

PAPER 7: DIRECT TAX LAWS

SECTION – A: STATUTORY UPDATE

The direct tax laws, as amended by the Finance Act, 2018, including significant notifications/circulars issued upto 30th April, 2019 are applicable for November, 2019 examination. The relevant assessment year for November, 2019 examination is A.Y.2019-20. The significant notifications/circulars issued upto 30th April, 2019, relevant for November, 2019 examination but not covered in the September, 2018 edition of the Study Material, are given hereunder.

STUDY MATERIAL MODULE-1

Chapter 3: Income which do not form part of Total Income

Computation of admissible deduction u/s 10AA of the Income-tax Act, 1961 [Circular No. 4/2018, Dated 14-8-2018]

As per the provisions of section 10AA(7), the profits derived from export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking.

Further as per clause (i) to *Explanation 1* to section 10AA, "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee, but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India.

The issue of whether freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover" and "total turnover" while working out deduction admissible under section 10AA on the ground that they are attributable to delivery of articles or things outside India has been highly contentious. Similarly, the issue whether charges for rendering services outside India are to be excluded both from "export turnover" and "total turnover" while computing deduction admissible under section 10AA on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in rendering services outside India has also been highly contentious.

The controversy has been finally settled by the Hon'ble Supreme Court vide its judgment dated 24.4.2018 in the case of Commissioner of Income Tax, Central-III Vs. M/s HCL

Technologies Ltd. (CA No. 8489-8490 of 2013, NJRS Citation 2018-LL-0424-40), in relation to section 10A.

The issue had been examined by CBDT and it is clarified, in line with the above decision of the Supreme Court, that freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover", while working out deduction admissible under section 10AA to the extent they are attributable to the delivery of articles or things outside India.

Similarly, expenses incurred in foreign exchange for rendering services outside India are to be excluded from both "export turnover" and "total turnover" while computing deduction admissible under section 10AA.

Note: Though this CBDT Circular is issued in relation to erstwhile section 10A, the same is also relevant in the context of section 10AA. Accordingly, the reference to section 10A in the Circular and the relevant sub-section and Explanation number thereto have been modified and given with reference to section 10AA and the corresponding sub-sections, Explanation number and clause of Explanation.

Chapter 4: Salaries

Notified limit for exemption in respect of gratuity increased, in case of employees not covered under the Payment of Gratuity Act, 1972 [Notification No. 16 /2019, dated 08.03.2019]

As per section 10(10)(iii), in case of an employee not covered under the Payment of Gratuity Act, 1972, any gratuity received by an employee on his retirement or his becoming incapacitated prior to such retirement or on termination of his employment or any gratuity received by his widow, children or dependents on his death is exempt from tax to the extent of least of the following limits:

- (i) One-half month's salary for each year of completed service
- (ii) Actual gratuity received
- (iii) Specified limit (i.e., limit notified by the Central Government)

The Central Government, having regard to the maximum amount of any gratuity payable to employees, has specified ₹20 lakh as the limit for the purposes of section 10(10)(iii) in relation to the employees who retire or become incapacitated prior to such retirement or die on or after 29th March, 2018 or whose employment is terminated on or after the said date. In effect, the Central Government has, vide this notification, increased the specified limit from ₹10 lakhs to ₹20 lakh with effect from 29.03.2018.

Chapter 6: Profits and gains of business or profession**Determining fair market value of inventory on the date of conversion into capital asset [Notification No. 42/2018, dated 30-08-2018]**

Section 28(via) has been inserted by the Finance Act, 2018 to provide that fair market value of the inventory on the date of its conversion or treatment as capital asset, determined in the prescribed manner, would be chargeable to tax as business income.

Accordingly, the CBDT, has vide this notification, inserted Rule 11UAB to prescribe the manner of determination of fair market value (FMV) of the inventory on the date of conversion.

[Note: For detailed reading of 11UAB of the Income-tax Rules, 1962, students may visit <https://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx>

Chapter 7: Capital Gains**Notification of transactions in equity shares in respect of which the condition of chargeability to STT at the time of acquisition for claiming concessional tax treatment under section 112A shall not apply [Notification No. 60/2018, dated 01-10-2018]**

The Finance Act, 2018 has withdrawn exemption under section 10(38) and has inserted new section 112A in the Income-tax Act, 1961, to provide that long-term capital gains arising from transfer of a capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, shall be taxed at 10% of such capital gains exceeding one lakh rupees. The said section, *inter alia*, provides that the provisions of the section shall apply to the capital gains arising from a transfer of long-term capital asset, being an equity share in a company, only if securities transaction tax (STT) has been paid on acquisition and transfer of such capital asset.

However, to provide for the applicability of the concessional tax regime under section 112A to genuine cases where the STT could not have been paid, it has also been provided in section 112A(4) that the Central Government may specify, by notification, the nature of acquisitions in respect of which the requirement of payment of STT shall not apply in the case of acquisition of equity share in a company.

In view of the above, the Central Government has, vide notification No. 60/2018, dated 1st October, 2018, notified that the condition of chargeability of STT shall not apply to the acquisition of equity shares entered into

- before 1st October, 2004 or
- on or after 1st October, 2004 which are not chargeable to STT, other than the following transactions.

In effect, only in respect of the following transactions mentioned in column (2), the requirement of paying STT at the time of acquisition for availing the benefit of concessional rate of tax under section 112A would apply. It may be noted that the exceptions are listed in column (3) against the transaction. The requirement of payment of STT at the time of

acquisition for availing benefit of concessional tax rate under section 112A will not apply to acquisition transactions mentioned in column (3).

(1)	(2)	(3)
	Transaction	Non-applicability of condition of chargeability of STT
(a)	Where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue	Where acquisition of listed equity share in a company–
		(i) has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
		(ii) is by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;
		(iii) is by an investment fund referred to in clause (a) of Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;
		(iv) is through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply.
(b)	Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India	Following acquisitions of listed equity share in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956:
		(i) acquisition through an issue of share by a company other than through preferential the issue referred to in (a);
		(ii) acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;
		(iii) acquisition by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
		(iv) acquisition under employee stock option scheme or employee stock purchase scheme

			framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
		(v)	acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India;
		(vi)	acquisition in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
		(vii)	acquisition from the Government;
		(viii)	acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;
		(ix)	acquisition by mode of transfer referred to in section 47 (e.g., transfer of capital asset under a gift, an irrevocable trust, transfer of capital asset between holding company and its subsidiary, transfer pursuant to amalgamation, demerger, etc.) or section 50B (slump sale) or section 45(3) (Introduction of capital asset as capital contribution in firm/ AOPs/ BOIs) or section 45(4) (Distribution of capital assets on dissolution of firm/ AOPs/ BOIs) of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in (a), (b) or (c) listed in column (2) [other than the exceptions listed in column (3)]
(c)	acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately		

	preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 and the rules made thereunder;	
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Chapter 8: Income from Other Sources

Notification of company for the purposes of exemption under clause (ii) of the proviso to section 56(2)(viib) [Notification No. 13/2019, dated 5-03-2019]

Where a company, other than a company in which public are substantially interested, issues shares at a premium to a person being a resident, section 56(2)(viib) brings to tax in the hands of such company, the difference between the aggregate consideration received for such shares as exceeds the fair market value of the shares under the head “Income from Other Sources”.

However, such provision would not be attracted, *inter alia*, where the consideration for issue of such shares is received by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Earlier, the Central Government had, vide *Notification No. 45/2016, dated 14.6.2016*, notified classes of persons. In supersession of the above mentioned Notification, the Central Government has, vide this notification, notified that the provisions of section 56(2)(viib) shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration received from a person, being a resident, by a company which fulfills the conditions specified by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade and files the declaration referred to in the said notification. In effect, vide this notification, the Central Government has notified the conditions to be fulfilled by a company which issues shares rather than the class or classes of persons to whom such shares are issued.

The Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade has, vide Notification No. G.S.R. 127(E) dated 19.2.2019, specified in para 4 thereunder, that a startup shall be eligible for exemption under clause (ii) of the proviso to section 56(2)(viib), if it fulfills the following conditions:

- (i) It has been recognized by the Department for Promotion of Industry and Internal Trade as start up as per this notification or any earlier notification on the subject.

- (ii) Aggregate amount of paid up capital and share premium of the startup after issue or proposed issue of shares, if any, does not exceed, twenty five crore rupees.

However, in computing the aggregate amount of paid up share capital, the amount of paid up share capital and share premium of twenty five crore rupees in respect of shares issued to any of the following persons shall not be included:

- (a) a non-resident
- (b) a venture capital company or a venture capital fund

Further, consideration received by such startup for shares issued or proposed to be issued to a specified company shall also be exempt and shall not be included in computing the aggregate amount of paid up share capital and share premium of twenty five crore rupees. For this purpose, a specified company means a company whose shares are frequently traded within the meaning of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and whose net worth on the last date of financial year preceding the year in which shares are issued exceeds one hundred crore rupees or turnover for the financial year preceding the year in which shares are issued exceeds two hundred fifty crore rupees.

- (iii) It has not invested in any of the following assets –
- (a) building or land appurtenant thereto, being a residential house, other than that used by the Startup for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business;
 - (b) land or building, or both, not being a residential house, other than that occupied by the Startup for its business or used by it for purposes of renting or held by it as stock-in-trade, in the ordinary course of business;
 - (c) loans and advances, other than loans or advances extended in the ordinary course of business by the Startup where the lending of money is substantial part of its business;
 - (d) capital contribution made to any other entity;
 - (e) shares and securities;
 - (f) a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees, other than that held by the Startup for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business;
 - (g) jewellery other than that held by the Startup as stock-in-trade in the ordinary course of business;

- (h) any other asset, whether in the nature of capital asset or otherwise, of the nature specified in section 56(2)(vi)(d)(iv) to (ix) i.e., archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

However, the Startup should not invest in any of the assets mentioned above for the period of seven years from the end of the latest financial year in which shares are issued at premium;

Meaning of Startup:

A company would be considered as Startup if the following conditions are satisfied:

- (i) **Period** – It would be considered as a Startup upto a period of ten years from the date of incorporation/registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) in India.
- (ii) **Turnover limit** - Turnover of the company for any of the financial years since incorporation/registration has not exceeded one hundred crore rupees.
- (iii) **Object and Purposes** - The company is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

However, a private limited company shall not be considered a “Startup”, if it formed by splitting up or reconstruction of an existing business.

This notification shall be deemed to have come into effect from 19.02.2019.

Note – Accordingly, students are advised to ignore Notifications No. 45/2016 dated 14.6.2016 and the related paras in page 8.10 of Module 1 of the Study Material and instead, read this notification.

STUDY MATERIAL MODULE-3

Chapter 15: Deduction, Collection and Recovery of Tax

No tax is required to be deducted at source on interest payable on “Power Finance Corporation Limited 54EC Capital Gains Bond” and “Indian Railway Finance Corporation Limited 54EC Capital Gains Bond” - Notification No. 27 & 28/2018, dated 18-06-2018

Section 193 (Interest on securities) provides that the person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @ 10%, being the rates in force on the amount of the interest payable.

As per clause (iib) of the proviso to section 193, no tax is required to be deducted at source from any interest payable on such debentures, issued by any institution or authority, or any

public sector company, or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Accordingly, the Central Government has, vide this notification, specified -

- (i) "Power Finance Corporation Limited 54EC Capital Gains Bond" issued by Power Finance Corporation Limited {PFCL} and
- (ii) "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" issued by Indian Railway Finance Corporation Limited {IRFCL}

The benefit of this exemption would, however, be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs PFCL/IRFCL by registered post within a period of sixty days of such transfer.

No tax to be deducted at source under section 194A, in case of Senior Citizens if the aggregate amount of interest does not exceed ₹50,000 [Notification No. 6/2018, dated 6-12-2018]

Section 194A requires deduction of tax at source on interest other than interest on securities. However, section 194A(3) provides for exemption from this requirement where such interest credited or paid or likely to be credited or paid during the Financial Year does not exceed ₹10,000 and the payer is a banking company, co-operative society engaged in banking business or post office. In case of a senior citizen (being a resident), however, a higher threshold of ₹50,000 has been specified for non-deduction of tax at source in such cases.

Accordingly, as per the third proviso to section 194A(3), no tax is required to be deducted at source in the case of senior citizens where the amount of interest or the aggregate of the amount of interest credited or paid during the financial year by a banking company, co-operative society engaged in banking business or post office does not exceed ₹50,000. However, it has come to the notice of the CBDT, that, some tax deductors/banks are making tax deductions even when the amount of interest does not exceed ₹50,000.

Under Rule 31A(5) of the Income-tax Rules, 1962, the DGIT (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in the manner so specified.

Accordingly, the Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), clarified that no tax deduction at source under section 194A shall be made in the case of senior citizens where the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year does not exceed ₹50,000.

Housing and Urban Development Corporation Ltd. (HUDCO), New Delhi notified for the purpose of section 194A(3)(iii)(f) [Notification No. 26/2019, dated 20.03.2019]

Section 194A(3)(iii)(f) provides that no tax is required to be deducted on interest income paid or credited to such other institution, association or body or class of institutions, associations, or bodies which is notified by the Central Government. Accordingly, the Central Government has, vide this notification, notified the Housing and Urban Development Corporation Ltd.(HUDCO), New Delhi for the purpose of the said section.

Consequent to such notification, no tax need to be deducted at source from interest other than interest on securities credited or paid to HUDCO.

Chapter 17: Assessment Procedure

Time limit for making an application for allotment of PAN in respect of certain persons [Notification No. 82/2018, dated 19-11-2018]

Section 139A(1) lists out the persons, who have not allotted PAN, to apply to the Assessing Officer for allotment of PAN within such time, as may be prescribed. The time limit for making such application is prescribed in Rule 114(3).

The Finance Act, 2018 has expanded the list of persons covered under section 139A(1) to include the persons mentioned in (iv) & (v) in column (2) of the table below, who have not been allotted a PAN, to apply to the Assessing Officer for allotment of PAN. Accordingly, Rule 114(3) has been amended *vide* this notification to provide the time limit (indicated in column (3) of the table below) for such persons to apply to the Assessing Officer for allotment of PAN.

The table below contains the list of persons mentioned in section 139A(1), who have not been allotted PAN, to apply for PAN and the time limit for making such application in each such case.

(1)	(2)	(3)
	Persons required to apply for PAN	Time limit for making such application
(i)	Every person, if his total income or the total income of any other person in respect of which he is assessable under the Act during any previous year exceeds the maximum amount which is not chargeable to income-tax	on or before 31st May of the assessment year for which such income is assessable
(ii)	Every person carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹ 5 lakhs in any previous year	before the end of that financial year (previous year).
(iii)	Every person who is required to furnish a return of income under section 139(4A)	before the end of the financial year (previous year).

(iv)	Every person being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year	on or before 31 st May of the immediately following financial year
(v)	Every person who is a managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of any person referred in (iv) above or any person competent to act on behalf of such person referred in (iv) above	on or before 31 st May of the immediately following financial year in which the person referred in (iv) enters into financial transaction specified therein.

Quoting of Aadhaar Number mandatory in returns filed on or after 1.4.2019 [Circular No. 6/2019 dated 31.03.2019]

As per section 139AA(1)(ii), with effect from 01.07.2017, every person who is eligible to obtain Aadhaar number has to quote Aadhaar number in the return of income.

The Apex Court in a series of judgments has upheld the validity of section 139AA. Consequently, with effect from 01.04.2019, the CBDT clarified that it is mandatory to quote Aadhaar number while filing the return of income unless specifically exempted as per any notification issued under section 139AA(3). Thus, returns being filed either electronically or manually on or after 1.4.2019 cannot be filed without quoting the Aadhaar number.

Time limit for intimation of Aadhar Number to Prescribed Authority [Notification No. 31/2019, dated 31.03.2019]

Section 139AA(2) provides that every person who has been allotted Permanent Account Number (PAN) as on 1st July, 2017, and who is eligible to obtain Aadhar Number, shall intimate his Aadhar Number to prescribed authority on or before a date as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification, notified that every person who has been allotted permanent account number as on 1st July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to the Principal DGIT (Systems) or Principal Director of Income-tax (Systems) by 30th September, 2019.

This notification would, however, not be applicable to those persons or such class of persons or any State or part of any State who/which are/is specifically excluded under section 139AA(3).

Chapter 18: Appeals and Revision

Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Circular No. 3/2018, Dated 11-7-2018 and F. No. 279/Misc. 142/2007-ITJ (Pt), Dated 20-8-2018

Circular No. 21/2015 dated 10.12.2015 specified monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court.

In supersession of the above Circular, it has been decided by the CBDT that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S. No.	Appeals/SLPs in Income-tax matters	Monetary Limit (₹)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

For further details regarding the meaning of 'tax effect' in different situations and methodology to be followed in such cases, the detailed circular may be referred.

Cases where adverse judgments should be contested on merits even if tax effect is less than the specified monetary limits

Adverse judgments relating to the issues enumerated hereunder should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or
- (d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.
- (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).
- (f) Cases where prosecution has been filed by the Department and is pending in the Court.

Chapter 22: Liability in Special Cases**Clarification regarding liability and status of Official Assignees under the Income-tax Act, 1961 [Circular No. 4/2019, dated 28-01-2019]**

Under provisions of the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, where an order of Insolvency is passed against a debtor by the concerned Court, property of the debtor gets vested with the Court appointed Official Assignee. The Official Assignee then realizes property of the insolvent and allocates it amongst the creditors of the insolvent. Consequentially, Official Assignee has the responsibility to handle income-tax matters of the estate assigned to him.

In this regard, a clarification has been sought regarding applicability of section 160(1)(iii) which applies on a 'Representative Assessee' in the case of an Official Assignee. Further, clarity regarding status of the Official Assignee's i.e. their fallibility in the appropriate category of 'persons', as defined in section 2(31), has also been sought.

As per provisions of section 160(1)(iii), a 'Representative Assessee' amongst other situations specified therein, becomes liable in respect of any income which the Assignee receives or is entitled to receive while managing the property for benefit of any person. As per the two insolvency Acts, Official Assignee manages the property of the debtor for the benefit of the creditors. Further, the Insolvency Act, 1909, in unambiguous terms, provides that an insolvent ceases to have an ownership interest in the estate once an order of adjudication is made under section 17 of the Insolvency Act.

Thus, it is clarified by the CBDT that since Official Assignee does not receive the income or manage the property on behalf of the debtor, they cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate of the debtor.

As property of the insolvent is vested with the Official Assignee as per specific provisions of the Act/Law regulating functioning of the Official Assignee's, they have to be treated as a 'juristic entity' for purposes of the Income-tax Act. Hence, it is clarified by the CBDT that for purpose of discharge of tax-liability under the Act, the status of Official Assignees is that of an 'artificial juridical person' as prescribed in section 2(31)(vii), not being one of the 'persons' falling in section 2(31)(i) to (vi).

Therefore, Official Assignee is required to file income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.

In view of the above position, Official Assignees would have to obtain a separate PAN for each of the estate of the insolvent.

