2015 without deducting tax at source. Out of the said salary, ₹ 15 lakh is paid to employees falling in the 20% tax slab and the balance to employees falling in the 30% tax slab.
- (e) E Ltd. paid fees for professional services to X Inc., a Swedish company, in March, 2015 after deducting tax at source at the rates in force. The tax so deducted was, however, deposited only in September, 2015.

Capital Gains

4. Mr. Ganesh, aged 43 years, working as a General Manager with W Consulting Ltd., furnishes the following particulars of assets transferred by him during the P.Y. 2014-15 –

	Particulars	Date of transfer	Net Sale consideration ₹
(1)	A residential house in Pune which he had purchased in January, 2000 at a cost of ₹ 31,12,000.	28/2/2015	2,00,00,000
(2)	Listed equity shares of Indian companies purchased in June 2012 at a cost of ₹ 2 lakh.	15/3/2015	4,00,000
(3)	Unlisted shares purchased in June 2012 at a cost of ₹ 75,000.	15/3/2015	1,25,000
(4)	Units of equity oriented fund purchased in June 2012 at a cost of ₹ 50,000	15/3/2015	90,000
(5)	Units of debt oriented fund purchased in February 2010 at a cost of ₹ 63,200	15/3/2015	1,45,000

Mr. Ganesh made the following investments out of the net consideration from sale of residential house at Pune–

	Particulars	₹
(1)	Purchased a residential flat in Nagpur on 30/6/2015	52,00,000
(2)	Purchased a residential flat in Coimbatore on 31/7/2015	40,00,000
(3)	Invested in 3 year bonds of NHA1 on 30/3/2015	35,00,000
(4)	Invested in 3 year bonds of RECL on 18/6/2015	50,00,000

Compute the total income and tax liability of Mr. Ganesh for A.Y.2015-16, if his salary income (computed) is ₹ 32 lakh and interest on fixed deposits with banks is ₹ 2 lakh. Assume that he has contributed ₹ 1,50,000 to public provident fund and paid medical insurance premium of ₹ 14,000 to insure his health.

Cost Inflation Index of F.Y.1999-2000: 389; F.Y.2009-10: 632; F.Y.2012-13: 852; F.Y.2014-15: 1024.

Capital Gains & Income from other sources

5. Mr. Vallish has acquired a residential house property in Noida on 23rd May, 2001 for ₹ 36,85,800 and decided to sell the same on 14th August, 2005 to Mrs. Poorna and an advance of ₹ 1,50,000 was taken from her. The balance money was not paid by Mrs. Poorna and hence, Mr. Vallish has forfeited the entire advance sum. In April, 2014, he once again entered into negotiations for sale of the said property to Mr. Sridhar, and received ₹ 3,50,000 as advance, but the transfer did not materialize and hence, the advance was forfeited. On 27th March, 2015, he finally sold this house to Mr. Sundar for ₹ 1,37,00,000. In the meantime, on 3rd January, 2015, he had purchased a residential house in Mathura for ₹ 36,00,000 and made full payment for the same. However, Mr. Vallish does not possess any legal title till 31st March, 2015, as such transfer was not registered with the registration authority.

Mr. Vallish had purchased another old house in Agra on 22nd September, 2014 from Mr. Yadav, an Indian resident, by paying ₹ 30,00,000 and the purchase was registered with the appropriate authority.

Determine the taxable capital gain arising from above transactions in the hands of Mr. Vallish for the A.Y. 2015-16 [Cost Inflation Index - 2001-02: 426; 2005-06: 497; 2014-15: 1024].

Assessment of various entities

6. A business trust, registered under SEBI (Real Estate Investment Trusts) Regulations, 2014, gives particulars of its income for the P.Y.2014-15:
- (1) Interest income from A Ltd. – ₹ 4 crore;
 - (2) Dividend income from A Ltd. – ₹ 2 crore;
 - (3) Short-term capital gains on sale of listed shares of A Ltd. – ₹ 3 crore;
 - (4) Short-term capital gains on sale of developmental properties – ₹ 2 crore

- (5) Interest received from investments in unlisted debentures of real estate companies – ₹ 10 lakh;

A Ltd. is an Indian company in which the business trust holds controlling interest. The business trust holds 62% of the shareholding of A Ltd.

Discuss the tax consequences of the above income earned by the business trust in the hands of the business trust and the unit holders, assuming that the business trust has distributed ₹ 10 crore to the unit holders in the P.Y.2014-15.

7. Mr. Anish, carrying on the business of operating a warehousing facility for storage of food grains, has a total income of ₹ 95 lakh for the P.Y.2014-15. He commenced operations of the business in April, 2014. In computing the total income for the P.Y.2014-15, he had claimed deduction under section 35AD in respect of investment of ₹ 82 lakh in building (on 1.5.2014) for operating the warehousing facility for storage of food grains. Compute his tax liability for A.Y.2015-16.
8. Gamma Ltd., a domestic company, has distributed on 10.12.2014, dividend of ₹ 460 lakh to its shareholders. On 1.10.2014, Gamma Ltd. has received dividend of ₹ 120 lakh from its domestic subsidiary company Beta Ltd., on which Beta Ltd. has paid dividend distribution tax under section 115-O. Compute the additional income-tax payable by Gamma Ltd. under section 115-O.
9. The net profit of Delta Ltd. as per profit and loss account for the previous year 2014-15 is ₹ 170 lakhs after debiting/crediting the following items:
- (i) Provision for income-tax: ₹ 14 lakhs
 - (ii) Dividend Distribution tax: ₹ 2 lakhs
 - (iii) Securities transaction tax: ₹ 1 lakh
 - (iv) Transfer to General Reserve: ₹ 6 lakhs
 - (v) Provision for deferred tax: ₹ 9 lakhs
 - (vi) Proposed Dividend: ₹ 5 lakhs
 - (vii) Preference Dividend: ₹ 3 lakhs
 - (viii) Provision for permanent diminution in value of investments: ₹ 2 lakhs
 - (ix) Provision for gratuity based on actuarial valuation: ₹ 4 lakhs
 - (x) Depreciation debited to Profit & Loss Account is ₹ 18 lakhs. This includes depreciation on revaluation of assets to the tune of ₹ 4 lakhs.
 - (xi) Agricultural income: ₹ 5 lakhs (Expenditure to earn agricultural income : ₹ 2 lakh)
 - (xii) Long term capital gains exempt under section 10(38) : ₹ 7 lakhs (Expenditure to earn long-term capital gains : ₹ 0.75 lakhs)
 - (xiii) Transfer from Special Reserve: ₹ 3 lakhs

(xiv) Transfer from Revaluation Reserve: ₹ 5 lakhs

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

Previous year	Brought forward loss (₹ in lakhs)	Unabsorbed Depreciation (₹ in lakhs)
2011-12	3	4
2012-13	2	-
2013-14	8	5

Compute the book profit of Delta Ltd. under section 115JB for the A.Y. 2015-16. Compute the tax liability of the company for the A.Y.2015-16, if the total income computed as per the provisions of the Income-tax Act, 1961 is ₹ 100 lakhs.