STUDY MATERIAL MODULE-4

Chapter 1: Non-resident Taxation

Notification of exceptions, modifications and adaptations under Section 115JH for applicability of the provisions of the Income-tax Act on a foreign company said to be resident in India on account of PoEM [Notification No. 29/2018, dated 22-06-2018]

With effect from 1.4.2017, Chapter XII-BC consisting of Section 115JH has been inserted by the Finance Act, 2016 to provide that where a foreign company is said to be resident in India in any previous year on account of Place of Effective Management (PoEM) and such foreign company has not been resident in India in any of the previous years preceding the said previous year, then, notwithstanding anything contained in this Act and subject to the conditions as may be notified by the Central Government in this behalf, the provisions of this Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply with such exceptions, modifications and adaptations as may be specified in that notification for the said previous year.

Accordingly, the Central Government has, vide this Notification, specified the exceptions, modifications and adaptations subject to which, the provisions of the Act relating to computation of income, treatment of unabsorbed depreciation, set-off or carry forward and set off of losses, special provision relating to avoidance of tax and the collection and recovery of taxes shall apply in a case where a foreign company is said to be resident in India in any previous year on account of its POEM being in India and the such foreign company has not been resident in India before the said previous year.

Particulars	Provisions
Determination of opening WDV	<u>If the foreign company is assessed to tax in the foreign jurisdiction</u> Where depreciation is required to be taken into account for the purpose of computation of its taxable income, the WDV of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted as the opening WDV for the said previous year. Where WDV is not available as per tax records, the WDV shall be calculated assuming that the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction. The WDV so arrived at as on the 1st day of the previous year shall be adopted to be the opening WDV for the said previous year. <u>If the foreign company is not assessed to tax in the foreign jurisdiction</u> WDV of the depreciable asset as appearing in the books of

	account as on the 1 st day of the previous year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.
Brought forward loss and unabsorbed depreciation	<u>If the foreign company is assessed to tax in the foreign jurisdiction</u> Brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year. <u>If the foreign company is not assessed to tax in the foreign jurisdiction</u> Brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said previous year. <u>Other provisions</u> Such brought forward loss and unabsorbed depreciation shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year. However, the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which has become chargeable to tax in India on account of it becoming resident in India due to application of POEM. In cases where the brought forward loss and unabsorbed depreciation originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward in India.
Period of profit and loss account and balance sheet in cases where accounting year of foreign company does not end on 31st March	The foreign company is required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident. The foreign company is also required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its POEM.

	Examples: Example 1: If the accounting year of the foreign company is a calendar year and the company becomes resident in India during P.Y. 2018-19 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st January, 2018 to 31st March, 2018. It is also required to prepare profit and loss account and balance sheet for the period 1st April, 2018 to 31st March, 2019. For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period 1st January, 2018 to 31st March, 2018 is less than 6 months, it is to be included in the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India for the first time. Accordingly, the profit and loss and balance sheet of the 15 month period from 1 January, 2017 to 31st March, 2018 is to be prepared. Example 2: If the accounting year of the foreign company is from 1st July to 30th June and the company becomes resident in India during P.Y. 2018-19 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st July, 2017 to 31st March, 2018. It is also required to prepare profit and loss account and balance sheet for the period 1st April, 2018 to 31st March, 2019. For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period is more than 6 months, it is to be treated as a separate accounting year. The loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.
Applicability of provisions of Chapter XVII-B (TDS provisions)	Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply. Compliance to those provisions of Chapter XVII-B of the Act as are applicable to the foreign company prior to its becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter. The provisions of section 195(2) relating to application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax shall apply in such manner so as to include payment to the foreign company.
Availability of deduction under	The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 90 or section 91 of

section 90 or 91 (Foreign tax credit)	the Act. Where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India in respect of the income to which it relates and shall be in accordance with the provisions of rule 128 of the Income-tax Rules, 1962.
Non-applicability of the notification	The above exceptions, modifications and adaptations shall not apply in respect of such income of the foreign company which otherwise would have been chargeable to tax in India, even if the foreign company had not become Indian resident.
Applicability of the notification where foreign company becomes resident in the subsequent previous year also	In a case where the foreign company is said to be resident in India during a previous year, immediately succeeding a previous year during which it is said to be resident in India; the exceptions, modifications and adaptations shall apply to the said previous year subject to the condition that the WDV, the brought forward loss and the unabsorbed depreciation to be adopted on the 1st day of the previous year shall be those which have been arrived at on the last day of the preceding previous year in accordance with the provisions of this notification.
No effect on other transactions	Any transaction of the foreign company with any other person or entity under the Act shall not be altered only on the ground that the foreign company has become Indian resident.
Applicability of other provisions relating to foreign company	Subject to the above exceptions, modifications and adaptations specifically provided vide this notification, the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly. Consequently, the provisions specifically applicable to- (i) a foreign company, shall continue to apply to it; (ii) non-resident persons, shall not apply to it; and (iii) the provisions specifically applicable to resident, shall apply to it.
Applicability of tax rate on foreign company	In case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company i.e., 40% shall remain the same, i.e., rate of income-tax applicable to the foreign company even though residency status of the foreign company changes from non-resident to resident on the basis of POEM.

Applicability of notification	This notification shall be deemed to have come into force from 1st April, 2017.
Meaning of foreign jurisdiction	The place of incorporation of the foreign company.
Applicability of rule 115 of the Income-tax Rules, 1962.	The rate of exchange for conversion into rupees of value expressed in foreign currency, wherever applicable, shall be in accordance with provision of rule 115 of the Income-tax Rules, 1962.

Exemption to interest income on specified off-shore Rupee Denominated Bonds [Press Release, dated 17-09-2018]

Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India before 1.7.2020 is liable for concessional rate of tax of 5%. Consequently, section 194LC provides for the deduction of tax at a lower rate of 5% on the said interest payment.

Consequent to review of the state of economy on 14.9.2018 by the Prime Minister, the Finance Minister has announced a multi-pronged strategy to contain the Current Account Deficit (CAD) and augment the foreign exchange inflow. In this background, low cost foreign borrowings through off-shore rupee denominated bond have been further incentivised to increase the foreign exchange inflow.

Accordingly, it has been decided that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC.

Conditions under section 115JG(1) in respect of conversion of Indian branch of foreign bank into Indian subsidiary company and specification of holding period of a capital asset which becomes the property of the Indian subsidiary company in consequence of such conversion notified [Notification No. 85 & 86/2018, dated 6-12-2018]

Chapter XII-BB comprises of section 115JG which contains "Special provisions relating to conversion of Indian branch of a foreign bank into a subsidiary Indian company". Section 115JG *inter-alia* provides that, in case the conversion of an Indian Branch of foreign bank into a subsidiary Indian company in accordance with the scheme framed by Reserve Bank of India and fulfilling the conditions notified by the Central Government, the capital gains arising from such conversion shall not be chargeable to tax and the provisions of the Income-tax Act, 1961 relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain company and the computation of income in case of foreign company and Indian subsidiary company would apply with such modification, exception and adaptation as may be specified in the notification.

Accordingly, the Central Government has, *vide* notification no. 85/2018, specified the conditions to be fulfilled –

(1) For Capital Gains exemption:

Where a foreign company is engaged in the business of banking through its Indian branch and converts such Indian branch into its Indian subsidiary company in accordance with the scheme framed by RBI, the capital gains arising from such conversion would not be chargeable to tax, if -

- (a) the Indian branch amalgamates with the Indian subsidiary company in accordance with the scheme of amalgamation approved by the shareholders of the foreign company and the Indian subsidiary company and sanctioned by the RBI¹
- (b) all the assets and liabilities of the Indian branch immediately before conversion would become the assets and liabilities of the Indian subsidiary company;
- (c) the assets and liabilities of the Indian branch are transferred to the Indian subsidiary company at values appearing in the books of account of the Indian branch immediately before its conversion.

Note - Any change in the value of assets consequent to their revaluation would not be considered while determining the value of the assets.

- (d) the foreign bank or its nominee shall hold the whole of the share capital of the Indian subsidiary company during the period beginning from the date of conversion and ending on the last day of the previous year in which the conversion took place and continue to hold the shares of Indian subsidiary company carrying not less than 51% of the voting power for a period of five years immediately succeeding the said previous year;
- (e) the foreign company does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the Indian subsidiary company.

(2) Application of the provisions of the Income-tax Act, 1961 with modifications/exceptions

The provisions of the Income-tax Act, 1961 relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in case of foreign company and Indian subsidiary company shall apply with following modifications, exceptions and adaptation –

¹ under paragraph 20(h) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India *vide* Press release number 2013-2014/936 dated 6th day of November, 2013

	Purpose	Modification/exception/adaptation
(a)	Allowance of depreciation under section 32	The aggregate deduction, in respect of depreciation on buildings, machinery, plant or furniture, being tangible assets, or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets, allowable to the Indian branch and the Indian subsidiary company shall not exceed in any previous year the deduction calculated at the prescribed rates as if the conversion had not taken place. Such deduction would be apportioned between the Indian branch and the Indian subsidiary company in the ratio of the number of days for which the assets were used by them;
(b)	Set-off and c/f of loss and depreciation	The accumulated loss and the unabsorbed depreciation of the Indian branch would be deemed to be the loss or allowance for depreciation of the Indian subsidiary company for the previous year in which conversion was effected; and provisions of the Income-tax Act, 1961, relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.
(c)	Determination of actual cost u/s 43(1)	The actual cost of the block of assets in the case of the Indian subsidiary company shall be the written down value of the block of assets as in the case of the Indian branch on the date of its conversion into the Indian subsidiary company The actual cost of any capital asset on which deduction has been allowed or is allowable under section 35AD, shall be treated as 'nil' in the case of the Indian subsidiary company if the capital asset became the property of the Indian subsidiary company as a result of conversion of the Indian branch
(d)	Cost of acquisition of other capital assets	Where the capital asset other than those referred to in (c) above became the property of the Indian subsidiary company as a result of conversion of the Indian branch, the cost of acquisition of the asset for the purposes of computation of capital gains shall be deemed to be the cost for which the Indian branch acquired it or, as the case may be, the cost for which previous owner has acquired it.
(e)	Tax credit	The tax credit of the Indian branch shall be deemed to be the tax credit of the Indian subsidiary company for the purpose of the previous year in which conversion was effected; and the provisions of section 115JAA of the Income-tax Act, 1961 shall apply accordingly.
(f)	Amortisation of VRS	The provisions of 35DDA of the Act shall be, as far as may be, apply to the Indian subsidiary company, as they would have

	Expenditure	applied to the Indian branch, if the conversion had not taken place
(g)	Deemed credit balance in provision for bad and doubtful debts	The credit balance in the provision for bad and doubtful debts account made under section 36(1)(via) of the Indian branch on the date of conversion shall be deemed to be the credit balance of the Indian subsidiary company and the provisions of section 36 of the Income-tax Act, 1961, shall apply accordingly
(h)	Non-applicability of section 56(2)(x)	The provisions of section 56(2)(x) shall not apply to the transaction of receipt of shares in the Indian subsidiary company by the foreign company or its nominee in consequence of the conversion of the Indian branch into the Indian subsidiary company.

Meaning of certain terms (given in bold in the above table):

Term	Meaning
Accumulated loss	So much of the loss of the Indian branch before its conversion into Indian subsidiary company under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such Indian branch would have been entitled to carry forward and set off under the provisions of section 72, if the conversion had not taken place.
Unabsorbed depreciation	So much of the allowance for depreciation of the Indian branch before its conversion into Indian subsidiary company, which remains to be allowed and which would have been allowed to the Indian branch under the provisions of the Act, if the conversion had not taken place.
Previous owner	In relation to any capital asset owned by the Indian subsidiary company means the last previous owner of the capital asset who acquired it by a mode of acquisition other than those referred in section 49(1)(i)/(ii)/(iii)/(iv) or section 115JG(1).
Tax credit	So much of the tax credit of the Indian branch before conversion into Indian subsidiary company which such Indian branch would have been entitled to carry forward and set off under the provisions of section 115JAA of the Act, if the conversion had not taken place.
Date of conversion	The date, which the Reserve Bank of India appoints for the vesting of undertaking of the Indian branch in Indian subsidiary company ²

² under paragraph 20(i) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India vide press release number 2013-2014/936 dated 6th day of November, 2013.

Further, the CBDT has, vide Notification No. 86/2018, inserted sub-rule (4) in rule 8AA providing for method of determination of period of holding of capital assets in certain cases. This sub-rule provides that, in the case of a capital asset which became the property of the Indian subsidiary company in consequence to conversion of a branch of a foreign company referred to in section 115JG(1), the period for which the asset was held by the said branch of the foreign company and by the previous owner, if any, who has acquired the capital asset by a mode of acquisition referred to in clause (i)/(ii)/(iii)/(iv) of section 49(1) or section 115JG(1) shall be included.

Chapter 3: Transfer Pricing & Other Anti-avoidance Measures

Time limit for furnishing of report by constituent entity of an international group, resident in India specified [Notification No. 88/2018 dated 18-12-2018, Circular No. 9/2018 dated 26-12-2018 and Circular No. 7/2019 dated 08-04-2019]

I. Requirement of furnishing of report by constituent entity of an international group, resident in India [Section 286(4)]

As per section 286(4), a constituent entity of an international group, resident in India, other than the parent company or the alternate reporting entity, is required to furnish a report in respect of the international group for a reporting accounting year **within the prescribed period**, if the parent entity is resident of a country or territory –

- (i) where the parent entity is not obligated to file the report of the nature referred to in section 286(2).
- (ii) with which India does not have an agreement providing for exchange of the report of the nature referred to in section 286(2)
- (iii) there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity.

II. Time limit for furnishing of report by constituent entity [Notification No. 88/2018 dated 18-12-2018 -Rule 10DB(4)]

The CBDT has, accordingly, amended Rule 10DB(4) vide Notification no. 88/2018 to provide that the constituent entity is required to furnish the report under section 286(4) within twelve months from the end of the reporting accounting year. However, in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report would be six months from the end of the month in which said systemic failure has been intimated.

III. Relaxation in time limit for report to be furnished under section 286(4) in respect of reporting accounting years ending upto 28.2.2018 [Circular No. 9/2018 dated 26-12-2018]

Representations from the stakeholders were received by the CBDT in the matter, wherein it has been stated, *inter alia*, that the constituent entity of an international group, which is resident in India, having parent entity resident in jurisdictions with which India does not have an agreement providing for exchange of the report of the nature referred to in section 286(2) and where the reporting accounting year is calendar year based, i.e., ending on December 31 of the year, would need to furnish the report under section 286(4) in India by 31.12.2018. It has also been represented that read with the amendment to section 286 and the substituted rule 10DB(4), the constituent entity in such case for reporting accounting year ending on 31.3.2017 would have been required to furnish the CbCR by 31.3.2018 which is not plausible.

In order to remove the genuine hardship caused as above in furnishing of the report under section 286(4) read with Rule 10DB(4) and as a one-time measure, the CBDT has, in exercise of powers conferred under section 119 extended the period for furnishing of said report by the constituent entities referred to in (i) and (ii) of I. above in respect of reporting accounting years ending upto 28.2.2018 to 31.3.2019.

IV Relaxation in time limit for constituent entities, whose parent entities are resident in USA [Circular No. 7/2019 dated 08-04-2019]

The agreement for providing for exchange of the report of the nature referred to in section 286(2) has been entered into by India and the USA on March 27, 2019. However, the agreement and the exchange mechanism would come into effect only after both the countries notify each other about the completion of all internal procedures for exchange which is underway.

Since filing of the report by the constituent entity referred to in section 286(4) [(i) and (ii) of I. above] in India gets triggered on completion of twelve months from the last date of the reporting accounting year and Circular 9/2018 has extended the period for furnishing of the report till March 31, 2019 in respect of reporting accounting years ending upto February 28, 2018, due to non-notification of the agreement and resultant non-activation of the exchange mechanism between India and the USA, said report has to be filed by such constituent entities, whose parent entities are resident in USA and whose reporting accounting years ended after February 28, 2018.

In view of the above, in order to remove the genuine hardship faced by the constituent entities referred to in (i) and (ii) of I. above, whose parent entities are resident in USA, in furnishing of the report under section 286(4) read with rule 10DB(4), the CBDT has extended the period for furnishing of said report by such constituent entities, in respect of reporting accounting years ending upto April 29, 2018, to April 30, 2019.

SECTION – B: QUESTIONS AND ANSWERS**OBJECTIVE TYPE QUESTIONS**

From the options (a), (b), (c) and (d) given in each question, choose the most appropriate option.

- (i) X Ltd. is engaged in the business of letting out of properties. As per the memorandum of association of X Ltd., letting out of properties is its main objective. The total income of X Ltd. comprises only of rental income from the business of letting out of properties. Y Ltd. is engaged in the construction and sale of properties, which is also its main objective as per its memorandum of association. Incidentally, it lets out some properties which are held as stock-in-trade and earns rental income therefrom. Which of the following statements are correct?
- (a) Rental income from letting out of properties by X Ltd. and Y Ltd. is taxable under the head “Income from house property”
 - (b) Rental income from letting out of properties by X Ltd. and Y Ltd. is taxable under the head “Profits and gains of business or profession”
 - (c) Rental income from letting out of properties by X Ltd. is taxable under the head “Income from house property” and by Y Ltd is taxable under the head “Profits and gains of business or profession”
 - (d) Rental income from letting out of properties by Y Ltd. is taxable under the head “Income from house property” and X Ltd is taxable under the head “Profits and gains of business or profession”
- (ii) PQ Ltd. is a company having two units – Unit P carries on specified business of setting up and operating warehousing facility for storage of agricultural produce and Unit Q carries on specified business of setting up and operating warehousing facility for storage of edible oil. Unit P commenced operations on 1.4.2017 and claimed deduction of ₹120 lakhs incurred in April, 2017 on purchase of two buildings for ₹70 lakhs and ₹50 lakhs (for operating warehousing facility for storage of agricultural produce) under section 35AD for A.Y.2018-19. However, in March, 2019, Unit P transferred its building costing ₹70 lakhs to Unit Q. What are the tax implications of such transfer in the hands of PQ Ltd.?
- (i) ₹70 lakhs would be deemed as business income in the hands of PQ Ltd. for A.Y.2019-20
 - (ii) ₹63 lakhs would be deemed as business income in the hands of PQ Ltd. for A.Y.2019-20
 - (iii) Actual cost of building for computing depreciation for P.Y.2018-19 would be ₹70 lakhs

- (iv) Actual cost of building for computing depreciation for P.Y.2018-19 would be ₹63 lakhs

Which of the above statements are correct?

- (a) (i) and (iii) above
(b) (i) and (iv) above
(c) (ii) and (iii) above
(d) (ii) and (iv) above.
- (iii) XYZ Ltd. engaged in the business of manufacture of steel, claimed deduction under section 80-IB on the profits and gains of business which included transport subsidy, interest subsidy and power subsidy received from the Government and duty drawback receipts. XYZ Ltd. contended that all the above receipts are profits derived from the business of the industrial undertaking and are hence, eligible for deduction under section 80-IB. Is the contention of XYZ Ltd. correct?
- (a) Yes; transport subsidy, interest subsidy, power subsidy and duty drawback are profits derived from the business of the industrial undertaking and hence, eligible for deduction under section 80-IB.
(b) No; none of the above receipts can be treated as profits "derived" from the business of the industrial undertaking and hence, deduction under section 80-IB cannot be claimed in respect of any such receipt.
(c) No; transport subsidy, interest subsidy and power subsidy received from Government are profits derived from the business of the industrial undertaking and hence, eligible for deduction under section 80-IB. However, duty drawbacks belong to the category of ancillary profits and hence, deduction under section 80-IB cannot be claimed in respect of such receipt.
(d) No; transport subsidy, interest subsidy and power subsidy received from Government are ancillary profits and hence, deduction under section 80-IB cannot be claimed in respect of such receipts. However, duty drawbacks are profits derived from the business of the industrial undertaking and hence, deduction under section 80-IB can be claimed in respect of such receipt.
- (iv) A REIT has distributed ₹2 crore to its unitholders, which comprises of -
(i) Rental income from real estate property directly held by it ₹80 lakhs
(ii) Interest income from special purpose vehicle ₹50 lakhs
(iii) Dividend income from special purpose vehicle ₹40 lakhs
(iv) Capital gains on disposal of assets ₹30 lakhs

In this case, the special purpose vehicle is an Indian company, in which REIT holds 100% of shares. Which of the following statements relating to taxability of the above income are correct?

- (1) All the above income are taxable in the hands of REIT. The said income are exempt in the hands of unit holders.
- (2) Only income referred to in (i) and (ii) are taxable in the hands of REIT. Income referred to in (iii) and (iv) are taxable in the hands of unit holders.
- (3) Only income referred to in (i) and (ii) are taxable in the hands of REIT. Income referred to in (iv) is taxable in the hands of unit holders. Income referred to in (iii) is exempt both in the hands of REIT and unit holders.
- (4) Only income referred to in (iv) is taxable in the hands of REIT. Income referred to in (i) and (ii) is taxable in the hands of unit holders. Income referred to in (iii) is exempt both in the hands of REIT and unit holders.
- (5) Tax is deductible by REIT from income referred to in (i) and (ii).
- (6) Tax is deductible by REIT from income referred to in (iii) and (iv).
- (7) Tax is deductible by REIT only from income referred to in (iv)
- (8) No tax is deductible by REIT since the entire income is taxable in its hands.

The correct option is –

- (a) (1) and (8) above
 - (b) (2) and (6) above
 - (c) (3) and (7) above
 - (d) (4) and (5) above
- (v) During the P.Y.2018-19, HelpAid Charitable Trust registered under section 12AA received donations of ₹80 lakhs, out of which ₹10 lakhs were corpus donations and ₹20 lakhs were anonymous donations. The trust applied ₹40 lakhs towards its objects during the P.Y.2018-19. The tax liability of the trust for A.Y.2019-20 is –
- (a) ₹6,24,000
 - (b) ₹5,92,800
 - (c) ₹5,30,920
 - (d) ₹5,97,220
- (vi) In the course of search operations under section 132 in May, 2019, Mr. Hari makes a declaration under section 132(4) on the earning of income in respect of P.Y.2018-19 not disclosed in the books of account. Mr. Hari explains the manner in which income was derived and pays the tax, together with interest in respect of such income. However, he

does not disclose such income in his return of income filed on 31.7.2019. Is penalty leviable in this case, and if so what is the quantum of penalty?

- (a) No penalty is leviable since Mr. Hari has made a declaration under section 132(4)
 - (b) Penalty@10% is leviable
 - (c) Penalty@30% is leviable
 - (d) Penalty@60% is leviable.
- (vii) A Ltd. filed its return of income for A.Y.2019-20 on 30th September, 2019. The return is selected for regular assessment under section 143(3). The time limit for service of notice under section 143(2) in this case is -
- (a) 31.3.2020
 - (b) 30.6.2020
 - (c) 30.9.2020
 - (d) 31.3.2021
- (viii) Shipcargo Inc., a company based in Netherlands operating its ships to and fro Cochin port, collected freight of ₹85 lakhs, demurrage of ₹5 lakhs and handling charges of ₹2 lakhs in respect of goods shipped at Cochin port. It incurred expenses of ₹35 lakhs during the year for operating its fleet. In respect of goods shipped at Rotterdam, Netherlands, it received ₹50 lakhs in India. Its tax liability (rounded off) for the A.Y.2019-20 is -
- (a) ₹4,21,200
 - (b) ₹4,43,040
 - (c) ₹3,12,000
 - (d) ₹1,77,840
- (ix) Mr. Ganesh, a citizen of India, is employed in the Indian embassy in the USA. He is a non-resident for A.Y.2019-20. He received salary and allowances in the USA from the Government of India for the year ended 31.3.2019 for services rendered by him in the USA. In addition, he was allowed perquisites by the Government. Which of the following statements are correct?
- (a) Salary, allowances and perquisites received outside India are not taxable in the hands of Mr. Ganesh, since he is a non-resident.
 - (b) Salary, allowances and perquisites received outside India by Mr. Ganesh is taxable in India since they are deemed to accrue or arise in India.
 - (c) Salary received by Mr. Ganesh is taxable in India but allowances and perquisites are exempt.

- (d) Salary received by Mr. Ganesh is exempt but allowances and perquisites are taxable.
- (x) Mr. Rajesh, a resident Indian, is an employee of M/s. ABC Ltd., Bangalore. In addition to the salary income from M/s. ABC Ltd., he also earns interest from fixed deposits. M/s. PQR Inc., a foreign company not having permanent establishment in India, rendered online advertisement services to Mr. Rajesh, for which Mr. Rajesh made a payment of ₹2 lakhs in the F.Y.2018-19. Which of the statements is correct?
- (a) The transaction is subject to equalisation levy since payment exceeding ₹1 lakh has been made for online advertisement services by a resident to a non-resident not having permanent establishment in India.
- (b) Equalisation levy@6% has to be deducted from the consideration of ₹2 lakhs payable to M/s. PQR Inc.
- (c) Both (a) and (b)
- (d) The transaction is not subject to equalisation levy

DESCRIPTIVE QUESTIONS

1. PQR Ltd. is a company in which the whole of its share capital was held by LMN Ltd. Both PQR Ltd. and LMN Ltd. are Indian companies. PQR Ltd. had made investment in shares of Berkley Ltd. in 1992 for ₹ 7,00,000 which it sold to LMN Ltd. on April 1, 2010 for a consideration of ₹ 42,00,000.
- The fair market value of these shares of Berkley Ltd., as on April 1, 2001 is ₹ 32,00,000. LMN Ltd. disinvested 7% of the shares held by it in PQR Ltd., in November 2018 by sale to public. It sold the shares in Berkley Ltd. acquired by it from PQR Ltd. in February, 2019 for a sum of ₹ 95,00,000.
- Examine the capital gains tax effect of these transactions in the hands of PQR Ltd. and LMN Ltd. in the relevant assessment years, presuming that the shares of Berkley Ltd. are unlisted shares.
- The cost inflation index for the F.Y.2010-11 is 167 and F.Y.2018-19 is 280.
2. Ms. Janani reports to you that her gross receipt from interior decoration profession carried on by her during the year ended 31-03-2019 is ₹ 47,80,000. Her net income as per income and expenditure account is ₹ 25,00,000 before adjustment of depreciation of ₹ 1,50,000. She did not pay any amount by way of advance tax during the financial year 2018-19. She has two residential house properties, of which one is self-occupied for residence and another is let out for the monthly rent of ₹ 15,000 during the financial year 2018-19.
- Is Janani eligible to opt for presumptive tax provisions, if any, under the Income-tax Act, 1961? If so, is it beneficial for her to opt for such provisions? Advise, assuming that she approached you for consulting on this matter in April, 2019.

3. Calculate the capital gains/loss on transfer of listed equity shares (STT paid both at the time of acquisition and transfer of shares) for the A.Y.2019-20, in the following cases:
- (i) Mr. Ravi purchased 500 shares in Tapti Ltd. on 15.11.2016 at a cost of ₹1,200 per share. The Fair Market Value (FMV) of the share as on 31.1.2018 is ₹2,300. Ravi sold all the shares of Tapti Ltd. on 15.5.2018 for ₹3,000.
 - (ii) Mr. Giri purchased 700 shares in Narmada Ltd. on 3.12.2016 at a cost of ₹3,100 per share. The Fair Market Value (FMV) of the share as on 31.1.2018 is ₹4,500. Mr. Giri sold all the shares of Narmada Ltd. on 24.4.2018 for ₹4,200.
 - (iii) Mr. Mani purchased 300 shares in Cauvery Ltd. on 12.1.2017 at a cost of ₹2,500 per share. The Fair Market Value (FMV) of the share as on 31.1.2018 is ₹1,800. Mr. Mani sold all the shares of Cauvery Ltd. on 15.7.2018 for ₹3,200.
 - (iv) Mr. Sathy purchased 600 shares in Mahanadi Ltd. on 25.1.2017 at a cost of ₹1,900 per share. The Fair Market Value (FMV) of the share as on 31.1.2018 is ₹2,400. Mr. Sathy sold all the shares of Mahanadi Ltd. on 31.1.2019 for ₹1,700.
4. PQR Ltd. is engaged in the manufacture of multi-layer tubes and other speciality packaging and plastic products. It came out with an initial public issue of shares during the year 2017-18 and deposited the share application money received in banks till the allotment of shares was completed. The company earned interest of ₹75 lakhs on such deposits, which it set off against the public issue expenses, while computing total income for A.Y.2018-19. Accordingly, the company paid the tax on total income, after adjusting tax deducted at source and advance tax paid, and filed its return of income in September, 2018. On scrutiny, the Assessing Officer contended that interest of ₹75 lakhs is not eligible for set-off against public issue expenses but is taxable under the head 'Income from Other Sources'. Examine the correctness of contention of the Assessing Officer.
5. ABC Ltd. has approached the Supreme Court under a special leave petition. There has been a delay of 439 days in filing the appeal under section 260A for which reason ABC Ltd. requested for a condonation of delay under section 14 of Limitation Act, 1963. The company submitted that the delay was on account of pursuing an alternate remedy of filing a miscellaneous application before the Income-tax Appellate Tribunal (ITAT) under section 254(2).
- From the above facts, examine whether delay in filing appeal under section 260A can be condoned under section 14 of Limitation Act, 1963 where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record.
6. (a) HelpAll charitable trust, having its main object as relief of poor, earned agricultural income of ₹ 2.80 lakh, dividend income of ₹ 1.10 lakh and income of ₹ 1.30 lakh from mutual funds specified under section 10(23D) during the P.Y.2018-19.

The trust claims exemption under section 10(1), 10(34) and 10(35) in respect of its agricultural income, dividend income and income from mutual funds, respectively, without complying with the conditions laid down under section 11. Examine the correctness or otherwise of the claim of the trust.

- (b) HistoSpace charitable trust, having its main object as preservation of monuments of historic interest, purchased computers for ₹ 12 lakh in March, 2018 for the purposes of the trust and claimed the same as application of income in the P.Y.2017-18. It also claims depreciation @ 40% on such computers for P.Y.2018-19, while computing income for the purpose of application for that year. Examine the correctness or otherwise of the claim of the trust.
7. Sigma Ltd., incorporated on 1.4.2017, is a technology enabled eligible start-up engaged in innovation of processes. The company filed its return of income for A.Y.2019-20 after claiming deduction of ₹ 18 lakhs under section 80-IAC. The return was selected for scrutiny. In the assessment, a sum of ₹ 7 lakhs, being 30% of ₹ 21 lakhs, towards payment of fees for professional services was disallowed for non-deduction of tax at source by invoking section 40(a)(ia). The Assessing Officer, however, limited the deduction under section 80-IAC to the original amount claimed by Sigma Ltd. Sigma Ltd. contended that it was eligible for a higher deduction of ₹ 25 lakhs under section 80-IAC consequent to disallowance under section 40(a)(ia). Examine the correctness of contention of Sigma Ltd.
8. Satpura Ltd. is an Indian company in which 52% of shares are held by Vindhyas Ltd. Satpura Ltd. declared a dividend amounting to ₹ 60 lakhs to its shareholders for the financial year 2017-18 in its Annual General Meeting held on 29th May, 2018. Dividend distribution tax was paid by Satpura Ltd. on 5th June, 2018. Vindhyas Ltd. declared an interim dividend amounting to ₹ 48 lakhs on 2nd December, 2018.

Compute the amount of tax on dividend payable by Vindhyas Ltd., an Indian company.
 Would your answer change if Vindhyas Ltd. held 48% of shares of Satpura Ltd?
 Examine.
9. The following are the details pertaining to M/s. Aravali, a partnership firm, for the year ended 31-3-2019:
 - (i) Gross total income of ₹ 600 lakhs, which includes a profit of ₹ 550 lakhs from an undertaking engaged in an irrigation project.
 - (ii) The profits of the undertaking are eligible for deduction under section 80-IA. This is the third year and the deduction available is ₹ 510 lakhs.
 - (iii) The firm has undertaken “specified domestic transactions” referred to in section 92BA during the said year and has to obtain a report from an accountant under section 92E and furnish such report.

Since M/s. Aravali wishes to seek opinion of tax consultants in relation to certain issues before filing its return of income, it is planning to file its return of income only in the month of March, 2020. Advise M/s. Aravali the right course of action. You may ignore interest under section 234A, 234B, 234C and 234F while making your computations in support of your advice.

10. Godavari Ltd., an Indian Company engaged in manufacture and sale of electrical appliances in India and abroad, started adoption of Ind AS with effect from 1st April, 2017. The following particulars are furnished for the year ended 31st March, 2019:-

- (a) The book profit after adjustment of all items specified in section 115JB(2) amounted to ₹ 87.34 lakhs (except the adjustment for brought forward losses/ unabsorbed depreciation), for the year ended 31.3.2019.

- (b) Brought forward losses as per books are as under : (₹ In lakhs)

Financial Year	Business loss	Depreciation
2016-17	8.20	7.60
2017-18	7.30	9.50

- (c) The particulars of "Other Comprehensive Income" for the year ended 31.03.2019:

(₹ In lakhs)

Other Comprehensive Income (OCI) that will not be re-classified to profit and loss:		Debit	Credit
(i)	Deferred costs of hedging	3.80	
(ii)	Changes in fair values of equity instruments	8.00	
(iii)	Revaluation surplus for assets		8.20
(iv)	Deferred gains on cash flow hedges		6.70
(v)	Re-measurement of post-employment benefit obligations		5.20
(vi)	Share of other comprehensive income of other associates		2.80
Other Comprehensive Income (OCI) that may be re-classified to profit and loss:		Debit	Credit
(i)	Deferred gains on cash flow hedges		8.20
(ii)	Comprehensive income from discontinued operations		5.30
(iii)	Exchange Differences of foreign exchange operations	1.80	
(iv)	Deferred costs of hedging	0.80	

- (d) The transition amount as on convergence date (01-04-2017) stood at ₹ 48 lakhs (credit balance) including capital reserve of ₹ 6 lakhs and adjustment of ₹ 5 lakhs relating to translation difference in a foreign operation.
- (e) The National Company Law Tribunal (NCLT), Mumbai Bench has admitted an application under section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) made by financial creditor against the company for initiation of Corporate Insolvency Resolution Process on 30th March, 2019.

You are required to compute the MAT liability for the assessment year 2019-20, applying the provisions relating to Ind AS compliant companies. Assuming that the income tax under normal provisions of Income-tax Act, 1961 for the assessment year 2019-20 works out to ₹ 13.20 lakhs, compute the tax credit, if any, to be carried forward by the company including the period up to which it will be available to be carried forward.

11. M/s. Uranus LLP filed its return of income for the A.Y. 2016-17 on 23-07-2016. The assessment u/s 143(3) was completed on 27th April, 2017. The Assessing Officer made two additions to the income of the LLP, namely, ₹ 12 lakhs towards unexplained investment u/s 69 and ₹ 4 lakhs u/s 40(b) due to excess interest paid to partners.

The LLP, being aggrieved, contested the addition of ₹ 12 lakhs under section 69 and filed an appeal before the Commissioner (Appeals). The appeal was decided on 12th February, 2019 against the LLP.

In March, 2019, the LLP approaches you to know whether it should apply for revision to Principal Commissioner u/s 264 or for rectification u/s 154 to the Assessing Officer as regards disallowance u/s 40(b). You are required to advise the LLP, keeping in mind the relevant provisions of income-tax law.

12. M/s. Pluto LLP filed its return of income for A.Y.2019-20, declaring total income of ₹25 lakhs, on 2nd October, 2019. On processing of return, the total income determined under section 143(1)(a) was ₹30 lakhs, after disallowing claim for deduction under section 10AA on account of late furnishing of return of income. Thereafter, on scrutiny, the Assessing Officer made some additions under section 40(a)(ia) and section 43B and passed an assessment order under section 143(3) assessing total income of ₹40 lakhs. Later on, the Assessing Officer noticed that certain income had escaped assessment and issued notice for reassessment under section 148. The total income reassessed under section 147 was ₹45 lakhs.

Considering that none of the additions or disallowances made in the assessment or re-assessment as above qualifies under section 270A(6), compute the amount of penalty to be levied under section 270A of the Income-tax Act, 1961 at the time of assessment under section 143(3) and at the time of reassessment under section 147 (Assume under-reporting of income is not on account of misreporting).

13. Neptune Inc, a notified Foreign Institutional Investor (FII), derived the following incomes for the financial year 2018-19:-

- (1) Interest received on investment in Rupee Denominated Bonds of ABC Ltd., an Indian company (investment was made in the F.Y.2017-18) - ₹8,50,000
- (2) Dividend from listed shares of Indian companies – ₹6,20,000
- (3) Interest on securities – ₹17,32,000 (Expenses of ₹ 26,000 has been incurred to earn such income)

(4) **Income from sale of securities and shares:**

(i) **Bonds of Jupiter Ltd.**

[Date of purchase 5 May 2015; Date of sale 7 March 2019]

Sale proceeds : ₹ 47,00,000

Cost of purchase : ₹ 32,00,000

Cost Inflation Index: F.Y.2015-16:254; F.Y.2018-19:280

(ii) **Listed Shares of Earth Ltd.**

[Date of purchase – 2 May, 2018; Date of sale – 9 February, 2019]

Sale Consideration ₹ 12,40,000

Purchase cost ₹ 7,80,000

[STT paid both at the time of purchase and sale]

(iii) **Unlisted equity shares of Mars Ltd.**

[Date of purchase – 1 July, 2018; Date of sale – 7 March, 2019]

Sale Consideration ₹ 8,40,000

Purchase cost ₹ 3,72,000

Compute the total income and tax liability of the FII, Neptune Inc., for the A.Y. 2019-20, assuming that no other income is derived by Neptune Inc. during the F.Y.2018-19.

14. Examine the following transactions and discuss whether the transfer price declared by the following assessee, who have exercised a valid option for application of safe harbour rules, can be accepted by Income-tax authorities –
- (i) Mercury Ltd., an Indian company, provided data processing services to Venus Inc., which is a specified foreign company in relation to Mercury Ltd. The aggregate value of such international transactions entered into in the P.Y.2018-19 is ₹105 crores. It declared an operating profit margin of ₹16 crores. Its operating expenses were ₹80 crores.
 - (ii) Jupiter Ltd., an Indian company, provides contract R & D services relating to software development to Saturn Inc., a US company which guarantees 12% of the borrowings of Jupiter Ltd. The value of such international transactions entered into in the P.Y.2018-19 is ₹190 crores. It declared an operating profit margin of ₹40 crores against an operating expenses of ₹175 crores.

In case it is not binding on the income-tax authorities to accept the transfer price declared by Mercury Ltd. or Jupiter Ltd., what is the primary adjustment, if any, to be made by either company in the A.Y.2019-20?