Taxation of non-residents

10. The details given hereunder relate to two non-residents, Mr. Evan Smith, an Australian cricket player and his brother, Mr. Dean Smith, a musician for the A.Y.2015-16–

	Particulars	Mr. Evan Smith	Mr. Dean Smith
(1)	Participation in cricket tournaments in India	₹ 32 lakhs	
(2)	Winnings from lotteries (net)	₹ 55,280	
(3)	Contribution of an article relating to the sport of cricket in a sports magazine in India	₹ 15,000	
(4)	Performance in a music show in India		₹ 2 lakhs

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

- Compute their tax liability for the A.Y.2015-16.
- Discuss whether the above income are subject to deduction of tax at source.
- Explain whether it is necessary for them to file their return of income for A.Y.2015-16.

Transfer Pricing

11. (i) “In the Indian context, Advance Pricing Agreements entered into for determining arm's length price in relation to an international transaction is valid only for a period, not exceeding 5 years, prospective to the date of agreement and cannot be applied in respect of prior period transactions” – Discuss the correctness or otherwise of this statement.
- (ii) XYZ Ltd., an Indian company, has entered into an agreement for sale of product M to Mr. Ganesh, an unrelated party, on 15/3/2015. Mr. Ganesh had entered into an agreement on 10/3/2015 (for sale of product M) with ABC Inc., a non-resident entity, which is a specified foreign company in relation to XYZ Ltd. Would the transaction

between XYZ Ltd. and Mr. Ganesh be deemed as an international transaction entered into between two associated enterprises, if Mr. Ganesh is a resident and ordinarily resident for the P.Y.2014-15?

Income-tax Authorities

12. Elucidate the following statements, with specific reference to the amendments made by the Finance (No.2) Act, 2014, bringing out the cause and effect of the changes:
- (a) "The scope of powers of an income-tax authority under section 133A has been expanded".
 - (b) "The period of time for which an income-tax authority acting under section 133A has the power to retain books of account and documents impounded without pre-approval from higher authorities has been increased."

Assessment Procedure

13. The assessment of Mr. Hari for A.Y.2007-08 was made on 28.3.2009 making an addition of ₹ 3,25,000 in respect of certain income received during the P.Y.2006-07. The assessee contested the addition before Commissioner (Appeals) but lost the case. The Appellate Tribunal passed an order on 26.2.2014 holding that the said income was not taxable in the P.Y.2006-07 but the same was taxable in the year of accrual, being P.Y.2001-02 relevant to A.Y.2002-03. The Assessing Officer issued notice under section 148 for A.Y.2002-03 in March 2014 bringing to tax the sum of ₹ 3,25,000. Is the notice for reassessment valid?

Would your answer change if, in the said case, the assessment order for A.Y.2007-08 was made on 4.4.2009 instead of 28.3.2009?

Appeals and Revision

14. Does the Appellate Tribunal, under section 254(2), have the power to review or re-appreciate the correctness of its earlier decision on merits? Also, discuss whether the Tribunal has the power thereunder to recall an order in entirety, to rectify a mistake apparent from record. In this context, distinguish between the power to review and power to recall, with the aid of recent case laws.

Settlement Commission

15. "The scope of definition of "case" in respect of which an assessee can make an application to the Settlement Commission has been expanded" – Discuss the correctness or otherwise of this statement, in the context of the definition as amended by the Finance (No.2) Act, 2014.

Miscellaneous Provisions/Penalties

16. Discuss the correctness or otherwise of the following statements –

- (i) Acceptance of loan or deposit of ₹ 20,000 or more from any person through electronic clearing system would attract penalty under section 271D;
 - (ii) The Assessing Officer and Commissioner (Appeals) are the only authorities competent to levy penalty under section 271G.
17. Biotech Ltd. filed its return of income for A.Y.2014-15 on 30th September, 2014. In computing its business income, it had claimed a weighted deduction@200% of the expenditure of ₹ 22 lakhs (including cost of building ₹ 10 lakhs) on in-house scientific research under section 35(2AB). The assessee had clearly disclosed the bifurcation of expenditure of ₹ 22 lakhs in its return of income. The Assessing Officer, disallowed ₹ 10 lakhs, being the excess 100% of cost of building which was claimed as weighted deduction under section 35(2AB), since the same was eligible only for deduction@100% under section 35(1)(iv) read with section 35(2). He also levied penalty under section 271(1)(c). Biotech Ltd. agreed with the disallowance made but contended that there no concealment of particulars of income so as to attract penalty under section 271(1)(c), since it has disclosed all the particulars of income, including the bifurcation of expenditure in respect of which deduction was claimed under section 35(2AB). Discuss the correctness of the Biotech Ltd.'s contention.

Provisions for deduction and collection of tax at source

18. Examine the applicability of the provisions for tax deduction at source under section 194DA in the following cases -
- (i) Mr. Anand, a resident, is due to receive ₹ 7 lakhs on 31.3.2015, towards maturity proceeds of LIC policy taken on 1.4.2009, for which the sum assured is ₹ 6 lakhs and the annual premium is ₹ 80,000.
 - (ii) Mr. Aarav, a resident, is due to receive ₹ 2.25 lakhs on 31.3.2015 on LIC policy taken on 1.4.2012, for which the sum assured is ₹ 2 lakhs and the annual premium is ₹ 50,000.
 - (iii) Mr. Avnish, a resident, is due to receive ₹ 98,000 on 15.12.2014 towards maturity proceeds of LIC policy taken on 15.12.2010 for which the sum assured is ₹ 90,000 and the annual premium was ₹ 19,000.

Wealth-tax

19. ABC Constructions Ltd. furnishes the following particulars of its wealth for the valuation date as on 31.3.2015:

Assets:		₹ (in lakhs)
(i)	Land in urban area (held as stock in trade since 1997).	67
(ii)	Motor cars (including one imported car, worth ₹ 25 lakhs used for hiring)	46

(iii)	320 acres agricultural land acquired at Faridabad on 15.6.2014 for construction of residential flats/commercial complex. However, Faridabad Authority has reserved 32 acres land as green belt.	320
(iv)	Residential flats of 1200 sq feet each provided to 5 employees (salary of two employees exceeded ₹ 10 lakhs per annum)	45
(v)	Farm house of 3 acres at a remote village beyond 25 kms from the local limits of Municipality	11
(vi)	Cash in hand as per cash book	2
Liabilities:		
(i)	Loan for purchase of land at Urban area	42
(ii)	Loan for purchase of land at Faridabad	200
(iii)	Wealth-tax liability for Assessment year 2014-15	8
(iv)	Loan for construction of residential flats	20

Compute the net wealth of the company as on valuation date 31.03.2015.

20. State with reasons whether the following assets are chargeable to wealth tax under the Wealth-tax Act, 1957:
- Silver and gold in the jewellers shop
 - Jewellery purchased by Mr. Shankar out of balance lying in his Non Resident External Account on the date of his return to India. Mr. Shankar, who was living in the USA for 15 years, returned to India two years back on permanent basis.
 - Aircraft owned and used by a company for transportation of its goods.
 - Jeep of the company given to the Director for official use.
 - Farm house situated 40 kms outside the municipal limits of Jaipur, but within 23 kms of Niwai Municipal Corporation.

SUGGESTED ANSWERS/HINTS

1. (a) Liquidated damages received from supplier of plant and machinery

The issue as to whether liquidated damages received from supplier of plant and machinery for failure to supply machinery within the stipulated time is a capital receipt or revenue receipt came up before the Supreme Court in *CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)*.

In that case, it was observed that the damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the

course of profit earning process. The Supreme Court, therefore, held that the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business; hence, it is a capital receipt in the hands of the assessee.

Applying the rationale of the Apex Court ruling to the case on hand, the liquidated damages received by A Ltd. from supplier of plant and machinery for failure to supply machinery within the stipulated time is a capital receipt, not chargeable to tax.

(b) Power subsidy received year after year on the basis of actual power consumption

The issue as to whether power subsidy received by a company from the State Government, year after year, on the basis of actual power consumption is a capital receipt or revenue receipt came up before the Andhra Pradesh High Court, in *CIT v. Rassi Cement Ltd. (2013) 351 ITR 169*.

The Andhra Pradesh High Court referred to the decision of the Supreme Court in *Sahney Steel & Press Works Ltd. v CIT (1997) 228 ITR 253*, where incentives (including power subsidy) granted year after year were treated as supplementary trade receipts. In that case, the Supreme Court had observed that the power subsidy, given as a part of an incentive scheme after commencement of production, is linked to production. Therefore, the same has to be treated as a revenue receipt, since such assistance is given for the purpose of carrying on of the business of the assessee.

Accordingly, the Andhra Pradesh High Court, in *Rassi Cement Ltd.*'s case, held that power subsidy received by the assessee from the State Government on the basis of actual power consumption has to be treated as a revenue receipt and not as a capital receipt.

Applying the rationale of the above ruling to the case on hand, power subsidy received by B Ltd. from the State Government, year after year, on the basis of actual power consumption is a revenue receipt and hence, chargeable to tax.

(c) One-time subsidy [received as a percentage of sales tax paid] for capacity expansion and modernisation

The issue as to whether one-time subsidy (received as a percentage of sales tax paid) for capacity expansion and modernisation would constitute a revenue receipt or capital receipt came up before the Calcutta High Court in *CIT v. Rasoi Ltd. (2011) 335 ITR 438*, where the subsidy received by the company was a one-time receipt, equivalent to 90% of the amount of sales tax paid.

The Calcutta High Court, applying the rationale of Supreme Court in *CIT v. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 392*, observed that if the object of the subsidy is to enable the assessee to run the business more profitably, the receipt would be a revenue receipt. On the other hand, if the object of the assistance is to enable the assessee to set up a new unit or to expand an existing unit, the receipt

would be a capital receipt. Therefore, the object for which subsidy is given determines the nature of the subsidy and not the form or the mechanism through which the subsidy is given.

In *Rasoi Ltd.*'s case, since the company received subsidy by way of financial assistance, in the period of crisis, for expansion of the capacities and modernization of its manufacturing units in West Bengal, the Calcutta High Court observed that merely because the subsidy was equivalent to 90% of the sales tax paid, it cannot be construed that the same was in the form of refund of sales tax paid. Therefore, the Court held that the subsidy received has to be treated as a capital receipt and not as a revenue receipt.

Applying the rationale of the above ruling, the one-time subsidy, equivalent to 60% of sales tax paid, received by C Ltd. from the State Government under the scheme of industrial promotion for expansion of its capacities and modernization is a capital receipt.

2. (a) Section 11(7) provides that where a trust has been granted registration under section 12AA and the registration is in force for a previous year, then, such trust cannot claim any exemption under any provision of section 10 [other than exemption of agricultural income under section 10(1) and exemption available under section 10(23C)].

Therefore, Ramji Charitable trust cannot claim exemption under section 10(35) in respect of income from mutual funds and exemption under section 10(34) in respect of dividends, since it has voluntarily opted for the special dispensation under sections 11 to 13, and consequently has to be governed by the provisions of these sections. However, it can claim exemption under section 10(1) in respect of agricultural income, since section 11(7) provides an exception in respect of such income.

Therefore, the claim of Ramji charitable trust, as regards exemption under section 10(34) and section 10(35), is not correct.

- (b) Section 11(6) provides that income for the purposes of application shall be determined without allowing any deduction for depreciation or otherwise in respect of any asset, the cost of acquisition of which has been claimed as an application of income under section 11 in the same or any other previous year.

Accordingly, in this case, since the cost of building (i.e., ₹ 25 lakh) has been claimed and allowed as application of income under section 11 while computing the income of the trust for the P.Y.2013-14, depreciation on building will not be allowed for the purpose of determining income for the purposes of application in the P.Y.2014-15.

Therefore, the depreciation claim made by Shivji charitable trust is not correct.

- (c) Section 12A(2) provides that the provisions of section 11 and 12 shall apply in relation to the income of a trust from the assessment year immediately following the financial year in which the application for registration is made. Accordingly, by

virtue of this provision, the exemption provisions would apply from A.Y.2015-16 since the charitable trust made an application for registration in April, 2014.

However, the first proviso to section 12A(2) provides that in case where a trust or institution has been granted registration under section 12AA, the benefit of sections 11 and 12 shall be available in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are **pending before the Assessing Officer as on the date of such registration, provided the objects and activities of the trust remain the same for such preceding year.**

In this case, since the assessment proceedings for A.Y.2013-14 and A.Y.2014-15 are pending before the Assessing Officer on the date of registration of the trust, the claim of Ganeshji charitable trust is correct and the benefit of exemption under sections 11 and 12 would be available in respect of those years, provided the objects and activities of the trust were the same during those years.

3. (a) A Ltd. is eligible for deduction @ 15% under section 32AC(1A), since the investment in new plant and machinery (excluding computers installed in office) acquired and installed during the P.Y.2014-15 exceeds ₹ 25 crore. The deduction under section 32AC(1A) would be ₹ 4.50 crore (i.e., 15% of ₹ 30 crore). This deduction would be in addition to deduction under section 32 in respect of depreciation of ₹ 7.5 crore (i.e., 15% of ₹ 30 crore **plus** 60% of ₹ 5 crore) and additional depreciation of ₹ 6 crore (i.e., 20% of ₹ 30 crore).
- (b) B Ltd. would be eligible for investment-linked tax deduction under section 35AD@100% in respect of amount of ₹ 5 crore invested in new plant and machinery in April, 2014 for setting up and operating a semi-conductor wafer fabrication manufacturing unit which commences operation on 1st June, 2014, being a date falling on or after 1st April, 2014. However, such unit must be notified by the CBDT in accordance with the prescribed guidelines and the expenditure must be capitalized in the books of account of B Ltd. on 1st June, 2014. ₹ 10 crore, being the cost of land, would not qualify for investment-linked tax deduction under section 35AD.
- (c) For the purposes of section 37(1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37.

Accordingly, the expenditure of ₹ 42 lakhs incurred by C Ltd. on rural development activities, being an activity qualifying as a CSR activity as per section 135 of the Companies Act, 2013 read with Schedule VII thereto, is not allowable as deduction under section 37.

₹ 10 lakhs, being contribution to Prime Minister's National Relief Fund, though not eligible for deduction while computing business income, would be eligible for 100% deduction under section 80G from gross total income

Note : The Explanatory Memorandum to the Finance (No.2) Bill, 2014 clarifies that expenditure on CSR activities, which is of the nature described in sections 30 to 36, shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.

Under section 35AC, 100% deduction is eligible in respect of the expenditure incurred on eligible projects/schemes specified under Rule 11K, which includes, inter alia, any programme for uplift of the rural poor as the Central Government may, by notification in the Official Gazette, specify in this behalf on the recommendation of the National Committee, being a committee constituted by the Central Government, from amongst persons of eminence in public life.