15. Mr. Gopal, aged 50 years, is a resident individual having income from the following sources:
- (i) Income from a sole-proprietary business in Pune ₹ 75 lakhs.
 - (ii) Share of profit from a partnership firm in Mumbai ₹ 25 lakhs.
 - (iii) Agricultural Income (gross) from tea gardens in Country G, a foreign country with which India has no DTAA, CGD 45000. Withholding Tax on the above income CGD 9,000
 - (iv) Brought forward business loss of F.Y.2015-16 in Country G was CGD 5,000 which is not permitted to be set off against other income as per the laws of that country.
 - (v) Mr. Gopal has deposited ₹1,50,000 in public provident fund and paid medical insurance premium of ₹28,000 by account payee cheque to insure the health of himself and his wife.

Compute total income and tax liability of Mr. Gopal for the A.Y. 2019-20, assuming that 1 CGD = ₹70.

MOST APPROPRIATE OPTION – OBJECTIVE TYPE QUESTIONS

- (i) (d)
- (ii) (d)
- (iii) (c)
- (iv) (d)
- (v) (c)
- (vi) (d)
- (vii) (c)
- (viii) (b)
- (ix) (c)
- (x) (d)

SUGGESTED ANSWERS/HINTS – DESCRIPTIVE QUESTIONS

1. (i) **Sale of shares of Berkley Ltd. by PQR Ltd. to LMN Ltd. on 1.4.2010**

Since LMN Ltd. is an Indian company which holds 100% of shares of PQR Ltd., the transfer of capital asset, namely, shares of Berkley Ltd., by PQR Ltd. to LMN Ltd. would not be treated as a transfer for attracting capital gains tax liability as per section 47(v).

Hence, no capital gains tax would have been attracted on such transfer in the hands of PQR Ltd.

(ii) Disinvestment by LMN Ltd., of 7% shares held in PQR Ltd. in November, 2018

As per section 47A(1), where a holding company ceases to hold 100% of shares of the subsidiary company before the expiry of a period of eight years from the date of transfer of capital asset, the amount of capital gains not charged to tax at the time of transfer would be deemed to be income chargeable under the head "Capital gains" of the previous year in which such transfer took place.

However, in this case, the above deeming provision would not apply because the eight year period from the date of transfer expires on 31.3.2018 and the disinvestment by LMN Ltd. of 7% shares held in PQR Ltd. was only in November, 2018.

(iii) Sale of shares of Berkley Ltd. by LMN Ltd. in February 2019

This transaction would attract capital gains tax in the hands of LMN Ltd. for the A.Y.2019-20. The capital gains would be long-term, since the period of holding is more than 24 months.

The cost of acquisition to PQR Ltd. in the year 1992 (i.e., ₹ 7,00,000) or the fair market value as on 1.4.2001 (₹ 32,00,000), whichever is higher, would be deemed as the cost of acquisition in the hands of LMN Ltd.

Computation of capital gains in the hands of LMN Ltd.

Particulars	₹
Sale consideration	95,00,000
Less: Indexed cost of acquisition [₹ 32,00,000 x 280/100]	89,60,000
Long-term capital gains	5,40,000
Tax on long-term capital gains@20.8% (₹ 5,40,000 x 20.8%)	1,12,320

2. Since gross receipts of ₹ 47,80,000 of Ms. Janani from interior decoration profession carried on by her is less than ₹ 50,00,000, she can opt for presumptive tax provisions under section 44ADA.

In such a case, her income from interior decoration profession would be ₹ 23,90,000, being 50% of ₹ 47,80,000. Since all deductions allowable under sections 30 to 38 are deemed to have been given full effect to, no deduction in respect of depreciation would be allowable from the income computed on presumptive basis under section 44ADA.

I. Where Ms. Janani declares income from profession on presumptive basis u/s 44ADA

Computation of total income of Ms. Janani		
Particulars	₹	₹
Income from house property		
Self-occupied property	Nil	
Let-out Property:		
Annual Value [₹ 15,000 x 12] ³	1,80,000	
Less: Deduction u/s 24 [30% of ₹ 1,80,000]	<u>54,000</u>	
		1,26,000
Profits and gains from business or profession		
Income from interior decoration profession [50% of ₹ 47,80,000]		<u>23,90,000</u>
Total Income		<u>25,16,000</u>
Computation of tax liability of Ms. Janani		
Particulars		₹
Tax on total income = [30% of ₹ 15,16,000 (₹ 25,16,000 – ₹10,00,000) + ₹ 1,12,500]		5,67,300
Add: Health and education cess@4%		<u>22,692</u>
Total tax liability		5,89,992
Add: Interest under section 234B [1% of ₹ 5,89,900 ⁴]		5,899
Interest under section 234C [1% of ₹ 5,89,900, since the advance tax liability has to be paid in one instalment on or before 15.3.2019]		<u>5,899</u>
Total tax and interest liability		<u>6,01,790</u>
Ms. Janani can, however, declare lower profits than the presumptive profits of ₹ 23,90,000, if she maintains books of accounts under section 44AA and gets the same audited under section 44AB. In such case, she can file return on or before 30.9.2019.		

³ Rent received is taken as Annual Value in the absence of information relating to fair rent, municipal value and standard rent.

⁴ Rounded off as per Rule 119A

II Where Ms. Janani declares income from profession as per books of account

Computation of total income of Ms. Janani		
Particulars	₹	₹
Income from house property		
Self-occupied property	Nil	
Let-out property:		
Annual Value [₹ 15,000 x 12]	1,80,000	
Less: Deduction u/s 24 [30% of ₹ 1,80,000]	<u>54,000</u>	1,26,000
Profits and gains from business or profession		
Income from interior decoration profession [₹ 25,00,000 – ₹ 1,50,000]		<u>23,50,000</u>
Total Income		<u>24,76,000</u>
Computation of tax liability:		
Tax on total income = [30% of ₹ 14,76,000 (₹ 24,76,000 – ₹ 10,00,000) + ₹ 1,12,500]		5,55,300
Add: Health and education cess@4%		<u>22,212</u>
Total tax liability		<u>5,77,512</u>
Add: Interest under section 234B [1% of ₹ 5,77,500]		5,775
Interest under section 234C [See Working Note below]		<u>29,164</u>
Total tax and interest liability		<u>6,12,451</u>
Total tax and interest liability (rounded off)		<u>6,12,450</u>

Although the income from profession computed as per books of account is lower than the income from profession computed on presumptive basis under section 44ADA, however, the cumulative tax and interest liability would be higher by ₹ 10,660 (i.e., ₹ 6,12,450 - ₹ 6,01,790) in case of the former. Therefore, Ms. Janani should opt to declare income on presumptive basis under section 44ADA, in which case, she has to file her return of income on or before 31st July, 2019.

Working Note: Computation of interest under section 234C

Date	Advance tax payable till date	Short-fall	Rate of interest [1% per month]	Interest
		(₹)		(₹)
15.06.2018	15%	86,625	3% [1% x 3]	2,599
15.09.2018	45%	2,59,875	3% [1% x 3]	7,796
15.12.2018	75%	4,33,125	3% [1% x 3]	12,994
15.03.2019	100%	5,77,500	1%	<u>5,775</u>
				<u>29,164</u>

Note – The above solution has been worked out by considering that Ms. Janani pays the advance tax required to be paid in April, 2019 itself, after consulting the tax advisor in the month of April, 2019.

3. For the purpose of computation of long-term capital gains chargeable to tax under section 112A, the cost of acquisition in relation to the long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust acquired before 1st February, 2018 shall be the higher of
- (i) cost of acquisition of such asset, i.e., actual cost; and
 - (ii) lower of
 - (a) the fair market value of such asset; and
 - (b) the full value of consideration received or accruing as a result of the transfer of the capital asset.

In the four independent cases given in the question, the shares are long-term capital asset, since they are held for a period of more than 12 months preceding the date of its transfer. Accordingly, long-term capital gain/loss on transfer of STT paid listed equity shares would be determined as follows:

- (i) In the case of Mr. Ravi, the cost of acquisition of equity share of Tapti Ltd. would be ₹ 2,300, being higher of actual cost i.e., ₹ 1,200 and ₹ 2,300 (being the lower of FMV of ₹ 2,300 as on 31.1.2018 and actual sale consideration of ₹ 3,000). Thus, the long-term capital gain would be ₹ 3,50,000 i.e., $(₹ 3,000 - ₹ 2,300) \times 500$ shares.
 - (ii) In the case of Mr. Giri, the cost of acquisition of equity shares of Narmada Ltd. would be ₹ 4,200, being higher of actual cost i.e., ₹ 3,100 and ₹ 4,200 (being the lower of FMV of ₹ 4,500 as on 31.1.2018 and actual sale consideration of ₹ 4,200). Thus, the long-term capital gains would be Nil $(₹ 4,200 - ₹ 4,200) \times 700$ shares.
 - (iii) In the case of Mr. Mani, the cost of acquisition of equity shares of Cauvery Ltd. would be ₹ 2,500, being higher of actual cost i.e., ₹ 2,500 and ₹ 1,800 (being the lower of FMV of ₹ 1,800 as on 31.1.2018 and actual sale consideration of ₹ 3,200). Accordingly, the long-term capital gains would be ₹ 2,10,000 i.e., $[(₹ 3,200 - ₹ 2,500) \times 300]$.
 - (iv) In the case of Mr. Sathy, the cost of acquisition of equity shares of Mahanadi Ltd. would be ₹ 1,900, being higher of actual cost i.e., ₹ 1,900 and ₹ 1,700 (being the lower of FMV of ₹ 2,400 as on 31.1.2018 and actual sale consideration of ₹ 1,700). The long-term capital loss would be ₹ 1,20,000 $(₹ 1,700 - ₹ 1,900) \times 600$ shares.
4. The issue under consideration is whether the interest income from share application money is taxable under the head 'Income from Other Sources', or can the same be set-off against public issue expenses.

This issue came up before the Supreme Court in *CIT v. Sree Rama Multi Tech Ltd.* [2018] 403 ITR 426. The Supreme Court observed that the assessee-company was statutorily required to keep share application money in a separate account till the allotment of shares was completed. Part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the company. The interest earned was inextricably linked with the requirement of raising share capital.

The Supreme Court further observed that any surplus money deposited in the bank for the purpose of earning interest is liable to be taxed as "Income from Other Sources"; however, in this case, the share application money was deposited with the bank not to make additional income by earning interest but to comply with the statute. The interest accrued on such deposit is merely incidental. Moreover, the issue of shares relates to capital structure of the company and hence, expenses incurred in connection with the issue of shares are to be capitalized. Accordingly, the Supreme Court held that the accrued interest on deposit of share application money is eligible to be set-off against public issue expenses.

Applying the rationale of the Supreme Court ruling to the case on hand, the contention of the Assessing Officer that interest income is taxable under the head "Income from Other Sources" is **not** correct.

5. The issue under consideration is whether delay in filing appeal under section 260A can be condoned under section 14 of the Limitation Act, 1963, where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record.

This issue came up before the Supreme Court in *Spinacom India (P.) Ltd. v. CIT* [2018] 258 Taxman 128. The Supreme Court rejected the question of invoking section 14 of the Limitation Act 1963 which allows condonation of delay on demonstration of sufficient cause. The Apex Court did not accept the submission that the application before the ITAT under section 254(2) was an alternate remedy to filing of the application under section 260A. The former is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter. Under section 260A, an order of the ITAT can be challenged on substantial questions of law. The Court stated that the appellant had the option of filing an appeal under section 260A while also mentioning in the Memorandum of Appeal that its application under section 254(2) was pending before the ITAT. The Supreme Court, therefore, held that the time period for filing an appeal under section 260A does not get suspended on account of the pendency of an application before the ITAT under section 254(2).

Accordingly, applying the rationale of the above Supreme Court ruling to the facts of this case, the delay in filing appeal under section 260A due to pursuance of an alternate

remedy by way of filing an application before the ITAT under section 254(2) cannot be condoned.

6. (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, a 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. Accordingly, it has to apply 85% of such income for charitable purposes to claim exemption under section 11. 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 HelpAll 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 computers (i.e., ₹ 12 lakh) has been claimed and allowed as application of income under section 11 while computing the income of the trust for the P.Y.2017-18, depreciation on computers will not be allowed for the purpose of determining income for the purposes of application in the P.Y.2018-19.

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

7. The issue under consideration in this case is whether the increase in gross total income on account of disallowance of expenditure under section 40(a)(ia) can be considered for the purpose of deduction under section 80-IAC.

The Bombay High Court, in *CIT v. Sunil Vishwambharnath Tiwari (2016) 388 ITR 630*, observed that if, on account of non-deduction of tax at source by a company, expenses have been disallowed under section 40(a)(ia) which goes to increase the income chargeable under the head 'Profits and gains of business or profession', such enhanced income becomes eligible for deduction, as profit-linked deduction under Chapter VI-A is with reference to an assessee's gross total income.

The High Court held that the company is entitled to claim profit-linked deduction under Chapter VI-A in respect of the enhanced gross total income as a consequence of disallowance of expenditure under section 40(a)(ia).

Further, the CBDT has, in its Circular No.37/2016 dated 2.11.2016, mentioned that the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Thus, the settled position is that the disallowances made under, *inter alia*, section 40(a)(ia), relating to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

Accordingly, applying the rationale of the Bombay High Court ruling and the CBDT Circular in this regard to the facts of this case, Sigma Ltd. would be entitled to claim deduction under section 80-IAC in respect of the enhanced profits of ₹ 25 lakhs, consequent to disallowance under section 40(a)(ia). The contention of Sigma Ltd. is, therefore, correct.

8. As per section 115-O, dividend distribution tax at the rate of 17.472% (i.e., 15% plus surcharge @12% and health and education cess@4%) is leviable on dividend declared, distributed or paid by a domestic company. As per section 115-O(1A), a holding company receiving dividend from its domestic subsidiary company can reduce the same from dividend declared, distributed or paid by it for the purpose of payment of dividend distribution tax. The dividend from its domestic subsidiary company should be received in the same financial year in which the holding company declares, distributes or pays the dividend. Further, the dividend shall not be considered for reduction more than once.

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

- (1) The domestic subsidiary company should have paid the dividend distribution tax which is payable on such dividend;
- (2) The recipient holding company should be a domestic company;

For this purpose, a holding company is a company which holds more than 50% of the nominal value of equity shares of another company.

Section 115-O(1B) provides that for the purposes of determining the tax on distributed profits payable in accordance with 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.

(i) Where Vindhya Ltd. holds 52% of shares of Satpura Ltd.

In this case, Vindhya Ltd. is the holding company of Satpura Ltd. It receives dividend during the year from its subsidiary company, Satpura Ltd., which has paid the DDT as payable on such dividend. Accordingly, dividend distributed by the holding company, Vindhya Ltd., in the same year to the extent of dividend received from the subsidiary, Satpura Ltd., shall not be subject to DDT under section 115-O. Therefore, Vindhya Ltd. can reduce the amount of dividend received from Satpura Ltd. from the dividend distributed by it for computation of dividend distribution tax payable.

On the basis of the aforesaid provisions, dividend distribution tax payable by Vindhya Limited shall be computed as follows:

Particulars	₹ in lakh
Dividend distributed by Vindhya Ltd.	48.00
Less: Dividend received from subsidiary Satpura Ltd. (52% of ₹ 60 lakhs)	<u>31.20</u>
Net distributed profits	16.80
Add: Increase for the purpose of grossing up of dividend $16.80 \times \frac{15}{85}$	<u>2.96</u>
Gross dividend	<u>19.76</u>
Additional income-tax payable by Vindhya Ltd. u/s 115-O [15% of ₹ 19.76 lakh]	2.96
Add: Surcharge@12%	<u>0.36</u>
	3.32
Add: Health and education cess@4%	<u>0.13</u>
	<u>3.45</u>

Therefore, dividend distribution tax payable by Vindhya Ltd. shall be 17.472% of ₹ 19.76 lakhs (grossed up amount) i.e. ₹ 3.45 lakhs.

(ii) Where Vindhya Ltd. holds 48% of shares of Satpura Ltd.

In this case, since Vindhya Ltd. is not the holding company of Satpura Ltd., it cannot reduce the dividend received from Satpura Ltd. from dividend distributed by it, for computing dividend distribution tax payable.

Particulars	₹ in lakh
Dividend distributed by Vindhya Ltd.	48.00
Add: Increase for the purpose of grossing up of dividend $48 \times \frac{15}{85}$	<u>8.47</u>
Gross dividend	<u>56.47</u>

Additional income-tax payable by Vindhya Ltd. u/s 115-O [15% of ₹ 56.47 lakh]	8.47
Add: Surcharge@12%	<u>1.02</u>
	9.49
Add: Health and education cess@4%	<u>0.38</u>
	<u>9.87</u>

9. As per section 80AC, while computing the total income of an assessee of a previous year (**P.Y. 2018-19, in this case**) relevant to any assessment year (**A.Y. 2019-20, in this case**), any deduction is admissible, *inter alia*, under section 80-IA, such deduction shall not be allowed unless it furnishes a return of income for such assessment year on or before the due date specified in section 139(1).

Since the partnership firm, M/s. Aravali, has undertaken specified domestic transactions and has to file transfer pricing report under section 92E for A.Y.2019-20, its due date of filing return of income for A.Y.2019-20 would be 30th November, 2019 as per section 139(1). Therefore, the difference in tax liability where return is filed on or before 30th November, 2019 and where return is filed in March, 2020 has to be computed to understand the impact of late filing of return on the tax liability of the firm.

Computation of total income and tax liability of M/s. Aravali for A.Y.2019-20

- I. Where the firm files its return of income on 30th November 2019:

Particulars	₹ in lakhs
Gross Total Income	600.00
Less: Deduction under section 80-IA	<u>510.00</u>
Total Income	<u>90.00</u>
Tax liability@30%	27.00
Add: Health and education cess@4%	<u>1.08</u>
Regular income-tax payable	<u>28.08</u>
Computation of Alternate Minimum Tax payable [Section 115JC]	
Total Income	90.00
Add: Deduction under section 80-IA	<u>510.00</u>
Adjusted Total Income	<u>600.00</u>
Alternate Minimum Tax (AMT) @ 18.5% on ₹ 600 lakhs	<u>111.00</u>
Add: Surcharge@12% (Since adjusted total income > ₹ 1 crore)	<u>13.32</u>
	124.32
Add: Health and education cess@4%	<u>4.97</u>
Total tax payable (AMT)	<u>129.29</u>

Since the regular income-tax payable by the firm is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income of the firm for P.Y.2018-19 and it shall be liable to pay income-tax on such total income@18.5% [Section 115JC(1)]. Therefore, the tax payable for the A.Y.2019-20 would be ₹ 129.29 lakhs.

Tax credit for Alternate Minimum Tax [Section 115JD]	₹ in lakhs
Total tax payable for A.Y.2019-20 (Alternate Minimum Tax)	129.29
Less: Regular income-tax payable	<u>28.08</u>
To be carried forward for set-off against regular income-tax payable (upto a maximum of fifteen assessment years).	<u>101.21</u>

II. Where the firm files its return of income in March, 2020:

Where the firm files its return in March, 2020, it would be a belated return under section 139(4). Consequently, as per section 80AC, deduction under section 80-IA would not be available. In such circumstances, the gross total income of ₹ 600 lakhs would be the total income of the firm.