Therefore, if the expenditure of ₹ 42 lakhs on rural development activities are incurred for the uplift of the rural poor and the other conditions mentioned under section 35AC are fulfilled by C Ltd., it can claim deduction of such expenditure under section 35AC.

- (d) Non-deduction of tax at source on any payment on which tax is deductible as per the provisions of Chapter XVII-B would attract disallowance under section 40(a)(ia). Under section 192, forming part of Chapter XVII-B, obligation is cast on every person responsible for paying any income chargeable under the head "Salaries" to deduct tax at source. 30% of expenditure would be disallowed under section 40(a)(ia) for failure to deduct tax at source. Accordingly, ₹ 7.50 lakhs, being 30% of ₹ 25 lakhs paid as salary to its resident employees without deduction of tax at source, would be disallowed under section 40(a)(ia).
- (e) Disallowance under section 40(a)(i) is not attracted in this case since the tax deducted at source under section 195 in the P.Y.2014-15 has been deposited on or before the due date of filing of return under section 139(1).

4. **Computation of total income of Mr. Ganesh for A.Y.2015-16**

Particulars	₹
Salaries	32,00,000
Capital gains [See Working Note below]	17,00,600
Interest on fixed deposits	2,00,000
Gross Total Income	51,00,600
Less: Deductions under Chapter VI-A	
Under section 80C – PPF	1,50,000
Under section 80D – Mediciclaim premium	14,000
Total Income	49,36,600

Tax on total income:	₹
Tax on long-term capital gains [20% of ₹ 16,50,600]	3,30,120
Tax on other income of ₹ 32,86,000 [₹ 49,36,600 - ₹ 16,50,600]	8,10,800
	11,40,920
Add: Education cess@2% and SHEC@1%	34,228
	11,75,148

Working Note – Computation of Capital Gains chargeable to tax for A.Y.2015-16

	Particulars	₹
(1)	Residential house	
	Gross Sale consideration	2,00,00,000
	Less: Indexed cost of acquisition [31,12,000 × 1024/389]	81,92,000
		1,18,08,000
	Less: Exemption under section 54	
	Investment in one residential house [See Note 1]	52,00,000
	Investment in bonds of NHAI/RECL [See Note 2]	50,00,000
	Long-term capital gains taxable@20% under section 112	16,08,000
(2) & (4)	Listed equity shares and units of equity oriented fund Capital gains on sale of listed equity shares and units of equity oriented fund held for more than 12 months is a long-term capital gain exempt under section 10(38).	Nil
(3)	Unlisted shares	
	Sale consideration	1,25,000
	Less: Cost of acquisition	75,000
	Short-term capital gains taxable at normal rates of tax [See Note 3]	50,000
(5)	Units of debt-oriented fund	
	Sale consideration	1,45,000
	Less: Indexed cost of acquisition [₹ 63,200 × 1024/632]	1,02,400
	Long-term capital gains taxable at 20% u/s 112 [See Notes 3 & 4]	42,600

Taxable Capital Gains:	₹
Long-term capital gains taxable@20% u/s 112 [(1) + (5)]	16,50,600
Short-term capital gains taxable at normal rates [3]	50,000
	17,00,600

Notes:

- (1) Section 54 has been amended by the Finance (No.2) Act, 2014 to provide that the exemption thereunder is available in respect of investment made in **one residential house** situated in India. In this case, it is more beneficial for Ganesh to avail the exemption under section 54 in respect of residential flat at Nagpur, since the cost of the Nagpur flat is higher than the cost of the Coimbatore flat.
- (2) Section 54EC provides for exemption of capital gains invested in bonds of NHAI and RECL within a period of six months from the date of transfer. The maximum deduction thereunder in respect of investment in such bonds, out of capital gains arising from transfer of one or more capital assets during a financial year, would be restricted to ₹ 50 lakhs, irrespective of whether the investment is made in the same financial year or in the subsequent financial year or both. Therefore, in this case, the deduction under section 54EC would be restricted to ₹ 50 lakhs, even though the aggregate investment in eligible bonds within a period of six months is ₹ 85 lakhs.
- (3) With effect from A.Y.2015-16, units of debt oriented fund and unlisted shares would qualify as a long-term capital asset only if they are held for a period of more than 36 months. Since unlisted shares are held for a period of less than 36 months, the gain arising therefrom is a short-term capital gain chargeable to tax at normal rates. Since the units of debt-oriented fund are held for more than 36 months, the gain arising therefrom is a long-term capital gain chargeable to tax@20%.
- (4) Further, the benefit of concessional rate of 10% on long-term capital gains (without indexation) would not be available to units of a debt-oriented fund and unlisted shares with effect from A.Y.2015-16.

5. Computation of taxable capital gain of Mr. Vallish for the A.Y.2015-16

Particulars	₹
Sale proceeds	1,37,00,000
Less: Indexed cost of acquisition (See Notes 1 & 2)	<u>84,99,200</u>
Long-term capital gain	52,00,800
Less: Exemption under section 54 in respect of investment in house at Mathura (See Notes 3 & 4)	<u>36,00,000</u>
Taxable long-term capital gain	<u>16,00,800</u>

Notes:**(1) Computation of indexed cost of acquisition**

Particulars	₹
Cost of acquisition	36,85,800
Less: Advance taken in the previous year 2005-06 and forfeited	<u>1,50,000</u>

Cost for the purpose of indexation	<u>35,35,800</u>
Indexed cost of acquisition ($\text{₹ } 35,35,800 \times 1024/426$)	84,99,200

- (2) Advance of ₹ 3,50,000 taken by Mr. Vallish from Mr. Sridhar in April, 2014, which was forfeited due to the transaction not materializing, is taxable under section 56(2)(ix). Hence, such amount would not be reduced to compute the indexed cost of acquisition while computing capital gains on sale of the property in March, 2015.
- (3) In order to avail exemption of capital gains under section 54, one residential house should be purchased within 1 year before or 2 years after the date of transfer or constructed within a period of 3 years after the date of transfer. In this case, Mr. Vallish has purchased the residential house in Mathura within one year before the date of transfer and paid the full amount as per the purchase agreement, though he does not possess any legal title till 31.3.2015 since the transfer was not registered with the registration authority. However, for the purpose of claiming exemption under section 54, holding of legal title is not necessary. If the taxpayer pays the full consideration in terms of the purchase agreement within the stipulated period, the exemption under section 54 would be available. It was so held in *Balraj v. CIT* (2002) 254 ITR 22 (Del.) and *CIT v. Shahzada Begum* (1988) 173 ITR 397 (A.P.).
- (4) The Finance (No.2) Act, 2014 has clarified that exemption under section 54 can be availed only in respect of one residential house. It would be more beneficial for Mr. Vallish to claim exemption in respect of the Mathura house since the cost of the same is higher than the cost of the Agra house.

6. Tax consequences in the hands of the business trust and its investors

- (1) **Interest income of ₹ 4 crore from A Ltd.:** There would be no tax liability in the hands of business trust due to pass-through status enjoyed by it under section 10(23FC) in respect of interest income from A Ltd., being the special purpose vehicle [See Notes 2 & 3 below]. Therefore, A Ltd. is not required to deduct tax at source on interest payment to the business trust.

However, the business trust has to deduct tax at source under section 194LBA –

- @10%, on interest component of income distributed to resident unit holders; and
- @5%, on interest component of income distributed to non-corporate non-resident unit holders and foreign companies.

Interest component of income distributed to unit holders is taxable in the hands of the unit holders – @5%, in case of unit holders, being non-corporate non-residents or foreign companies; and at normal rates of tax, in case of resident unit holders.

The interest component of income received from the business trust in the hands of each unit-holder would be determined in the proportion of 4/11.1, by virtue of section 115UA(1) [See Notes 1 & 4 below].

- (2) **Dividend income of ₹ 2 crore from A Ltd.:** There would be no tax liability in the hands of the business trust since dividend is subject to dividend distribution tax under section 115-O in the hands of A Ltd; Hence, the dividend income is exempt under section 10(34) in the hands of the business trust.

Any distributed income referred to in section 115UA, to the extent it does not comprise of interest referred to in section 10(23FC) received by unit holders, is exempt in their hands under section 10(23FD). Therefore, by virtue of section 10(23FD), there would be no tax liability on the dividend component of income distributed to unit holders in their hands.

- (3) **Short-term capital gains of ₹ 3 crore on sale of listed shares of A Ltd.:** As per section 115UA(2), the business trust is liable to pay tax@15% under section 111A in respect of short-term capital gains on sale of listed shares of special purpose vehicle [See Note 6]. There would, however, be no tax liability on the capital gain component of income distributed to unit holders, by virtue of the exemption contained in section 10(23FD) [See Note 5].
- (4) **Short-term capital gains of ₹ 2 crore on sale of developmental properties:** It is taxable at maximum marginal rate of 33.99% in the hands of the business trust as per section 115UA(2) [See Note 6]. There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them, by virtue of the exemption contained in section 10(23FD) [See Note 5].
- (5) **Interest of ₹ 10 lakh received in respect of investment in unlisted debentures of real estate companies:** Such interest is taxable@33.99%, being the maximum marginal rate, in the hands of the business trust, as per section 115UA(2) [See Note 6]. However, there would be no tax liability in the hands of the unit holders on the interest component of income distributed to them, by virtue of section 10(23FD) [See Note 5].

Notes:

- (1) New Chapter XII-FA, containing the special provisions relating to business trusts, has been inserted w.e.f. A.Y.2015-16. Section 115UA(1) provides that any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder, as it had been received by, or accrued to the business trust.
- (2) Section 10(23FC) exempts any income of a business trust by way of interest received or receivable from a Special Purpose Vehicle (SPV). Thus, the business trust enjoys a pass-through status in respect of interest received or receivable from a SPV.
- (3) SPV means any company or LLP in which the business trust holds controlling interest and any specified percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration [not less than 50% as per the current SEBI (Real Estate Investment Trusts) Regulations, 2014]. Since A Ltd. is an

Indian company in which the business trust holds controlling interest and 62% of shareholding, it is a special purpose vehicle. It is presumed that A Ltd. fulfills the other conditions specified in the regulations to qualify as an SPV.

- (4) The distributed income of the business trust, to the extent it comprises of interest referred to in section 10(23FC), is deemed to be the income of the unit holder in the previous year of distribution and subject to tax in the hands of the unit holder in that year. Accordingly, the business trust is required to deduct tax at source on interest component of income distributed to its unit holders.
- (5) Any distributed income referred to in section 115UA, to the extent it does not comprise of interest referred to in section 10(23FC), received by unit holders is exempt in their hands under section 10(23FD).
- (6) Section 115UA(2) provides that subject to the provisions of sections 111A and 112, the total income of a business trust shall be chargeable to tax at the maximum marginal rate.

7. Computation of tax liability of Mr. Anish for A.Y.2015-16

Particulars		₹ in lakh
Tax liability on total income of ₹ 95 lakhs under the normal provisions of the Income-tax Act, 1961 [₹1.25 lakhs (tax on income upto ₹ 10 lakhs) + 30% of ₹ 85 lakhs (₹ 95 lakhs – ₹ 10 lakhs)]		26.75
Add: Education cess and SHEC@3%		0.80
Total tax liability		27.55
Adjusted Total Income		₹ in lakh
Total Income		95.00
Add: Deduction under section 35AD [150% of ₹ 82 lakhs]	123.00	
Less: Depreciation under section 32 [10% of ₹ 82 lakhs]	8.20	114.80
Adjusted Total Income		209.80
Alternate Minimum Tax (AMT)@18.5%		38.81
Add: Surcharge@10% (since adjusted total income > ₹ 100 lakh)		3.88
		42.69
Add: Education cess@2% and SHEC@1%		1.28
Tax liability under section 115JC		43.97
Since the regular income-tax payable is less than the AMT payable, the adjusted total income of ₹ 209.80 lakhs shall be deemed to be the total		

income of Mr. Anish and tax is payable @ 18.5% thereof plus surcharge @ 10% and cess @ 3%. Therefore, the tax liability is ₹ 43.97 lakhs.	
AMT Credit to be carried forward under section 115JD	
Tax liability under section 115JC	43.97
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	27.55
	16.42

Notes:

- (1) The Finance (No.2) Act, 2014 has brought the investment-linked tax deduction claimed under section 35AD within the scope of AMT. Accordingly, section 115JC has been amended to provide that total income shall be increased by the deduction claimed under section 35AD, as reduced by the depreciation allowable under section 32, as if no deduction under section 35AD was allowed in respect of the asset for which such deduction is claimed.
- (2) The specified business of operating a warehousing facility for storage of food grains is eligible for weighted deduction @ 150% of capital expenditure under section 35AD, if operations were commenced on or after 1.4.2012.
- (3) AMT Credit can be carried forward for a maximum period of ten assessment years immediately succeeding the assessment year for which the tax credit becomes allowable. Such credit is allowed to be set-off against the tax payable on total income in an assessment year in which the tax is computed in accordance with the regular provisions of the Income-tax Act, 1961, to the extent of excess of such tax payable over the AMT of that year.

8. Computation of additional income-tax payable by Gamma Ltd.

Particulars	₹ in lakh
Dividend distributed by Gamma Ltd. [referred to in section 115-O(1)]	460
Less: Dividend received from domestic subsidiary Beta Ltd. [referred to in section 115-O(1A)]	120
Net distributed profits	340
Add: Increase for the purpose of grossing up of dividend $\left\{ \frac{15}{(100-15)} \times 340 \right\}$	60
Gross dividend	400

Additional income-tax payable by Gamma Ltd. u/s 115-O [15% of ₹ 400 lakhs]	60.00
Add: Surcharge@10%	6.00
	66.00
Add: Education cess@2% and SHEC@1%	1.98
	67.98

Notes:

- (1) Sub-section (1B) has been inserted in section 115-O by the Finance (No.2) Act, 2014 to provide that for the purposes of determining the tax on distributed profits payable in accordance with the section 115-O, any amount by way of dividends referred to in section 115-O(1), as reduced by the amount referred to in section 115-O(1A) [referred to as net distributed profits], shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in section 115-O(1), be equal to the net distributed profits.
- (2) As per section 115-O(1B), for the purpose of grossing up, the rate specified in sub-section (1) of section 115-O has to be considered. The rate specified in sub-section (1) of section 115-O is 15%. Accordingly, in the above solution, the rate of 15% has been considered for the purpose of grossing up.

Note - It is also possible to take a view that grossing up should be done at the rate of 16.995% (that is, 15% plus surcharge@10% plus education cess and SHEC@3%), which is the effective rate of dividend distribution tax.