Particulars	₹ in lakhs
Income-tax@30% of ₹ 600 lakhs	180.000
Add: Surcharge@12% (since total income exceeds ₹ 100 lakhs)	<u>21.600</u>
Income-tax (plus surcharge)	201.600
Add: Health and education cess@4%	<u>8.064</u>
Total tax liability	<u>209.664</u>

Right course of action to minimize tax liability

The right course of action to minimize tax liability would be to file the return of income under section 139(1) on or before the due date 30.11.2019 and claim deduction under section 80-IA. In such a case, the firm can claim deduction of ₹ 510 lakhs under section 80-IA. Thereafter, consequent to the clarifications obtained, if any change is required, it can file a revised return under section 139(5) within 31.3.2020 (i.e., within the end of A.Y.2019-20) which would replace the original return filed under section 139(1). A revised return filed under section 139(5) would replace the original return filed under section 139(1).

If the firm files the return of income under section 139(1) on or before 30.11.2019, its tax liability would stand reduced to ₹ 129.29 lakhs, as against ₹ 209.664 lakhs to be paid if return is furnished after due date. Further, it would also be eligible for tax credit for alternate minimum tax under section 115JD to the extent of ₹ 101.21 lakhs. Therefore, the firm is advised to file its return of income on or before 30.11.2019.

10. Computation of MAT liability of Godavari Ltd. under section 115JB for A.Y.2019-20

Particulars	₹	₹
Book profit after adjustment of items under section 115JB(2) [except brought forward business loss and unabsorbed depreciation]		87,34,000
Less: Brought forward business loss [₹ 8,20,000 + ₹ 7,30,000]	15,50,000	
Unabsorbed depreciation [₹ 7,60,000 + ₹ 9,50,000]	17,10,000	
[Since Godavari Ltd. is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2016, the amount of total loss brought forward (including unabsorbed depreciation) is allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB].		32,60,000
Book profit computed in accordance with Explanation 1 to section 115JB(2)		54,74,000
Add: Items credited to OCI that will not be reclassified to profit or loss:		
Deferred gains on cash flow hedges	6,70,000	
Share of Other Comprehensive Income of Other Associates	2,80,000	
Re-measurement of post-employment benefit obligations	5,20,000	
Revaluation surplus for assets ₹ 8,20,000 [Book profit not to be increased by revaluation surplus for assets as per proviso to section 115JB(2A)]	Nil	
		14,70,000
		69,44,000
Less: Items debited to OCI that will not be reclassified to profit or loss:		
Deferred costs of hedging	3,80,000	
Changes in fair values of equity instruments ₹ 8,00,000 [Book profit not to be decreased by changes in fair values of equity instruments as per proviso to section 115JB(2A)]	Nil	
		3,80,000
		65,64,000
Add: One-fifth of Transition amount [Credit Balance]		
Transition amount	48,00,000	

Less: Amounts to be excluded from above		
Capital Reserve	6,00,000	
Translation difference in foreign operations	<u>5,00,000</u>	
	<u>37,00,000</u>	
One-fifth of ₹ 37,00,000		<u>7,40,000</u>
Book Profit for levy of MAT		<u>73,04,000</u>
MAT on book profit under section 115JB = 18.5% of ₹ 73,04,000		13,51,240
Add: Health and education cess@4%		<u>54,050</u>
MAT liability for A.Y.2019-20		<u>14,05,290</u>

Computation of tax credit to be carried forward

Particulars	₹
MAT liability for A.Y.2019-20 (rounded off)	14,05,290
Income-tax computed as per the normal provisions of the Act for A.Y.2019-20	13,20,000
Since the income-tax liability computed as per the regular provisions of the Income-tax Act, 1961 is less than the MAT payable, the book profit would be deemed to be the total income and tax is leviable @18.5%: The total tax liability (rounded off) is ₹ 14,05,290.	
Computation of tax credit to be carried forward	
Tax payable for A.Y.2019-20 on deemed total income	14,05,290
Less: Income-tax payable as per the normal provisions of the Act	<u>13,20,000</u>
Tax credit in respect of tax paid on deemed income	<u>85,290</u>
[Can be carried forward for 15 Assessment Years i.e., upto A.Y.2034-35]	

11. Section 264(4)(c) provides that the Principal Commissioner or Commissioner has no power to revise any order which has been made the subject matter of an appeal to the Commissioner (Appeals), even if the relief claimed in the petition is different from the relief claimed in appeal. The concept of total merger would apply in the case of section 264. It was so held by the Supreme Court in the case of *Hindustan Aeronautics Ltd v. CIT* (2000) 243 ITR 898.

Section 154(1A) provides that where any matter had been considered and decided in any proceeding by way of appeal or revision relating to an order, Assessing Officer may amend the order for rectification of mistake apparent from the record, in relation to a matter other than the matter which has been considered and decided. The concept of partial merger would apply in the case of section 154.

In the present case, since the order passed by the Assessing Officer in respect of the addition of unexplained investment of ₹ 12 lakhs became the subject matter of an appeal to the Commissioner (Appeals), the assessee, M/s. Uranus LLP, cannot apply for revision under section 264 even if the subject matter of revision i.e., addition of ₹ 4 lakhs under section 40(b) is different from the subject matter of appeal.

However, M/s. Uranus LLP can apply to the Assessing Officer for rectification of the order in respect of addition of ₹ 4 lakh under section 40(b), if the mistake is apparent from the record, as this matter has not been considered and decided in any proceeding by way of appeal or revision.

In the view of above, the assessee, M/s. Uranus LLP should seek rectification under section 154.

12. M/s. Pluto LLP is deemed to have under-reported its income since:

- (1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and
- (2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Total income assessed under section 143(3)	40,00,000	
(-) Total income determined u/s 143(1)(a)	30,00,000	
	10,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 10 lakhs <i>plus</i> tax on total income of ₹ 30 lakhs determined u/s 143(1)(a) [30% of ₹ 40 lakh + HEC@4%]	12,48,000	
Less: Tax on total income determined u/s 143(1)(a) [30% of ₹ 30 lakh + HEC@4%]	9,36,000	
	3,12,000	
Penalty leviable@50% of tax payable		1,56,000
<u>Reassessment under section 147</u>		
<u>Under-reported income:</u>		
Total income reassessed under section 147	45,00,000	
(-) Total income assessed under section 143(3)	40,00,000	
	5,00,000	

Tax payable on under-reported income:		
Tax on under-reported income of ₹ 5 lakhs <i>plus</i> tax on total income of ₹ 40 lakhs assessed u/s 143(3) [30% of ₹ 45 lakh + HEC@4%]	14,04,000	
Less: Tax on total income assessed u/s 143(3) [30% of ₹ 40 lakh + HEC@4%]	12,48,000	
	1,56,000	
Penalty leviable@50% of tax payable		78,000

13. **Computation of total income of Neptune Inc., a notified FII, for A.Y.2019-20**

Particulars	₹	₹
Interest on Rupee Denominated Bonds	8,50,000	
Dividend income of ₹ 6,20,000 [Exempt under section 10(34)]	Nil	
Interest on securities [No deduction is allowable in respect of expenses incurred in respect thereof]	17,32,000	25,82,000
Long-term capital gains on sale of bonds of Jupiter Ltd.		
Sale consideration	47,00,000	
Less: Cost of acquisition	32,00,000	
[Benefit of indexation is not allowable]		15,00,000
Short-term capital gains on sale of STT paid equity shares of Earth Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	7,80,000	
		4,60,000
Short-term capital gains on sale on unlisted equity shares of Mars Ltd.		
Sale consideration	8,40,000	
Less: Cost of acquisition	3,72,000	
		4,68,000
Total Income		50,10,000

Computation of tax liability of Neptune Inc. for A.Y.2019-20

Particulars	₹
Tax@5% on interest of ₹ 8,50,000 received from an Indian company on investment in rupee denominated bonds = 5% x ₹ 8,50,000	42,500
Tax@20% on interest on securities of ₹ 17,32,000 = 20% x ₹ 17,32,000	3,46,400

Tax@10% on long-term capital gains on sale of bonds of Jupiter Ltd. = 10% x ₹ 15,00,000	1,50,000
Tax@15% on short-term capital gains on sale of listed equity shares of Earth Ltd., in respect of which STT has been paid = 15% of ₹ 4,60,000	69,000
Tax@30% on short-term capital gains on sale of unlisted equity shares of Mars Ltd. = 30% of ₹ 4,68,000	<u>1,40,400</u>
	7,48,300
Add: HEC@4%	<u>29,932</u>
Tax Liability	<u>7,78,232</u>
Tax Liability (rounded off)	<u>7,78,230</u>

14. (i) Venus Inc. is a specified foreign company in relation to Mercury Ltd. Therefore, the condition of Mercury Ltd. holding shares carrying not less than 26% of the voting power in Venus Inc is satisfied. Hence, Venus Inc. and Mercury Ltd. are deemed to be associated enterprises as per section 92A(2). Therefore, provision of data processing services by Mercury Ltd., an Indian company, to Venus Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Data processing services with the use of information technology falls within the definition of "information technology enabled services", and is hence, an eligible international transaction. Since Mercury Ltd. is providing data processing services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Since the aggregate value of transactions entered into in the P.Y.2018-19 exceeds ₹ 100 crore but does not exceed ₹ 200 crore, Mercury Ltd. should have declared an operating profit margin of not less than 18% in relation to operating expense, to be covered within the scope of safe harbour rules. In this case, since Mercury Ltd. has declared an operating profit margin of 20% $\left(\text{i.e. } \frac{16}{80} \times 100 \right)$, the same is in

accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by Mercury Ltd in respect of such international transaction.

Therefore, Mercury Ltd. need not make any primary adjustment.

- (ii) Saturn Inc., a foreign company, guarantees 12% of the total borrowings of Jupiter Ltd., an Indian company. Since Saturn Inc. guarantees not less than 10% of the total borrowings of Jupiter Ltd., Saturn Inc. and Jupiter Ltd. are deemed to be associated enterprises as per section 90A(2). Therefore, provision of contract R & D

services relating to software development by Jupiter Ltd., an Indian company, to Saturn Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Provision of contract R& D services in relation to software development is an eligible international transaction. Since Jupiter Ltd. is providing such services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Since the value of the international transaction does not exceed ₹ 200 crore, Jupiter Ltd. should have declared an operating profit margin of not less than 24% in relation to operating expense, to be covered within the scope of safe harbour rules. In this case, since Jupiter Ltd. has declared an operating profit margin of 22.86% $\left(\text{i.e. } \frac{40}{175} \times 100 \right)$, the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by Jupiter Ltd.

Jupiter Ltd. has to, therefore, make a primary adjustment of ₹2 crores [i.e., ₹ 42 crores, being 24% of ₹ 175 crores – ₹ 40 crores] in the A.Y.2019-20.

15. Computation of total income and tax liability of Mr. Gopal for A.Y. 2019-20

Particulars	₹	₹
Profits and gains from business and profession		
Income from sole proprietary concern in India	75,00,000	
Share of profit from a partnership firm in India of ₹ 25 lakhs, is exempt	Nil	
Business profit	75,00,000	
Less: Business Loss ⁵ in Country G (CGD 5000 x ₹ 70/CGD)	<u>3,50,000</u>	71,50,000
Income from Other Sources		
Agricultural income from tea gardens in Country G, is taxable in India (CGD 45000 x ₹ 70/CGD)		<u>31,50,000</u>
Gross Total Income		1,03,00,000

⁵ Since the eight year has not expired from the assessment year in which such business loss was incurred, such business loss can be set-off against current year business income.

Less: Deductions under Chapter VI-A		
Under section 80C [deposit in PPF]	1,50,000	
Under section 80D	<u>25,000</u>	
[Medi-claim premium paid ₹28,000, restricted to		<u>1,75,000</u>
Total Income		<u>1,01,25,000</u>
Tax on total income		
Tax on ₹ 1,01,25,000 [(30% x ₹ 91,25,000) plus ₹ 1,12,500]		28,50,000
Add: Surcharge@15%, since total income exceeds ₹ 1 crore		<u>4,27,500</u>
		32,77,500
Less: Marginal Relief (See Working Note below)		<u>58,750</u>
		32,18,750
Add: HEC@4%		<u>1,28,750</u>
		<u>33,47,500</u>
Average rate of tax in India	33.06%	
[i.e., ₹ 33,47,500/₹ 1,01,25,000 x 100]		
Average rate of tax in Country G	20%	
[i.e., CGD 9000/CGD 45000]		
Doubly taxed income [₹ 31,50,000 – ₹ 3,50,000]	28,00,000	
Rebate under section 91 on ₹ 28,00,000 @20% (lower of average Indian tax rate and rate of tax in Country G)		<u>5,60,000</u>
Tax payable in India [₹ 33,47,500 – ₹ 5,60,000]		<u>27,87,500</u>

Note: Since Mr. Gopal is resident in India for the P.Y.2018-19, his global income would be subject to tax in India. He is eligible for deduction under section 91 since the following conditions are fulfilled:-

- He is a resident in India during the relevant previous year.
- Agricultural income accrues or arises to him outside India during that previous year.
- Such agricultural income is not deemed to accrue or arise in India during the previous year.
- The income in question i.e., agricultural income, has been subjected to income-tax in Country G in his hands and he has paid tax on such income in Country G.

- (e) *There is no agreement under section 90 for the relief or avoidance of double taxation between India and Country G, where the income has accrued or arisen.*

Working Note : Computation of Marginal Relief

(A) Tax payable including surcharge on total income of ₹ 1,01,25,000		
₹ 2,50,000 – ₹ 5,00,000@5%	₹ 12,500	
₹ 5,00,000 – ₹ 10,00,000@20%	₹ 1,00,000	
₹ 10,00,000 – ₹ 1,01,25,000@30%	<u>₹ 27,37,500</u>	
Total	₹ 28,50,000	
Add: Surcharge @ 15%	<u>₹ 4,27,500</u>	₹ 32,77,500
(B) Tax payable on total income of ₹ 1 crore [(₹ 12,500 plus		
₹ 1,00,000 plus ₹ 27,00,000) plus surcharge@10%]		<u>₹ 30,93,750</u>
(C) Excess tax payable (A)-(B)		₹ 1,83,750
(D) Marginal Relief (₹ 1,83,750 – ₹ 1,25,000, being the amount		
of income in excess of ₹ 1,00,00,000)		₹ 58,750

PAPER 7: DIRECT TAX LAWS

SECTION – A: STATUTORY UPDATE

The direct tax laws, as amended by the Finance Act, 2018, including significant notifications/circulars issued upto 31st October, 2018 are applicable for May, 2019 examination. The relevant assessment year for May, 2019 examination is A.Y.2019-20. The significant notifications/circulars issued upto 31st October, 2018, relevant for May, 2019 examination but not covered in the September, 2018 edition of the Study Material, are given hereunder.

STUDY MATERIAL MODULE-1

Chapter 3: Income which do not form part of Total Income

Computation of admissible deduction u/s 10AA of the Income-tax Act, 1961 [Circular No. 4/2018, Dated 14-8-2018]

As per the provisions of section 10AA(7), the profits derived from export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking.

Further as per clause (i) to *Explanation 1* to section 10AA, "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee, but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India.

The issue of whether freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover" and "total turnover" while working out deduction admissible under section 10AA on the ground that they are attributable to delivery of articles or things outside India has been highly contentious. Similarly, the issue whether charges for rendering services outside India are to be excluded both from "export turnover" and "total turnover" while computing deduction admissible under section 10AA on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in rendering services outside India has also been highly contentious.

The controversy has been finally settled by the Hon'ble Supreme Court vide its judgment dated 24.4.2018 in the case of Commissioner of Income Tax, Central-III Vs. M/s HCL Technologies Ltd. (CA No. 8489-8490 of 2013, NJRS Citation 2018-LL-0424-40), in relation to section 10A.

The issue had been examined by CBDT and it is clarified, in line with the above decision of the Supreme Court, that freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover", while working out deduction admissible under section 10AA to the extent they are attributable to the delivery of articles or things outside India.

Similarly, expenses incurred in foreign exchange for rendering services outside India are to be excluded from both "export turnover" and "total turnover" while computing deduction admissible under section 10AA.

Note: Though this CBDT Circular is issued in relation to erstwhile section 10A, the same is also relevant in the context of section 10AA. Accordingly, the reference to section 10A in the Circular and the relevant sub-section and Explanation number thereto have been modified and given with reference to section 10AA and the corresponding sub-sections, Explanation number and clause of Explanation.

Chapter 6: Profits and gains of business or profession

Determining fair market value of inventory on the date of conversion into capital asset [Notification No. 42/2018, dated 30-08-2018]

Section 28(via) has been inserted by the Finance Act, 2018 to provide that fair market value of the inventory on the date of its conversion or treatment as capital asset, determined in the prescribed manner, would be chargeable to tax as business income.

Accordingly, the CBDT, has vide this notification, inserted Rule 11UAB to prescribe the manner of determination of fair market value (FMV) of the inventory on the date of conversion.

[Note: For detailed reading of 11UAB of the Income-tax Rules, 1962, students may visit <https://www.incometaxindia.gov.in/Pages/default.aspx>]

Chapter 7: Capital Gains

Notification of transactions in equity shares in respect of which the condition of chargeability to STT at the time of acquisition for claiming concessional tax treatment under section 112A shall not apply [Notification No. 60/2018, dated 01-10-2018]

The Finance Act, 2018 has withdrawn exemption under section 10(38) and has inserted new section 112A in the Income-tax Act, 1961, to provide that long-term capital gains arising from transfer of a capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, shall be taxed at 10% of such capital gains exceeding one lakh rupees. The said section, *inter alia*, provides that the provisions of the section shall apply to the capital gains arising from a transfer of long-term capital asset, being an equity share in a company, only if securities transaction tax (STT) has been paid on acquisition and transfer of such capital asset.

However, to provide for the applicability of the concessional tax regime under section 112A to genuine cases where the STT could not have been paid, it has also been provided in section 112A(4) that the Central Government may specify, by notification, the nature of acquisitions in respect of which the requirement of payment of STT shall not apply in the case of acquisition of equity share in a company.

In view of the above, the Central Government has, vide notification No. 60/2018, dated 1st October, 2018, notified that the condition of chargeability of STT shall not apply to the acquisition of equity shares entered into

- before 1st October, 2004 or
- on or after 1st October, 2004 which are not chargeable to STT, other than the following transactions.

In effect, only in respect of the following transactions mentioned in column (2), the requirement of paying STT at the time of acquisition for availing the benefit of concessional rate of tax under section 112A would apply. It may be noted that the exceptions are listed in column (3) against the transaction. The requirement of payment of STT at the time of acquisition for availing benefit of concessional tax rate under section 112A will not apply to acquisition transactions mentioned in column (3).

(1)	(2)	(3)
	Transaction	Non-applicability of condition of chargeability of STT
(a)	Where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue	Where acquisition of listed equity share in a company—
		(i) has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
		(ii) is by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;
		(iii) is by an investment fund referred to in clause (a) of Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;
		(iv) is through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply.