9. Computation of Book Profit of Delta Ltd. under section 115JB

Particulars	₹	₹
Net Profit as per Profit & Loss Account		1,70,00,000
Add: Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB		
Income-tax paid or payable or provision therefor		
Provision for income-tax ₹ 14,00,000		
Dividend distribution tax ₹ 2,00,000	16,00,000	
Provision for deferred tax	9,00,000	
Transfer to General Reserve	6,00,000	
Provision for diminution in the value of investment	2,00,000	
Dividend paid or proposed		
Proposed dividend 5,00,000		

Preference dividend	3,00,000	8,00,000	
Expenditure to earn income exempt u/s 10 [except section 10(38)]			
Expenditure to earn agricultural income [Exempt u/s 10(1)]		2,00,000	
Depreciation		18,00,000	61,00,000
Less: Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB			2,31,00,000
Amount credited to profit and loss account from Special Reserve		3,00,000	
Depreciation (excluding depreciation on account of revaluation of fixed assets) (i.e., ₹ 18,00,000 – ₹ 4,00,000)		14,00,000	
Amount credited to profit and loss account from revaluation reserve (to the extent of depreciation on revaluation)		4,00,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less taken on cumulative basis		9,00,000	
Income exempt u/s 10 [except section 10(38)]			
Agricultural Income [since it is exempt under section 10(1)]		5,00,000	35,00,000
Book Profit			1,96,00,000

Computation of tax liability of Delta Ltd. for A.Y.2015-16

18.5% of book profit		36,26,000
Add: Surcharge@5% (since total income > ₹ 1 crore but less than ₹ 10 crore)		1,81,300
		38,07,300
Add: Education cess @ 2%	76,146	
Secondary and higher education cess @ 1%	<u>38,073</u>	1,14,219
Tax liability on book profit under section 115JB		39,21,519
Total income computed as per the provisions of the Income-tax Act, 1961	1,00,00,000	
Tax payable @ 30%		30,00,000
Add: Education cess @ 2%	60,000	
Secondary and higher education cess @ 1%	<u>30,000</u>	90,000
Tax Payable as per the Income-tax Act, 1961		30,90,000

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 18.5% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 18.5% thereof *plus* surcharge, if applicable, *plus* education cess @2% and secondary and higher education cess @1%. Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 18.5% of book profit, the book profit of ₹ 1,96,00,000 is deemed to be the total income and income-tax is payable @ 18.5% thereof *plus* surcharge@5% *plus* education cess @ 2% and secondary and higher education cess @1%. The tax liability, therefore, works out to ₹ 39,21,519.

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income-tax Act, 1961, will be allowed as tax credit in the subsequent years. The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the other provisions of the Act.

Particulars	₹
Tax on book profit under section 115JB	39,21,519
Less: Tax on total income computed as per the other provisions of the Act	30,90,000
Tax credit to be carried forward	8,31,519

This tax credit is allowed to be carried forward for ten assessment years succeeding the assessment year in which the credit became allowable. Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act, other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

Notes:

- (1) Securities transaction tax does not form part of income-tax and hence, should not be added back to net profit for computing book profit.
- (2) Provision for gratuity based on actuarial valuation is a provision for meeting an ascertained liability. Therefore, it should not be added back for computing book profit.
- (3) Long-term capital gains on sale of equity shares through a recognized stock exchange on which securities transaction tax (STT) is paid is exempt under section 10(38). One of the adjustments to the book profit is that exempt income under section 10, which is credited to profit and loss account, would be deducted in arriving at the book profit. However, deduction of such long-term capital gains is not allowed for computing book profit. Consequently, expenditure to earn such income should not be added back to arrive at the book profit. Section 10(38) also provides that such long term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

10. (i) Computation of tax liability of Mr. Evan Smith for the A.Y.2015-16

	Particulars	₹	₹
	Income taxable under section 115BBA		
	Income from participation in cricket tournaments in India	32,00,000	
	Contribution of article in a magazine in India	15,000	
		32,15,000	
	Tax @ 20% under section 115BBA on ₹ 32,15,000		6,43,000
	Tax@30% under section 115BB on income of ₹ 80,000 (₹ 55,280 + ₹ 24,720) by way of winnings from lotteries		24,000
			6,67,000
	Add: Education cess@2% and Secondary and higher education cess @1%		20,010
	Total tax liability of Mr. Evan Smith		6,87,010

Mr. Dean Smith is a non-resident entertainer, whose income of ₹ 2 lakh from a music show in India is taxable@20% under section 115BBA. Therefore, his tax liability is ₹ 41,200 (being 20% of ₹ 2 lakh plus education cess@2% and secondary and higher education cess@1%)

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

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

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

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

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

In this case, although Mr. Evan Smith is a non-resident sportsman, he has winnings from lotteries as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he has to file his return of income for A.Y.2015-16.

However, since Mr. Dean Smith's income comprises of only income referred to in section 115BBA, in respect of which tax is deductible under section 194E, he need not file his return of income for A.Y.2015-16, if tax has been so deducted.

11. (i) The statement is not correct.

Under section 92CC, the CBDT may, with the approval of the Central Government, enter into an advance pricing agreement with any person for determining the Arm's Length Price or specifying the manner in which the arm's length price is to be determined in relation to an international transaction to be entered into by that person.

The agreement entered into is valid for a period, not exceeding five previous years, as may be mentioned in the agreement. Once the agreement is entered into, the arm's length price of the international transaction, which is subject matter of the advance pricing agreement, would be determined in accordance with such an advance pricing agreement, except where there is a change in law or facts having a bearing on the agreement so entered.

In order to reduce current pending as well as future litigation in respect of the transfer pricing matters, sub-section (9A) has been inserted in section 92CC by the Finance (No.2) Act, 2014 to provide roll back mechanism in the advance pricing agreement scheme.

The "roll back" provisions refer to the applicability of the methodology of determination of arm's length in relation to the international transactions which have already been entered into in a period prior to the period covered under an advance pricing agreement.

Accordingly, the advance pricing agreement may, subject to such prescribed conditions, procedure and manner, provide for determining the arm's length price or for specifying the manner in which arm's length price is to be determined in relation to an international transaction entered into by a person during any period not exceeding four previous years preceding the first of the previous years for which the advance pricing agreement applies in respect of the international transaction.

(ii) Section 92B(2) extends the scope of the definition of international transaction given in section 92B(1) by deeming a transaction entered into with a person other than an associated enterprise as a transaction with an associated enterprise, if the following conditions are satisfied:

- there exists a prior agreement in relation to the relevant transaction between the other person and the associated enterprise **or**,
- where the terms of the relevant transaction are determined in substance between such other person and the associated enterprise; **and**
- either the enterprise or the associated enterprise or both of them are non-residents.

In such a case, a transaction entered into between the enterprise and the other person shall be deemed to be an **international transaction** entered into between two associated enterprises, **whether or not such other person is a non-resident.**

In this case, the agreement between the Indian company, XYZ Ltd. and unrelated party, Mr. Ganesh for sale of product M was entered into on 15/3/2015. Prior to that date (i.e., on 10/3/2015), Mr. Ganesh has entered into an agreement, for sale of product M, with ABC Inc., a non-resident entity. ABC Inc. is deemed to be an associated enterprise of XYZ Ltd. since it is a specified foreign company in relation to XYZ Ltd., which implies that XYZ Ltd. holds 26% or more in the nominal value of the equity share capital of ABC Inc.

In this case, there exists a prior agreement in relation to the transaction for sale of product M between the unrelated party, Mr. Ganesh and the associated enterprise, ABC Inc., which is a non-resident entity. Hence, the transaction entered into between XYZ Ltd., an Indian company and Mr. Ganesh for sale of product M is deemed to be an international transaction entered into between two associated enterprises, irrespective of the residential status of Mr. Ganesh.

12. (a) The statement is correct.

Sub-section (2A) has been inserted in section 133A to provide that an income-tax authority may, for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B or Chapter XVII-BB, as the case may be, enter-

- (1) any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or
- (2) any such place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept.

The income-tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset.

Further, such income-tax authority may require the deductor or the collector or any other person who may at the time and place of survey be attending to such work,—

- (1) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and
- (2) to furnish such information as he may require in relation to such matter.

An income-tax authority may -

- (1) place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof;
- (2) record the statement of any person which may be useful for, or relevant to, any proceeding under the Act.

However, while acting under sub-section (2A), the income-tax authority shall **not** impound and retain in his custody, any books of account or documents inspected by him or make an inventory of any cash, stock or other valuable articles or thing checked or verified by him.

(b) The statement is correct.

Section 133A empowers an income-tax authority to enter any premises in which business or profession is carried out for the purposes of survey.

An income-tax authority acting under this section may impound and retain in his custody any books of account or documents inspected by him during the course of survey, after recording his reasons for doing so. However, so far, he did not have the power to retain in his custody any such books of account or document for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be.

An income-tax authority acting under section 133A has the powers as conferred upon it under section 131(1), i.e., it has the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely, -

- (1) discovery and inspection;
- (2) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (3) compelling the production of books of account and other documents; and
- (4) issuing commissions.

Under section 131(3), an extended time limit of 15 days (exclusive of holidays) has been provided upto which an income-tax authority may retain in his custody, books of account or other documents impounded, without obtaining the approval of the higher authorities specified thereunder i.e., Principal Chief Commissioner or Chief Commissioner, Principal Director General or Director General etc.

In order to align the time period under section 133A with the time period under section 131(3), section 133A(3) has been amended by the Finance (No.2) Act, 2014 to provide that an income-tax authority shall not retain in his custody any such books of account or other documents for a period exceeding **fifteen days** (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be.

- 13.** Section 149(1) provides the time limit for issue of notice under section 148 for assessment, reassessment or recomputation where income has escaped assessment. The time limit prescribed under section 149(1) in a case where income escaping assessment exceeds ₹ 1 lakh is 6 years from the end of the relevant assessment year. In

this case, the relevant assessment year is A.Y.2002-03, being the year in respect of which the income exceeding ₹ 1 lakh has escaped assessment. The six year time limit under section 149(1) for issuing notice under section 148 relating to A.Y.2002-03 expires on 31.3.2009. In this case, the notice under section 148 is issued in March, 2014, which is outside the six year time limit prescribed under section 149(1).

The restriction of time limit under section 149(1) is, however, not applicable where notice under section 148 is issued for making an assessment, reassessment or recomputation to give effect to any finding or direction contained in an order passed by any authority in any proceeding by way of appeal, reference or revision or by a Court in any proceeding under any other law. This relaxation is contained in section 150(1).

However, such relaxation will not apply where any such assessment or reassessment relates to an assessment year in respect of which an assessment or reassessment could not have been made at the time the order which was the subject matter of appeal, reference or revision, as the case may be, was made on account of such assessment or reassessment having become time-barred at that point of time itself. This restriction is contained in section 150(2). The relaxation contained in section 150(1) is, therefore, subject to the restriction contained in section 150(2).

In this case, since the notice under section 148 was issued for the purpose of making reassessment to give effect to an appellate order, the restriction contained in section 149(1) does not apply. The relaxation under section 150(1) will apply in this case, since the order which was the subject matter of appeal was passed on 28.3.2009, which is within the six year time limit from the end of the relevant assessment year, i.e., A.Y.2002-03. Therefore, since the original order which was the subject matter of appeal was passed on 28.3.2009, the relaxation contained in section 150(1) will apply. Consequently, the notice issued under section 148 by the Assessing Officer in March 2014, in this case, would be valid.

However, if the original order was passed on 4.4.2009, it falls outside the six year time limit in relation to A.Y.2002-03, which expires on 31.3.2009. The operation of section 150(1) would then be subject to the restriction contained in section 150(2). According to section 150(2), if on the date of passing of the order which was the subject-matter of appeal (i.e., on 4.4.2009), the reassessment could not have been made on account of the same having become time-barred, then, notice for reassessment cannot be issued now by availing the relaxation given in section 150(1). Therefore, if the original order was passed on 4.4.2009, the notice issued under section 148 by the Assessing Officer in March 2014 would not be valid.

14. Section 254(2) specifically empowers the Appellate Tribunal to amend any order passed by it, either *suo motu* or on an application made by the assessee or Assessing Officer, with a view to **rectifying any mistake apparent from record**, at any time within 4 years from the date of passing the order sought to be amended.

The powers of the Tribunal under section 254(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the

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

The Delhi High Court, in *Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT* (2011) 330 ITR 243 (Delhi)(FB), observed that the justification of an order passed by the Tribunal recalling its own order is required to be tested on the basis of the law laid down by the Apex Court in *Honda Sael Power Products Ltd. v. CIT* (2007) 295 ITR 466, dealing with the Tribunal's power under section 254(2) to recall its order where prejudice has resulted to a party due to an apparent omission, mistake or error committed by the Tribunal while passing the order. Such recalling of order for correcting an apparent mistake committed by the Tribunal has nothing to do with the doctrine or concept of inherent power of review. It is a well settled provision of law that the Tribunal has no inherent power to review its own judgment or order on merits or reappreciate the correctness of its earlier decision on merits. However, the power to recall has to be distinguished from the power to review. **While the Tribunal does not have the inherent power to review its order on merits, it can recall its order for the purpose of correcting a mistake apparent from the record.**

When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. The Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.

Thus, while the Tribunal does not have the power to review or reappreciate the correctness of its earlier decision on merits under section 254(2), it, however, has the power to recall its order in entirety to rectify a mistake apparent from record.

15. The statement is correct.

Prior to 1st October, 2014, section 245A(b) defining "case" in respect of which an assessee may make an application to the Settlement Commission, specifically excluded from its scope –

- (1) a proceeding for assessment or reassessment or recomputation under section 147;
- (2) a proceeding for making fresh assessment in pursuance of an order under section 254 by the Appellate Tribunal or an order of revision under section 263 or section 264 by Commissioner, setting aside or cancelling an assessment.

This exclusion has now been removed by the Finance (No.2) Act, 2014 with effect from 1st October, 2014. Therefore, the proceedings mentioned in (1) and (2) above would now fall within the definition of “case” in respect of which an assessee can make an application to the Settlement Commission under section 245C.

16. (i) The statement is incorrect.

Under section 269SS, prior to amendment by the Finance (No.2) Act, 2014, no person shall accept any loan or deposit of ₹ 20,000 or more from any other person otherwise than by an account payee cheque or account payee bank draft. Thus, prior to amendment by the Finance (No.2) Act, 2014, account payee cheque and account payee bank draft were the only permissible modes of acceptance of loan or deposit to avoid penalty under section 271D.