(b)	Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India	Following acquisitions of listed equity share in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956:	
		(i)	acquisition through an issue of share by a company other than through preferential the issue referred to in (a);
		(ii)	acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;
		(iii)	acquisition by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
		(iv)	acquisition under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
		(v)	acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India;
		(vi)	acquisition in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
		(vii)	acquisition from the Government;
		(viii)	acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;
(ix)	acquisition by mode of transfer referred to in section 47 (e.g., transfer of capital asset under a gift, an irrevocable trust, transfer of capital asset between holding company and its subsidiary, transfer pursuant to amalgamation, demerger, etc.) or section 50B (slump sale) or section 45(3)		

		(Introduction of capital asset as capital contribution in firm/ AOPs/ BOIs) or section 45(4) (Distribution of capital assets on dissolution of firm/ AOPs/ BOIs) of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in (a), (b) or (c) listed in column (2) [other than the exceptions listed in column (3)]
(c)	acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 and the rules made thereunder;	

Chapter 8: Income from Other Sources

Exception notified for the purposes of clause (ii) of the proviso to section 56(2)(viib) [Notification No. 24/2018, dated 24-05-2018]

Where a company, other than a company in which public are substantially interested, issues shares at a premium to a person being a resident, section 56(2)(viib) brings to tax in the hands of such company, the difference between the aggregate consideration received for such shares as exceeds the fair market value of the shares under the head "Income from Other Sources".

However, such provision would not be attracted where the consideration for issue of such shares is received by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Earlier the Central Government had, vide Notification No. 45/2016, dated 14.6.2016, notified classes of persons, i.e., a person defined under section 2(31) of the Income-tax Act, 1961,

being a resident, who makes payment of an amount exceeding the face value of shares of the “startup” company, as consideration for issue of such shares.

In supersession of the above mentioned Notification, the Central Government has, vide this notification, notified that the provisions of section 56(2)(viib) shall not apply to consideration received by a company, being an eligible start-up for the purposes of deduction under section 80-IAC, for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification under para 4(3)(i) of the notification number G.S.R. 364(E), dated 11th April, 2018 issued by the Department of Industrial Policy and Promotion.

Accordingly, vide this notification, the eligibility criteria for non-applicability of section 56(2)(viib) have been specified in relation to the recipient company rather than the class or classes of persons making payment for issue of shares to the company.

This notification shall be deemed to have come into effect from 11.04.2018.

Note – Accordingly, students are advised to ignore para 1 in page 8.10 of Module 1 of the Study Material and instead read this notification.

Further, for the meaning of the term “startup” and conditions specified in notification number G.S.R. 364(E), dated 11th April, 2018 issued by the Department of Industrial Policy and Promotion, students may refer page no. 8.10 of Module 1 of the Study material.

STUDY MATERIAL MODULE-3

Chapter 15: Deduction, Collection and Recovery of Tax

No tax is required to be deducted at source on interest payable on “Power Finance Corporation Limited 54EC Capital Gains Bond” and “Indian Railway Finance Corporation Limited 54EC Capital Gains Bond” - Notification No. 27 & 28/2018, dated 18-06-2018

Section 193 (Interest on securities) provides that the person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @ 10%, being the rates in force on the amount of the interest payable.

As per clause (iib) of the proviso to section 193, no tax is required to be deducted at source from any interest payable on such debentures, issued by any institution or authority, or any public sector company, or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Accordingly, the Central Government has, vide this notification, specified -

- (i) "Power Finance Corporation Limited 54EC Capital Gains Bond" issued by Power Finance Corporation Limited {PFCL} and
- (ii) "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" issued by Indian Railway Finance Corporation Limited {IRFCL}

The benefit of this exemption would, however, be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs PFCL/IRFCL by registered post within a period of sixty days of such transfer.

Chapter 18: Appeals and Revision

Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Circular No. 3/2018, Dated 11-7-2018 and F. No. 279/Misc. 142/2007-ITJ (Pt), Dated 20-8-2018

Circular No. 21/2015 dated 10.12.2015 specified monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court.

In supersession of the above Circular, it has been decided by the CBDT that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S. No.	Appeals/SLPs in Income-tax matters	Monetary Limit (₹)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

For further details regarding the meaning of 'tax effect' in different situations and methodology to be followed in such cases, the detailed circular may be referred.

Cases where adverse judgments should be contested on merits even if tax effect is less than the specified monetary limits

Adverse judgments relating to the issues enumerated hereunder should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or
- (d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.
- (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).
- (f) Cases where prosecution has been filed by the Department and is pending in the Court.

STUDY MATERIAL MODULE-4

Chapter 1: Non-resident Taxation

Notification of exceptions, modifications and adaptations under Section 115JH for applicability of the provisions of the Income-tax Act on a foreign company said to be resident in India on account of PoEM [Notification No. 29/2018, dated 22-06-2018]

With effect from 1.4.2017, Chapter XII-BC consisting of Section 115JH has been inserted by the Finance Act, 2016 to provide that where a foreign company is said to be resident in India in any previous year on account of Place of Effective Management (PoEM) and such foreign company has not been resident in India in any of the previous years preceding the said previous year, then, notwithstanding anything contained in this Act and subject to the conditions as may be notified by the Central Government in this behalf, the provisions of this Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply with such exceptions, modifications and adaptations as may be specified in that notification for the said previous year.

Accordingly, the Central Government has, vide this Notification, specified the exceptions, modifications and adaptations subject to which, the provisions of the Act relating to computation of income, treatment of unabsorbed depreciation, set-off or carry forward and set off of losses, special provision relating to avoidance of tax and the collection and recovery of taxes shall apply in a case where a foreign company is said to be resident in India in any previous year on account of its POEM being in India and the such foreign company has not been resident in India before the said previous year.

Particulars	Provisions
Determination of opening WDV	<u>If the foreign company is assessed to tax in the foreign jurisdiction</u> Where depreciation is required to be taken into account for the purpose of computation of its taxable income, the WDV of the depreciable asset as per the tax record in the foreign country on the

	1st day of the previous year shall be adopted as the opening WDV for the said previous year. Where WDV is not available as per tax records, the WDV shall be calculated assuming that the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction. The WDV so arrived at as on the 1st day of the previous year shall be adopted to be the opening WDV for the said previous year. <u>If the foreign company is not assessed to tax in the foreign jurisdiction</u> WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.
Brought forward loss and unabsorbed depreciation	<u>If the foreign company is assessed to tax in the foreign jurisdiction</u> Brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year. <u>If the foreign company is not assessed to tax in the foreign jurisdiction</u> Brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said previous year. <u>Other provisions</u> Such brought forward loss and unabsorbed depreciation shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year. However, the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which has become chargeable to tax in India on account of it becoming resident in India due to application of POEM. In cases where the brought forward loss and unabsorbed depreciation originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward in India.
Period of profit and loss account	The foreign company is required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto

and balance sheet in cases where accounting year of foreign company does not end on 31st March	31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident. The foreign company is also required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its POEM. Examples: Example 1: If the accounting year of the foreign company is a calendar year and the company becomes resident in India during P.Y. 2018-19 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st January, 2018 to 31st March, 2018. It is also required to prepare profit and loss account and balance sheet for the period 1st April, 2018 to 31st March, 2019. For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period 1st January, 2018 to 31st March, 2018 is less than 6 months, it is to be included in the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India for the first time. Accordingly, the profit and loss and balance sheet of the 15 month period from 1 January, 2017 to 31st March, 2018 is to be prepared. Example 2: If the accounting year of the foreign company is from 1st July to 30th June and the company becomes resident in India during P.Y. 2018-19 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st July, 2017 to 31st March, 2018. It is also required to prepare profit and loss account and balance sheet for the period 1st April, 2018 to 31st March, 2019. For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period is more than 6 months, it is to be treated as a separate accounting year. The loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.
Applicability of provisions of Chapter XVII-B (TDS provisions)	Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply. Compliance to those provisions of Chapter XVII-B of the Act as are applicable to the foreign company prior to its becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter.

	The provisions of section 195(2) relating to application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax shall apply in such manner so as to include payment to the foreign company.
Availability of deduction under section 90 or 91 (Foreign tax credit)	The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 90 or section 91 of the Act. Where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India in respect of the income to which it relates and shall be in accordance with the provisions of rule 128 of the Income-tax Rules, 1962 [Given as Annexure 4 at the end of this material].
Non applicability of the notification	The above exceptions, modifications and adaptations shall not apply in respect of such income of the foreign company which otherwise would have been chargeable to tax in India, even if the foreign company had not become Indian resident.
Applicability of the notification where foreign company becomes resident in the subsequent previous year also	In a case where the foreign company is said to be resident in India during a previous year, immediately succeeding a previous year during which it is said to be resident in India; the exceptions, modifications and adaptations shall apply to the said previous year subject to the condition that the WDV, the brought forward loss and the unabsorbed depreciation to be adopted on the 1st day of the previous year shall be those which have been arrived at on the last day of the preceding previous year in accordance with the provisions of this notification.
No effect on other transactions	<i>Any transaction of the foreign company with any other person or entity under the Act shall not be altered only on the ground that the foreign company has become Indian resident.</i>
Applicability of other provisions relating to foreign company	Subject to the above exceptions, modifications and adaptations specifically provided vide this notification, the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly. Consequently, the provisions specifically applicable to,— (i) a foreign company, shall continue to apply to it; (ii) non-resident persons, shall not apply to it; and (iii) the provisions specifically applicable to resident, shall apply to it.
Applicability of tax rate on foreign company	In case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company i.e., 40% shall

	remain the same, i.e., rate of income-tax applicable to the foreign company even though residency status of the foreign company changes from non-resident to resident on the basis of POEM.
Applicability of notification	This notification shall be deemed to have come into force from the 1st April, 2017.
Meaning of foreign jurisdiction	The place of incorporation of the foreign company.
Applicability of rule 115 of the Income-tax Rules, 1962.	The rate of exchange for conversion into rupees of value expressed in foreign currency, wherever applicable, shall be in accordance with provision of rule 115 of the Income-tax Rules, 1962. [Given as Annexure 2 at the end of this material]

Exemption to interest income on specified off-shore Rupee Denominated Bonds [Press Release, dated 17-09-2018]

Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India before 1.7.2020 is liable for concessional rate of tax of 5%. Consequently, section 194LC provides for the deduction of tax at a lower rate of 5% on the said interest payment.

Consequent to review of the state of economy on 14.9.2018 by the Prime Minister, the Finance Minister has announced a multi-pronged strategy to contain the Current Account Deficit (CAD) and augment the foreign exchange inflow. In this background, low cost foreign borrowings through off-shore rupee denominated bond have been further incentivised to increase the foreign exchange inflow.

Accordingly, it has been decided that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC.

SECTION – B: QUESTIONS AND ANSWERS

OBJECTIVE TYPE QUESTIONS

From the options (a), (b), (c) and (d) given in each question, choose the most appropriate option.

- (i) A Pvt. Ltd. is a closely held Indian company. It is a subsidiary of a foreign company Y Inc. which had already issued 5,00,000 shares to its shareholders. During P.Y. 2017-18, it incurred a loss of ₹ 10 crores which couldn't be set off and hence, was carried forward. Further, there was also unabsorbed depreciation of ₹ 1 crore. During P.Y. 2018-19, Y Inc. amalgamated with Z Inc. and persons holding 2,45,000 shares of Y Inc. became the

shareholders of Z Inc. Determine whether the brought forward loss of ₹ 10 crores and unabsorbed depreciation of ₹ 1 crore can be set off by A Pvt. Ltd. during P.Y. 2018-19.

- (a) Loss cannot be set off but the unabsorbed depreciation can be set off.
 - (b) Loss can be set off but the unabsorbed depreciation cannot be set off.
 - (c) Both loss and unabsorbed depreciation can be set off.
 - (d) Both loss and unabsorbed depreciation cannot be set off
- (ii) Mr. Shiv was travelling from Delhi to Jodhpur on 05.07.2018 carrying FDRs of ₹ 20 Lakhs. The said FDRs were seized by the police authorities and subsequently, requisitioned by the income-tax authorities u/s 132A. The requisition was made on 20.07.2018. Now, the Assessing Officer has issued notices to Shiv u/s 153A for A.Y. 2009-10 to A.Y. 2018-19. Whether the said notices issued by the Assessing Officer u/s 153A are valid?
- (a) Invalid. Notices can be issued u/s 153A in the present case by the Assessing Officer only for A.Y. 2013-14 to A.Y. 2018-19, since FDRs do not constitute an asset for the purpose of section 153A.
 - (b) Invalid. Notices can be issued u/s 153A in the present case by the Assessing Officer for A.Y. 2013-14 to A.Y. 2019-20.
 - (c) Notices are valid for A.Y. 2013-14 to A.Y. 2018-19. However, for A.Y. 2009-10 to A.Y. 2012-13, notices can be issued u/s 153A only if the Assessing Officer has any evidence which reveals that income, represented in form of asset is greater than or equal to ₹ 50 lakhs.
 - (d) Notices are valid for A.Y. 2009-10 to A.Y. 2018-19 as notices in case of requisition can be issued for 10 assessment years immediately preceding the A.Y. relevant to the P.Y. in which requisition is made.
- (iii) XYZ is a charitable trust registered u/s 12AA w.e.f 01.04.2010. During the P.Y. 2017-18, it received a specific corpus donation for construction of building which was claimed as exempt u/s 11 during the said previous year. Now, during the P.Y. 2018-19, it desires to claim depreciation on such building as application of its income. Comment upon the validity of the said claim of depreciation.
- (a) Depreciation can be claimed as the acquisition of building was not claimed as application of income u/s 11(1)(a).
 - (b) Depreciation cannot be claimed as the specific corpus donation was already claimed as exempt during P.Y. 2017-18.
 - (c) Depreciation can be claimed as it is a statutory deduction and no restriction regarding the same has been provided in section 11.

- (d) It is upon the discretion of XYZ to either claim specific corpus donation for construction of building as exempt in the year of receipt or claim depreciation on building as application of income during various years.
- (iv) A is a resident individual aged 45 years. Find out his tax liability for A.Y. 2019-20 on the basis of the following particulars:
- | | |
|--|-----------|
| Business income | 5,00,000 |
| Dividend from different domestic companies
(dividend distribution tax has been paid by these companies) | |
| - G Ltd. | 40,00,000 |
| - H Ltd. | 10,000 |
| - I Ltd. | 11,90,000 |
| Expenditure for earning dividend income | 2,60,000 |
- (a) ₹ 4,49,800
 (b) ₹ 6,09,180
 (c) ₹ 4,22,760
 (d) ₹ 13,000
- (v) The tax liability of Mr. Sunil for the financial year 2018-19 came to ₹ 1,54,000. He has paid advance tax of ₹ 1,38,000 and there was a TDS credit of ₹ 44,000 in his account. He filed his return of income on 30th July, 2019 claiming the refund due. His assessment was completed under section 143(1) and he was granted the refund on 15th February, 2020. Subsequently, his case was selected for scrutiny and his income was assessed under section 143(3). As per the assessment order dated 25th August, 2020, his income was recomputed after making certain additions and his revised tax liability was computed at ₹ 1,76,000. Whether he will be liable to pay any interest on the excess refund granted to him? If yes, then for what period?
- (a) Sunil will be liable to pay interest on the excess refund of ₹ 22,000 at the rate of ½ percent for a period of 7 months.
 (b) Sunil will not be liable to pay any interest on the excess refund granted to him.
 (c) Sunil will be liable to pay interest on the excess refund of ₹ 22,000 at the rate of 1 percent for a period of 6 months.
 (d) Sunil will be liable to pay interest on the total refund of ₹ 28,000 at the rate of ½ percent for a period of 7 months.
- (vi) P Ltd. is a domestic company which filed its return of income for A.Y. 2019-20 declaring a total income of ₹ 1,15,00,000. The assessment in its case was opened by the Assessing Officer by issuing notice u/s 143(2). The Assessing Officer doubted the

genuineness of loans taken by the company and added an amount of ₹ 5,00,000 to the total income u/s 68 as cash credits. What shall be the effective rate at which the said income of ₹ 5,00,000 shall be taxable in the hands of P Ltd.?

- (a) 77.25 %
- (b) 66.768 %
- (c) 78 %
- (d) 33.384 %

(vii) Mr. A who is the tax consultant of X Pvt. Ltd. is computing the income from business of the company for A.Y. 2018-19 for determining the tax liability. X Pvt. Ltd. is not liable for tax audit u/s 44AB during the said year. While computing the business income under the normal provisions of the Income-tax Act, 1961, Mr. A has duly considered the provisions of the Income Computation and Disclosure Standards ("ICDS") wherever applicable. However, Mr. A is confused regarding the applicability of ICDS while computing book profits for determining the MAT liability of the company u/s 115JB. Advise Mr. A regarding the same.

- (a) Provisions of ICDS will not apply while computing "book profits" for the purposes of MAT as ICDS are applicable only for computation of income under the regular provisions of the Income-tax Act, 1961.
- (b) Provisions of ICDS will apply while computing "book profits" for the purposes of MAT as ICDS are applicable for computing income under the "Profits and gains of business or profession", whether computed under the normal provisions or on the basis of book profits under MAT provisions.
- (c) Provisions of ICDS will not apply while computing "book profits" for the purposes of MAT as ICDS are not applicable in the case of an assessee not liable for tax audit.
- (d) Provisions of ICDS will apply while computing "book profits" for the purposes of MAT as no exception regarding the same has been carved out in the notification with respect to ICDS.

(viii) Mr. X purchases 1,000 unlisted equity shares of ₹ 10 each in A Ltd. on 10.05.2018 @ ₹ 60. On 20.10.2018, he transfers 800 equity shares @ ₹ 30 per share and remaining 200 shares are transferred on 20.12.2018 @ ₹ 20 per share. A Ltd. declares 50 percent dividend (record date: 03.08.2018). Also, during the previous year 2018-19, X has also earned long term capital gain of ₹ 96,000 on sale of a capital asset. Compute the amount of short term capital loss on sale of shares in question that can be set off from the long term capital gain of ₹ 96,000.

- (a) ₹ 28,000
- (b) ₹ 32,000
- (c) ₹ 27,000
- (d) ₹ 8,000

- (ix) Mr. Gagan, aged 67 years and resident, is a retired person earning a monthly pension of ₹ 12,000 from his employer. He purchased a piece of land in Delhi in December, 2010 and sold the same in April, 2018. Taxable LTCG amounted to ₹ 2,80,000. Apart from pension income and gain on sale of land, he is not having any other income. What will be his tax liability (rounded off) for the year 2018-19?
- (a) ₹ 25,790
 (b) ₹ 6,450
 (c) ₹ 4,370
 (d) ₹ 17,470
- (x) ABC India Pvt. Ltd and XYZ India Pvt. Ltd are related parties, as defined under section 40A(2)(b), who have entered into a transaction for purchase of goods for ₹ 25 lacs on 2nd April, 2018. The Arm Length Price for such goods is ₹ 15 lacs. Aggregate value of such transactions in the previous year 2018-19 is ₹ 22.5 crores. Can the transaction be considered as a specified domestic transaction to attract transfer pricing provisions?
- (a) Yes, as the aggregate transaction value exceeds ₹ 20 crores
 (b) Yes, as parties are related parties.
 (c) No, transfer pricing provisions are not applicable in this case
 (d) Yes, since parties are related parties and the aggregate transaction value exceeds ₹ 20 crores

DESCRIPTIVE QUESTIONS

1. Mr. Prem commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2018.

	Particulars	Food grains	Sugar	Edible Oil
		₹ in lakhs		
(1)	Profits from business (computed) before allowing deduction under section 35AD/section 32	125	60	30
(2)	Capital expenditure on land and building purchased exclusively for the business (January 2018 - March 2018) and capitalized in the books of account as on 1 st April, 2018	120	90	75
(3)	Cost of land included in (2) above	75	60	45
(4)	Capital expenditure incurred during P.Y.2018-19 on extension/reconstruction of building purchased and used exclusively for the business	30	20	10

Compute Mr. Prem's total income and tax liability for the A.Y.2019-20, assuming that Mr. Prem does not have any income other than income from the above businesses.

2. Compute the long-term capital gains/loss on transfer of listed equity shares (STT paid both at the time of acquisition and transfer of shares) for the A.Y.2019-20, in the four independent cases given below:

	Name of Co.	No. of shares	Date of acquisition	Cost of acquisition (per share)	Date of transfer	Sale price (per share)	FMV as on 31.1.2018 (per share)
Mr. Ganesh	A Ltd.	1,000	28.12.2016	₹ 1,000	1.5.2018	₹ 2,500	₹ 2,000
Mr. Rajesh	B Ltd.	2,000	30.11.2016	₹ 3,000	1.6.2018	₹ 5,000	₹ 6,500
Mr. Sridhar	C Ltd.	3,000	1.1.2017	₹ 2,000	1.7.2018	₹ 3,000	₹ 1,500
Mr. Vaibhav	D Ltd.	4,000	15.1.2017	₹ 4,000	1.8.2018	₹ 2,500	₹ 6,000

3. Mr. Dheeraj has commenced the business of manufacture of paper on 1.4.2018. He employed 180 new employees during the P.Y.2018-19, the details of whom are as follows -

	No. of employees	Date of employment	Regular/ Contractual	Total monthly emoluments per employee (₹)
(i)	51	1.4.2018	Regular	23,000
(ii)	46	1.6.2018	Regular	26,000
(iii)	48	1.8.2018	Contractual	27,000
(iv)	35	1.10.2018	Regular	24,000

The regular employees participate in recognized provident fund while the contractual employees do not. The emoluments are paid by use of ECS through a bank account.

- (i) Compute the deduction, if any, available to Mr. Dheeraj for A.Y.2019-20, if the profits and gains derived from manufacture of paper that year is ₹ 74 lakh and his total turnover is ₹ 2.56 crore.
- (ii) Would your answer change if Mr. Dheeraj has commenced the business of manufacturing of leather products (and not paper) on 1.4.2018 and the above particulars related to such business?

4. M/s Satpura & Co., a partnership firm, has earned a gross total income of ₹ 420 lacs for the year ended 31-3-2019. The firm has undertaken few international transactions during the year 2018-19 and has to file transfer pricing report.

The Gross Total Income includes a profit of ₹ 330 lacs derived from the business of developing a SEZ, eligible for deduction under section 80-IAB. This is the fifth year of operation and M/s Satpura & Co. is a developer.

There are some grey areas in the taxation workings and hence, the firm is contemplating to file the return of income on 10.01.2020, after seeking clarifications from tax experts.

Advise the assessee-firm by working out the total income and tax payable, the appropriate due date of filing return of income.

What is the practical solution as regards obtaining clarifications, which might or might not have an impact on the total income?

5. Mega Tea Ltd. is a tea company engaged in cultivating and processing tea in its factory for marketing. The company distributed dividend of ₹ 25 lakhs to its shareholders. The Assessing Officer was of the view that the entire dividend is subject to dividend distribution tax. The company, however, contended that the tax on dividend declared by it in this case is nothing but a tax on agricultural income; and the legislative competence for taxing agricultural income lies with the State Government and not the Central Government. On appeal, the Appellate Authority held that since the company is carrying on cultivation of tea, which is an agricultural process as also the processing of tea in the factory, which is an industrial process, 40% of dividend distributed by the company is to be taxed under Section 115-O. Discuss the correctness or otherwise of the contention of the Appellate Authority.
6. Rhombus (P) Limited is engaged in manufacture and sale of ceramic tiles. The net profit of the company as per its profit and loss account for the year ended 31st March, 2019 is ₹ 210 lakh after debiting or crediting the following items:
- (i) One-time license fee of ₹ 32 lakh paid to ABC Ltd (an Indian company) for obtaining franchise on 1st June, 2018.
 - (ii) ₹ 32,000 paid to Beta & Co., a goods transport operator, in cash on 31st January, 2019 for carrying company's products to the warehouse.
 - (iii) Rent of ₹ 50,000 p.m. received from letting out a part of its office premises. Municipal tax in respect of the said part of the building is ₹ 8,000 remains unpaid due to court litigation.
 - (iv) ₹ 1 lakh, being contribution to a scientific research association approved and notified under section 35(1)(ii).
 - (v) ₹ 2 lakh, being loss due to destruction of a machinery caused by a fire due to short circuit. The Insurance Company did not admit the claim of the company.
 - (vi) ₹ 5 lakh paid to a contractor for repair work at the company's factory. No tax was deducted on such payment.

- (vii) Dividend of ₹ 10,000 from Gama Limited on 1,000 equity shares of ₹ 10 each purchased at ₹ 100 per share on 10th October, 2018. The rate of dividend declared is 100%, the record date being 10th December, 2018. The shares were sold on 1st March, 2019 at ₹ 80 per share.
- (viii) Depreciation on tangible fixed assets as per books of account ₹ 2.20 lakh.

Additional Information:

- (i) Depreciation on tangible fixed assets as per Income-tax Rules ₹ 2.60 lakh.
- (ii) The company has obtained a loan of ₹ 2 lakh from Theta Private Limited in which it holds 16% voting rights. The accumulated profits held by Theta Private Limited on the date of loan were ₹ 0.50 lakh.

Compute total income of Rhombus (P) Ltd. for the Assessment Year 2019-20 indicating reasons for treatment of each item. Ignore the provisions relating to minimum alternate tax.

7. Edu All Charitable Trust registered under section 12AA, following cash system of accounting, furnishes you the following information for P.Y. 2018-19:
- (i) Gross receipts from hospital ₹ 200 lakhs.
 - (ii) Gross receipts from medical college ₹ 95 lakhs (offering recognized degree courses).
 - (iii) Corpus donations by way of cheque ₹ 42 lakhs and by way of cash ₹ 6 lakhs.
 - (iv) Anonymous donations by cash ₹ 12 lakhs.
 - (v) Administrative expenses for hospital ₹ 75 lakhs.
 - (vi) Fees not realized from patients ₹ 18,00,000 as on 31st March, 2019.
 - (vii) Depreciation on assets of the trust ₹ 37,50,000. The entire cost of assets ₹ 250 lakhs claimed as application in the earlier years.
 - (viii) Acquired a building for ₹ 80 lakhs on 01.06.2018 for expansion of hospital (cost of land included therein ₹ 50 lakhs). Stamp duty value of the land and building on the date of registration of sale deed ₹ 210 lakhs.
 - (ix) The trust gave corpus donation of ₹ 19 lakhs to Help Aid Trust having objects of charitable nature registered under section 12AA but not similar to the objects of the donor trust.

You are required to compute the total income of the trust and its income-tax liability in such a manner that it can avail the optimal benefit within the four corners of the Income-Tax Act, 1961.

Note: The trust does not want to seek accumulation of income by virtue of section 11(2) of the Act.

8. Auto Ltd., a manufacturer of automobiles, sells premium cars (each of value between ₹12 lakh to ₹25 lakh) and small cars (each of value between ₹5 lakh to ₹ 9 lakh) to its dealers across the country. Discuss whether the manufacturers are liable to collect tax at source under section 206C.

Also, discuss the liability, if any, of dealers to collect tax at source on sale of these cars to the retail customers, if no part of the consideration is received in cash? Would your answer change, if part of the consideration is received in cash?

9. The assessment of Lambda Ltd. was completed under section 143(3) with an addition of ₹ 22 lakhs to the returned income. The assessee-company preferred an appeal before the Commissioner (Appeals) which is pending now.

In this backdrop, answer the following:

- (i) Based on fresh information that there was escapement of income for the same assessment year, can the Assessing Officer initiate reassessment proceedings when the appeal is pending before Commissioner (Appeals)?
 - (ii) Can the Assessing Officer pass an order under section 154 for rectification of mistake in respect of issues not being subject matter of appeal?
 - (iii) Can the assessee-company seek revision under section 264 in respect of matters other than those preferred in appeal?
 - (iv) Can the Commissioner make a revision under section 263 both in respect of matters covered in appeal and other matters?
10. Examine the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961:
- (i) The Commissioner (Appeals) cannot admit an appeal filed beyond 30 days from the date of receipt of order by an assessee.
 - (ii) The Appellate Tribunal is empowered to grant indefinite stay for the demand disputed in appeals before it.
11. Examine the powers of the Settlement Commission to -
- (i) rectify a mistake apparent from the record
 - (ii) grant immunity from prosecution and penalty
12. Mr. Vallish had approached the Settlement Commission for waiver of interest under sections 234A to 234C of the Income-tax Act, 1961. The Settlement Commission partially waived the interest but refused to grant interest on refund on the grounds that section 244A does not provide for payment of interest in such cases. Further, the Settlement Commission contended that its power to waive interest does not enable it to provide for payment of interest under section 244A. Discuss the correctness of the Settlement Commission's action in denying to grant interest on refund.

13. (i) Xylo Inc., a US company, received income by way of fees for technical services of ₹2 crore from Alpha Ltd., an Indian company, in pursuance of an agreement between Alpha Ltd. and Xylo Inc. entered into in the year 2012, which is approved by the Central Government. Expenses incurred for earning such income is ₹ 8 lakhs. Examine the taxability of the above sum in the hands of Xylo Inc as per the provisions of the Income-tax Act, 1961 and the requirement, if any, to file return of income, assuming that Xylo Inc does not have a permanent establishment in India
- (ii) If Xylo Inc. has a permanent establishment in India and the contract/agreement with Alpha Ltd. for rendering technical services is effectively connected with such PE in India, examine the taxability based on the following details provided –

	Particulars	Amount
(1)	Fees for technical services received from Alpha Ltd.	₹ 2 crore
(2)	Expenses incurred for earning such income	₹ 8 lakhs
(3)	Fees for technical services received from other Indian companies in pursuance of approved agreement entered into between the years 2005 to 2010	₹ 4 crore
(4)	Expenses incurred for earning such income	₹ 15 lakhs
(5)	Expenditure not wholly and exclusively incurred for the business of such PE [not included in (2) & (4) above]	₹ 6 lakhs
(6)	Amounts paid by the PE to Head Office (not being in the nature of reimbursement of actual expenses)	₹ 12 lakhs

What are the other requirements, if any, under the Income-tax Act, 1961 in this case?

14. Mr. Hari, an individual resident in India aged 59 years, furnishes you the following particulars of income earned in India, Foreign Countries "P" and "Q" for the previous year 2018-19. Compute the total income and tax payable by Mr. Hari in India for A.Y. 2019-20 assuming that India has not entered into double taxation avoidance agreement with countries P & Q.

Particulars	₹
Indian Income:	
Income from business carried on in Calcutta	4,40,000
Interest on savings bank with HDFC Bank	42,000
Income earned in Foreign Country "P" [Rate of tax – 16%]:	
Agricultural income in Country "P"	94,000
Royalty income from a book on art from Country "P" (Gross)	7,80,000
Expenses incurred for earning royalty	50,000

Income earned in Foreign Country "Q" [Rate of tax – 20%]:	
Dividend received from a company incorporated in Country "Q"	2,65,000
Rent from a house situated in Country "Q" (gross)	3,30,000
Municipal tax paid in respect of the above house (not allowed as deduction in Country "Q")	10,000

15. (i) Research & Co. is engaged in providing scientific research services to several non-resident clients. Such services are also provided to B Inc., which guarantees 15% of the total loans of Research & Co. Examine whether transfer pricing provisions are attracted in respect of this transaction.
- (ii) Without prejudice to the answer to (i) above, assuming that transfer pricing provisions are attracted in this case and that the Assessing Officer had made a primary adjustment of ₹ 225 lakhs to transfer price in the P.Y.2016-17 vide order dated 1.4.2018 and the same was accepted by Research & Co., what are the consequent requirements as per the Income-tax Act, 1961 and the implications of non-compliance with the said requirements? Assume that the transaction is denominated in Indian Rupees and no amount has been repatriated upto 31.3.2019. The one year marginal cost of fund lending rate of State Bank of India as on 1.4.2018 is 8.15%.
16. Narmada Ltd., an Indian Company has borrowed ₹ 80 crores on 01-04-2018 from M/s. Thames Inc, a Company incorporated in London, at an interest rate of 10% p.a. The said loan is repayable over a period of 5 years. Further, loan is guaranteed by M/s Tyne Inc. incorporated in UK. M/s. Tweed Inc, a non-resident, holds shares carrying 40% of voting power both in M/s Narmada Ltd. and M/s Tyne Inc.
- Net profit of M/s. Narmada Ltd. for P.Y. 2018-19 was ₹ 7 crores after debiting the above interest, depreciation of ₹ 4 crores and income-tax of ₹ 3 crores. Calculate the amount of interest to be disallowed under the head "Profits and gains of business or profession" in the computation of M/s Narmada Ltd., giving appropriate reasons.

MOST APPROPRIATE OPTION

- (i) (a)
(ii) (c)
(iii) (a)
(iv) (a)
(v) (a)
(vi) (c)
(vii) (a)

(viii) (a)

(ix) (d)

(x) (c)

SUGGESTED ANSWERS/HINTS

1. Computation of total income of Mr. Prem for A.Y.2019-20

Particulars	₹ (in lakhs)	
Profits and gains of business or profession		
Profits and gains from the specified business of setting up a warehousing facility for storage of food grains and sugar [See Working Note below]		60.00
Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)	30.00	
Less: Depreciation under section 32		
10% of ₹ 40 lakh, being (₹ 75 lakh – ₹ 45 lakh + ₹ 10 lakh)	4.00	26.00
Total Income		86.00

Computation of tax liability for A.Y.2019-20

Particulars	₹ in lakhs	
Tax liability under the normal provisions of the Income-tax Act, 1961 [30% of ₹ 76 lakhs (₹ 86 lakhs – ₹ 10 lakhs) + ₹ 1,12,500]		23.93
Add: Surcharge @10% (Since total income > ₹ 50 lakhs but does not exceed ₹ 1 crore)		2.39
		26.32
Add: Health and education cess @4%		1.05
Total tax liability		27.37
Adjusted Total Income	₹ in lakhs	
Total Income		86.00
Add: Deduction under section 35AD [See Working Note below]	125.00	
Less: Depreciation under section 32 [10% of ₹ 125 lakh]	12.50	112.50
Adjusted Total Income		198.50
AMT @18.5%		36.72
Add: Surcharge @15% (Since adjusted total income > ₹ 1 crore)		5.51
		42.23
Add: Health and Education cess @4%		1.69
Tax liability under section 115JC		43.92

Since the regular income-tax payable is less than the AMT payable, the adjusted total income of ₹ 198.50 lakhs shall be deemed to be the total income of Mr. Prem and tax is payable @18.5% thereof <i>plus</i> surcharge@15% (since adjusted total income exceeds ₹ 1 crore) <i>plus</i> cess@4%. Therefore, the tax liability is ₹ 43.92 lakhs.	
AMT Credit to be carried forward under section 115JD	
Tax liability under section 115JC	43.92
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	27.37
	16.55

Working Note:**Computation of income from specified business under section 35AD**

	Particulars	Food Grains	Sugar	Total
		₹ (in lakhs)		
(A)	Profits from the specified business of setting up a warehousing facility (before providing deduction under section 35AD)	125.00	60.00	185.00
	Less: Deduction under section 35AD			
(B)	Capital expenditure incurred prior to 1.4.2018 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2018 (excluding the expenditure incurred on acquisition of land) = ₹ 45 lakh (₹ 120 lakh – ₹ 75 lakh) and ₹ 30 lakh (₹ 90 lakh – ₹ 60 lakh)	45.00	30.00	75.00
(C)	Capital expenditure incurred during the P.Y.2018-19	30.00	20.00	50.00
(D)	Total capital expenditure (B + C)	75.00	50.00	125.00
(E)	Deduction under section 35AD 100% of capital expenditure	75.00	50.00	125.00
(F)	Profits from specified business of setting up and operating a warehousing facility for storage of food grains and sugar (A-E)	50.00	10.00	60.00

Notes:

- Deduction of 100% of the capital expenditure is available under section 35AD for A.Y.2019-20 in respect of specified business of setting up and operating a warehousing facility for storage of food grains and sugar.
- Since setting up and operating a warehousing facility for storage of edible oil is not a specified business, Mr. Prem is not eligible for deduction under section 35AD in

respect of capital expenditure incurred for such business. Mr. Prem can, however, claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y.2018-19.

2. For the purpose of computation of long-term capital gains chargeable to tax under section 112A, the cost of acquisition in relation to the long-term capital asset, being an equity share in a company or a unit of an equity oriented mutual fund or a unit of a business trust acquired before 1st February, 2018 shall be the higher of
- (i) cost of acquisition of such asset; and
 - (ii) lower of
 - (a) the fair market value of such asset; and
 - (b) the full value of consideration received or accruing as a result of the transfer of the capital asset.

In short, the cost of acquisition for the long-term capital asset acquired on or before 31.01.2018 will be the actual cost.

However, if the actual cost is less than the fair market value of such asset as on 31.01.2018, the fair market value will be deemed to be the cost of acquisition.

Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

In the four independent cases given in the question, the shares are long-term capital asset, since they are held for a period of more than 12 months preceding the date of its transfer. Accordingly, long-term capital gain/loss on transfer of STT paid listed equity shares would be determined as follows:

Person	Particulars	LTCG/LTCL (in ₹)
Mr. Ganesh	In this case, the cost of acquisition of equity share of A Ltd. would be ₹ 2,000, being higher of actual cost i.e., ₹ 1,000 and ₹ 2,000 (being the lower of FMV of ₹ 2,000 as on 31.1.2018 and actual sale consideration of ₹ 2,500). Thus, the long-term capital gain would be (₹ 2,500 – ₹ 2,000) x 1,000 shares.	5,00,000
Mr. Rajesh	In this case, the cost of acquisition of equity shares of B Ltd. would be ₹ 5,000, being higher of actual cost i.e., ₹ 3,000 and ₹ 5,000 (being the lower of FMV of ₹ 6,500 as on 31.1.2018 and actual sale consideration of ₹ 5,000).	Nil

	In other words, actual cost of acquisition (i.e., ₹ 3,000) is less than the FMV of ₹ 6,500 as on 31.1.2018. However, the sale value of ₹ 5,000 is also less than the FMV of ₹ 6,500 as on 31.1.2018. Accordingly, the sale value of ₹ 5,000 will be taken as the cost of acquisition. The long-term capital gains would be Nil (₹ 5,000 – ₹ 5,000) x 2,000 shares.	
Mr. Sridhar	In this case, the cost of acquisition of equity shares of C Ltd. would be ₹ 2,000, being higher of actual cost i.e., ₹ 2,000 and ₹ 1,500 (being the lower of FMV of ₹ 1,500 as on 31.1.2018 and actual sale consideration of ₹ 3,000). In other words, the FMV of equity shares of C Ltd. on 31.1.2018 (i.e., ₹ 1,500) is less than ₹ 2,000, being the actual cost of acquisition of equity shares, and therefore, the actual cost of ₹ 2,000 would be taken as cost of acquisition. Accordingly, the long-term capital gains would be (₹ 3,000 – ₹ 2,000) x 3,000	30,00,000
Mr. Vaibhav	In this case, the cost of acquisition of equity shares of D Ltd. would be ₹ 4,000, being higher of actual cost i.e., ₹ 4,000 and ₹ 2,500 (being the lower of FMV of ₹ 6,000 as on 31.1.2018 and actual sale consideration of ₹ 2,500). In other words, the actual cost of acquisition of equity shares D Ltd. (i.e., ₹ 4,000) is less than the FMV of ₹ 6,000 as on 31.1.2018. However, the sale value of ₹ 2,500 is also less than the FMV of ₹ 6,000 as on 31.1.2018 and also the cost of acquisition. Accordingly, the actual cost of ₹ 4,000 will be taken as the cost of acquisition. The long-term capital loss would be ₹ 6,00,000 (₹ 2,500 – ₹ 4,000) x 4,000 shares.	(60,00,000)

3. (i) **Case 1: Where Mr. Dheeraj has commenced the business of manufacture of paper on 1.4.2018**

Mr. Dheeraj is eligible for deduction under section 80JJAA since he is subject to tax audit under section 44AB for A.Y.2019-20, as his total turnover from business exceeds ₹ 1 crore and he has employed “additional employees” during the P.Y.2018-19. Also, emoluments are paid by use of ECS through a bank account. Since this is the first year of his new business, emoluments paid or payable to employees employed during this year shall be deemed to be the additional employee cost.