In order to enable payment by way of internet banking facilities or by use of payment gateways, sections 269SS has been amended by the Finance (No.2) Act, 2014 to provide that use of electronic clearing system through a bank account shall also be a permissible mode of acceptance of any loan or deposit thereunder.

Thus, acceptance of loan or deposit exceeding the prescribed limit of ₹ 20,000 through electronic clearing system would **not** be treated as contravention of the provisions of sections 269SS. **Hence, penalty under section 271D would not be attracted.**

(ii) The statement is incorrect.

Penalty under section 271G is leviable if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by section 92D(3).

Section 271G has been amended by the Finance (No.2) Act, 2014 with effect from 1st October, 2014, to include a Transfer Pricing Officer, as referred to in section 92CA, as an authority competent to levy the penalty under section 271G in addition to the Assessing Officer and the Commissioner (Appeals).

17. The issue under consideration in this case is whether making an incorrect claim in the return of income would tantamount to concealment of particulars or furnishing of inaccurate particulars for attracting the penal provisions under section 271(1)(c) when no information given in the return of income is found to be incorrect.

This issue came up before the Supreme Court in *CIT v. Reliance Petro Products Pvt. Ltd.* (2010) 322 ITR 158. The Supreme Court observed that in order to attract the penal provisions of section 271(1)(c), there has to be concealment of the particulars of income or furnishing inaccurate particulars of income. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. Making an incorrect claim (i.e. a claim which has been disallowed) would not, by itself, tantamount to furnishing inaccurate particulars.

The Apex Court held that where there is no finding that any details supplied by the assessee in its return are incorrect or erroneous or false, there is no question of imposing penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.

Applying the rationale of the above Supreme Court ruling to the case on hand, penalty under section 271(1)(c) cannot be imposed on Biotech Ltd. merely for making an incorrect claim which is not sustainable in law, since the company had furnished all the details and no information given by the company was found to be incorrect or erroneous or false.

The contention of Biotech Ltd. is, therefore, correct.

18. (i) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the maturity proceeds of ₹ 7 lakhs are exempt under section 10(10D) in the hands of Mr. Anand. Hence, no tax is required to be deducted at source under section 194DA on such sum payable to Mr. Anand.
- (ii) Since the annual premium exceeds 10% of sum assured in respect of a policy taken on 1.4.2012, the sum of ₹ 2.25 lakhs due to Mr. Aarav would not be exempt under section 10(10D) in his hands. Therefore, tax is required to be deducted @ 2% under section 194DA on the maturity proceeds of ₹ 2.25 lakhs payable to Mr. Aarav.
- (iii) Even though the annual premium exceeds 20% of sum assured in respect of a policy taken before 1.4.2012, and consequently, the maturity proceeds of ₹ 98,000 would not be exempt under section 10(10D) in the hands of Mr. Avnish, the tax deduction provisions under section 194DA are not attracted since the maturity proceeds are less than ₹ 1 lakh.

19. **Computation of Net Wealth of M/s ABC Constructions Ltd. as on valuation date 31.03.2015**

Particulars	₹ (in lakhs)	₹ (in lakhs)
Assets [as per the definition of assets under section 2(ea)]		
(i) Land in urban area (held as stock in trade since 1997) – taxable, under section 2(ea)(v), since it is held as stock-in-trade for more than 10 years		67
(ii) Motor cars (excluding imported car not being an asset since it is used for hiring) is an asset under section 2(ea)(ii) [₹ 46 lakhs – ₹ 25 lakhs]		21
(iii) Agricultural land acquired for construction of residential and commercial complex [is a stock-in-trade in the hands of a construction company – hence, not an asset under section 2(ea)(v)]		Nil

(iv) (a)	Residential flats provided to three employees drawing salary less than ₹ 10 lakhs per annum – not an asset, since covered under the exclusion contained in section 2(ea)(i)(1)		Nil
(b)	Residential flat provided to two employees drawing salary exceeding ₹ 10 lakhs per annum is an asset since it is not covered under the exclusion contained in section 2(ea)(i)(1) $[45 \times 2/5]$		18
(v)	Farm house – not included within the scope of asset under section 2(ea)(i) since it is situated beyond 25 kms from the local limits of a municipality		Nil
(vi)	Cash in hand as per cash book is not an asset, since it represents cash recorded in the books. Hence, it is not covered under section 2(ea)(vi)		Nil
			106
Less: Liabilities			
(i)	Loan for purchase of land in urban area – deductible, since it is incurred in relation to land in urban area, which is an asset chargeable to wealth-tax.	42	
(ii)	Loan for purchase of agricultural land - not deductible, since land held as stock-in-trade is not an asset	Nil	
(iii)	Wealth tax liability for Assessment year 2014-15 – wealth tax liability is not deductible	Nil	
(iv)	Loan for construction of residential flats - the portion relating to taxable asset (2/5th) is deductible i.e., $\frac{2}{5} \times 20$	<u>8</u>	<u>50</u>
Net Wealth			<u>56</u>

20. (i) **Silver and gold used in the jewellers' shop:** Jewellery is an asset within the meaning of section 2(ea)(iii) of the Wealth-tax Act, 1957. However, if jewellery is used as stock-in-trade, the same shall be excluded from the assets chargeable to wealth-tax, by virtue of proviso to section 2(ea)(iii). Silver and gold used in the jewellers' shop represent his stock-in-trade and would, therefore, not be chargeable to wealth-tax.
- (ii) **Jewellery purchased by Mr. Shankar out of balance lying in his NRE A/c on the date of his return to India on permanent basis:** Any asset acquired by Mr. Shankar out of money brought by him into India, within one year immediately preceding the date of his return or at any time thereafter, would be exempt for a

period of seven successive assessment years following the year of his arrival in India on a permanent basis. Money standing to the credit of such person in a NRE Account on the date of his return to India shall be deemed to be money brought by him into India on that date. Therefore, the jewellery acquired by Mr. Shankar out of balance lying in his NRE A/c on the date of his return to India would not be chargeable to wealth-tax for the A.Y.2015-16, since Mr.Shankar has come to India on a permanent basis only two years back.

- (iii) **Aircraft owned and used by a company for transportation of its goods:** The definition of asset under section 2(ea)(iv) includes, *inter alia*, aircrafts, other than those used by the assessee for commercial purposes. Aircraft owned and used by a company for transportation of its goods can be construed as used for “commercial purposes”, since it is used for the business of the company. Hence, such aircraft is not chargeable to wealth-tax [*Garware Wall Ropes Ltd. vs. Additional CIT (2004) 89 ITD 221 (Mum)*]
- (iv) **Jeep of the company given to Director for official use:** In the context of the Wealth-tax Act, 1957, the term “Motor Car” is meant to be an inclusive term encompassing all vehicles (other than heavy vehicles) which can be regarded as “motor car” in a broad sense. Hence, “Motor Car” includes a Jeep. Since the jeep is not used for the business of running on hire or as stock-in-trade, it is an asset as per section 2(ea)(ii) [*Southern Roadways Ltd. v. CWT (2001) 251 ITR 213 (Mad.)*]
- (v) **Farm house situated within 25 kilometers from the local limits of municipality:** Section 2(ea) of the Wealth-tax Act, 1957 defines the term “asset”. According to the said definition, asset means, *inter alia*, any building including farm house situated within 25 kilometers from the local limits of any municipality. Therefore, the farmhouse situated within 23 kilometers from Niwai Municipal Corporation shall be an asset chargeable to wealth-tax.