Deemed additional employee cost = ₹ 23,000 × 12 × 51 [See Working Note below]
= ₹ 1,40,76,000

Deduction under section 80JJAA = 30% of ₹ 1,40,76,000 = ₹ 42,22,800.

Working Note:

Number of additional employees

Particulars	No. of employees	
Total number of employees employed during the year		180
Less: Contractual employees employed on 1.8.2018, since they do not participate in recognized provident fund and their total monthly emoluments exceed ₹ 25,000	48	
Regular employees employed on 1.6.2018, since their total monthly emoluments exceed ₹ 25,000	46	
Regular employees employed on 1.10.2018 since they have been employed for less than 240 days in the P.Y.2018-19.	35	129
Number of "additional employees"		51

Notes –

1. Since contractual employees do not participate in recognized provident fund, they do not qualify as additional employees. In any case, their total monthly emoluments exceed ₹ 25,000, and hence do not qualify as additional employees. Further, 46 regular employees employed on 1.6.2018 also do not qualify as additional employees since their monthly emoluments exceed ₹ 25,000. Also, 35 regular employees employed on 1.10.2018 do not qualify as additional employees for the P.Y.2018-19, since they are employed for less than 240 days in that year.

Therefore, only 51 employees employed on 1.4.2018 qualify as additional employees, and the total emoluments paid or payable to them during the P.Y.2018-19 is deemed to be the additional employee cost.

2. As regards the 35 regular employees employed on 1.10.2018, they would be treated as "additional employee" for the P.Y. 2019-20, if they continue to be employed in that year for a minimum period of 240 days. Accordingly, 30% of additional employee cost in respect of such employees would be allowable as deduction under section 80JJAA in the hands of Mr. Dheeraj for the A.Y. 2020-21.

(ii) **Case 2: Where Mr. Dheeraj has commenced the business of manufacture of leather products on 1.4.2018**

Yes, the answer would change, since in the case of an assessee engaged in the business of manufacture of leather products, the requirement of minimum period of employment of 240 days in the previous year to qualify as an additional employee for the purpose of deduction under section 80JJAA has been relaxed due to the seasonal nature of business of manufacture of apparel. The minimum period of employment required in case of this industry, to qualify as an additional employee for the purpose of deduction under section 80JJAA, is 150 days. Therefore, the 35 regular employees employed on 1.10.2018 would also qualify as “additional employees” and the deemed additional employee cost pertaining to these employees would also be eligible for deduction under section 80JJAA.

Deemed Additional Employee Cost = ₹ 1,40,76,000 (as calculated in (i) above) + ₹ 50,40,000 (35 employees × ₹ 24,000 × 6 months) = ₹ 1,91,16,000

Deduction under section 80JJAA = 30% × ₹ 1,91,16,000 = ₹ 57,34,800

4. As per section 80AC, while computing the total income of an assessee of a previous year (***P.Y.2018-19, in this case***) relevant to any assessment year (***A.Y.2019-20, in this case***), any deduction is admissible under section 80-IAB, such deduction shall not be allowed unless it furnishes a return of income for such assessment year on or before the ‘due date’ specified in section 139(1).

Since Satpura & Co. has undertaken international transactions and has to file a transfer pricing report, the ‘due date’ of filing its return of income for A.Y.2019-20 would be 30th November, 2019 as per section 139(1). Since it is the fifth year of operation, the firm is eligible for 100% deduction.

Computation of total income and tax liability of M/s. Satpura & Co. for A.Y.2019-20

I. Where the firm files its return of income on 30th November, 2019:

Particulars	₹ in lacs
Gross Total Income	420.00
Less: Deduction under section 80-IAB	<u>330.00</u>
Total Income	<u>90.00</u>
Tax liability@ 30%	27.00
Add: Health and Education cess@4%	<u>1.08</u>
Regular income-tax payable	<u>28.08</u>
Computation of Alternate Minimum Tax payable [Section 115JC]	
Total Income	90.00
Add: Deduction under section 80-IAB	<u>330.00</u>
Adjusted Total Income	<u>420.00</u>

Alternate Minimum Tax (AMT) @ 18.5% on ₹ 420 lacs	77.70
Add: Surcharge@12% (Since adjusted total income > ₹ 1 crore)	<u>9.32</u>
	87.02
Add: Health and Education cess@4%	<u>3.48</u>
Total tax payable (AMT)	<u>90.50</u>

Since the regular income-tax payable by the firm is less than the alternate minimum tax payable, the adjusted total income of ₹ 420 lacs shall be deemed to be the total income of the firm for P.Y.2018-19 and it shall be liable to pay income-tax on such total income@18.5% [Section 115JC(1)]. Therefore, the tax payable for the A.Y.2019-20 would be ₹ 90.50 lacs.

Tax credit for Alternate Minimum Tax [Section 115JD]	₹ in lacs
Total tax payable for A.Y.2019-20 (Alternate Minimum Tax)	90.50
Less: Regular income-tax payable	<u>28.08</u>
To be carried forward for set-off against regular income-tax payable (upto a maximum of fifteen assessment years).	<u>62.42</u>

II. Where the firm files its return of income on 10th January, 2020:

Where the firm files its return on 10-01-2020, it would be a belated return under section 139(4). Consequently, as per section 80AC, deduction under section 80-IAB would not be available. In such circumstances, the gross total income of ₹ 420 lacs would be the total income of the firm.

Particulars	₹ in lacs
Income-tax@30% of ₹ 420 lacs	126.00
Add: Surcharge@12% (since total income exceeds ₹ 100 lacs)	<u>15.12</u>
Income-tax (plus surcharge)	141.12
Add: Health and Education cess@4%	<u>5.64</u>
Total tax liability	<u>146.76</u>

Practical solution regarding obtaining clarifications

The practical solution regarding obtaining clarifications would be to file the return of income under section 139(1) on or before the 'due date' i.e., 30.11.2019 and claim deduction under section 80-IAB. In such a case, the firm can claim deduction of ₹ 330 lacs under section 80-IAB. Thereafter, consequent to the clarifications obtained, if any change is required, it can file a revised return under section 139(5) upto 31.3.2020 (i.e., upto the end of A.Y.2019-20) which would replace the original return filed under section 139(1).

If the firm files the return of income under section 139(1) on or before 30.11.2019, its tax liability would stand reduced to ₹ 90.50 lacs, as against ₹ 146.76 lacs to be paid if return is furnished after due date. Further, it would also be eligible for tax credit for alternate minimum tax under section 115JD to the extent of ₹ 62.42 lacs. Therefore, the firm is advised to file its return of income on or before 30.11.2019.

Note: Students may note that a return furnished before the 'due date' specified in section 139(1) and a return filed under section 139(4) is eligible to be revised. However, there is no relaxation of conditions in section 80AC and hence to avail the benefits of certain deductions admissible under Chapter VI-A under the heading "C – Deductions in respect of certain incomes" the return has to be filed before the 'due date' specified in section 139(1).

5. The issue under consideration is whether dividend distribution tax under section 115-O can be levied on dividend income of a tea company, and if so, whether in whole or in part, to be restricted to 40%, being the proportion of business income of a tea company. This issue came up before the Supreme Court in *Union of India v. Tata Tea and Others* [2017] 398 ITR 260 (SC).

The Supreme Court observed that as per Entry 82 of List I, the Union Parliament has the competence to tax "income other than agricultural income". Section 115-O pertains to additional tax at the stage of distribution of dividend by a domestic company which is covered by Entry 82 in List I. When dividend is declared to be distributed and paid to a company's shareholders, it is not impressed with character of the source of its income. The Court relied on *Mrs. Bacha F Guzdar v. CIT* AIR 1955 SC 74 which looked into the nature of the dividend income in the hands of the shareholders. Dividend is derived from the investment made in the company's shares and the foundation rests on the contractual relations between the company and the shareholder.

Dividend is not 'revenue derived from land' and therefore, cannot be termed as agricultural income in the hands of a shareholder. Hence, despite the company being involved in agricultural activities, in the shareholder's hands, the income is only dividend and not agricultural income.

The Calcutta High Court had upheld the vires of section 115-O but put a qualification that additional tax levied under section 115-O shall be only to the extent of 40% which is the taxable income of the tea company. The Supreme Court overturned this cap placed by the Calcutta High Court. Section 115-O is within the competence of the Parliament and hence, no limits can be placed on the same.

Accordingly, applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Appellate Authority that only 40% of dividend distributed by the company is to be taxed under section 115-O is **not** correct. The entire dividend distributed would be subject to dividend distribution tax under section 115-O.

6. Computation of total income of Rhombus(P) Ltd. for the A.Y. 2019-20

Particulars	₹	₹
Income from House Property (Note 1)		
Gross Annual Value (GAV) (Rental income has been taken as GAV in the absence of other information) [₹ 50,000 x 12]	6,00,000	
Less: Municipal taxes (not deductible since it has not been paid)	Nil	
Net Annual Value (NAV)	6,00,000	
Less: Deduction under section 24 (30% of NAV)	1,80,000	4,20,000
Profits and gains of business or profession		
Net profit as per profit and loss account	2,10,00,000	
Add: Licence fee for obtaining franchise (Note 2)	32,00,000	
Municipal taxes in respect of let-out part of office premises (Note 1)	8,000	
Contribution to approved and notified scientific research association (treated separately) (Note 4)	1,00,000	
Loss due to destruction of machinery by fire (Note 5)	2,00,000	
Amount paid to contractor without deduction of tax at source [₹ 5 lakhs x 30%] (Note 6)	1,50,000	
Short-term capital loss on sale of shares of Gama Ltd. (Note 7)	20,000	
Depreciation on tangible fixed assets (Note 8)	2,20,000	
	2,48,98,000	
Less: Depreciation under section 32 (Note 8)		
Tangible fixed assets (Note 8)	2,60,000	
Intangible asset (Franchise)		
25% of ₹ 32,00,000 (Note 2)	8,00,000	10,60,000
Weighted deduction under section 35(1)(ii) (Note 4)		
₹ 1,00,000 x 150% (Contribution of scientific research association)	1,50,000	
Rental income to be taxed under "Income from house property" (Note 1)	6,00,000	
Dividend credited to profit and loss account to be excluded (Note 7)	10,000	
		2,30,78,000

Capital Gains (Note 7)		
Short-term capital loss (₹ 20 x 1000 shares)	20,000	
Less: Dividend exempt under section 10(34)	10,000	
Short-term capital loss to be carried forward to A.Y. 2020-21	10,000	
Income from Other Sources (Note 9)		
Deemed dividend under section 2(22)(e) subject to DDT in the hands of Theta (P) Ltd.		-
Total Income		2,34,98,000

Notes:

- (1) Rental income from letting out a part of the office premises is taxable under "Income from house property". Therefore, it has to be deducted while calculating business income, since the income has been credited to profit and loss account. Likewise, municipal taxes due in respect of such property, debited to profit and loss account has to be added back to compute business income.
- (2) Franchise is an intangible asset eligible for depreciation @ 25%. Since one-time licence fees of ₹ 32 lakh paid for obtaining franchise has been debited to profit and loss account, the same has to be added back. Depreciation @ 25% has to be provided in respect of the intangible asset since it has been used for more than 180 days during the year.
- (3) ₹ 32,000 paid to Beta & Co., a goods transport operator in cash is deductible while computing business income, as the limit for disallowance under section 40A(3) would be attracted in case of payment to a transport contractor only when it exceeds ₹ 35,000. Since it is already debited to profit and loss account, no further adjustment is required.
- (4) Contribution to a scientific research association approved and notified under section 35(1)(ii) is eligible for a weighted deduction of 150%. Therefore, the contribution of ₹ 1,00,000 debited to profit and loss account has been added back and ₹ 1,50,000 (being 150% of ₹ 1,00,000) has been deducted while computing business income.
- (5) Loss of ₹ 2 lakh due to destruction of machinery caused by fire is not deductible since it is capital in nature.
- (6) Payment to contractor without deduction of tax at source would attract disallowance at 30% of the expenditure under section 40(a)(ia).
- (7) As per section 94(7), where any person buys any shares within 3 months prior to the record date and sells such shares within 3 months after such date and the dividend received on such shares is exempt, then, the loss arising out of such purchase and sale of shares shall be ignored to the extent of dividend income.

	₹
Loss on sale of shares (₹ 100 - ₹ 80) x 1000 shares	20,000
Less: Dividend exempt under section 10(34)	<u>10,000</u>
Short-term capital loss	<u>10,000</u>

Since short term capital loss can be set-off only against income under the head "Capital Gains", the short-term capital loss of ₹ 10,000 has to be carried forward to the next year. Dividend of ₹ 10,000 credited to profit and loss account has to be deducted and short-term capital loss of ₹ 20,000 debited to profit and loss account has to be added back.

- (8) Depreciation as per Income-tax Rules, 1962, is deductible while calculating business income. Therefore, ₹ 2.60 lakh depreciation on tangible fixed assets and ₹ 8 lakh on intangible assets is deducted. The amount of ₹ 2.20 lakh depreciation debited to profit and loss account as per books of account has been added back.
- (9) 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 shares holding not less than 10% of voting power, is deemed as dividend to the extent to which the company possesses accumulated profits. Accordingly, in this case, ₹ 50,000 would be deemed as dividend under section 2(22)(e) and subject to dividend distribution tax @30% (plus surcharge @12% and health and education cess @4%) in the hands of Theta (P) Ltd. Hence, such dividend is exempt in the hands of Rhombus (P) Ltd. under section 10(34).

7. Computation of total income of Edu All Charitable Trust for the A.Y.2019-20

Particulars	₹	₹
Gross receipts from Hospital		2,00,00,000
Gross receipts from Medical College [exempt, since less than ₹1 crore]		<u>-</u>
		2,00,00,000
Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] [See Note 1 & 2]		<u>3,00,000</u>
		2,03,00,000
Less: 15% of income eligible for being set apart without any condition ¹		<u>30,45,000</u>
		1,72,55,000

¹ As per the Supreme Court ruling in *CIT v. Programme for Community Organisation* (2001) 116 Taxman 608, 15% of gross receipts would be eligible for accumulation under section 11(1)(a). However, as per the plain reading of section 11(1)(a), only 15% of income would be eligible for accumulation under section 11(1)(a).

Less: Amount applied for charitable purposes		
- On revenue account – Administrative expenses	75,00,000	
- On capital account – Land & Building [Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA]	80,00,000	
- Corpus donation to Help Aid Trust registered u/s 12AA – not allowable even if it is out of current year income of the trust		1,55,00,000
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		17,55,000
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) [See Note 1]		9,00,000
Total Income of the trust (including anonymous donation taxable@30%)		26,55,000

Computation of tax liability of the trust for the A.Y. 2019-20

Particulars	₹	₹
Tax on total income of ₹ 17,55,000 [Excluding anonymous donations]		
Upto ₹ 2,50,000	Nil	
₹ 2,50,001 – ₹ 5,00,000 [₹2,50,000 x 5%]	12,500	
₹ 5,00,001 – ₹ 10,00,000 [₹5,00,000 x 20%]	1,00,000	
> ₹ 10,00,000 [₹7,55,000 x 30%]	2,26,500	
	3,39,000	
Tax on anonymous donations taxable@30% [₹ 9,00,000 x 30%]	2,70,000	6,09,000
Add: Health and education cess @4%		24,360
Total tax liability		6,33,360

Notes:

- (1) Anonymous donations taxable @30%
- | | | |
|---|------|-------|
| | ₹ | ₹ |
| Anonymous Donations received (lakhs) | | 12.00 |
| 5% of total donations received, i.e. 5% of 60 lakhs | 3.00 | |
| Monetary limit | 1.00 | |
| Higher of the above | | 3.00 |
| Anonymous donations taxable@30% | | 9.00 |
- (2) The provisions of section 13(7) have been interpreted in a manner that it excludes only anonymous donations subject to tax@30% under section 115BBC(1)(i). All

taxable income of the trust [excluding anonymous donations taxable@30% u/s 115BBC(1)(i)] falls under section 115BBC(1)(ii), and are subject to tax at normal rates and eligible for benefit of unconditional accumulation u/s 11(1). Anonymous donation of ₹ 3,00,000 taxable at normal rates also falls under section 115BBC(1)(ii) and hence, like other taxable income of the trust falling within the scope of this clause, the same would also be eligible for the benefit of unconditional accumulation under section 11(1). The above solution has been worked out on the basis of this interpretation of section 13(7). Accordingly, in the above solution, the benefit of unconditional accumulation upto 15% under section 11(1) has been given in respect of anonymous donation of ₹ 3,00,000 subject to tax at normal rates.

However, an alternative view is also possible on the basis of the plain reading of section 13(7), as per which anonymous donation referred to in section 115BBC has to be excluded from the purview of exemption under sections 11 and 12. As per this view, even the anonymous donations of ₹ 3,00,000 subject to tax at normal rates would not be eligible for unconditional accumulation of upto 15%.

- (3) Corpus donations, whether received by way of cheque or cash, are not includible in the total income of the trust by virtue of section 11(1)(d).
 - (4) Since corpus donations and anonymous donations are indicated separately and the question does not mention that the same are included in gross receipts, the solution has been worked out on the assumption that corpus donations and anonymous donations are not included in the figure of gross receipts of ₹ 200 lakhs from hospital.
 - (5) Since the trust follows cash system of accounting, fees not realized from patients would not form part of gross receipts. Therefore, there is no need of applying the provisions of *Explanation 1* to section 11(1) to exclude such income.
 - (6) Where the cost of assets is claimed as application, no deduction for depreciation on such assets would be allowed in determining income for the purposes of application. Therefore, since cost of assets of the trust has been claimed as application of income, no depreciation would be allowed on these assets while determining income for the purposes of application.
8. Section 206C(1F) provides for collection of tax at source@1% by the seller from the buyer, at the time of receipt of consideration for sale of motor vehicle, the value of which exceeds ₹ 10 lakhs. CBDT Circular No.22/2016 dated 8.6.2016 clarifies that section 206C(1F) covers all transactions of retail sales and accordingly, it will not apply to sale of motor vehicles by manufacturers to dealers. Hence, car manufacturers are not liable to collect tax at source under section 206C(1F).

In respect of sale of premium cars (each of value ranging between ₹ 12 lakhs to ₹ 25 lakhs) by dealers to retail customers, tax has to be collected at source@1% under section 206C(1F), even if no part of the consideration is received in cash.

As regards small cars (each of value ranging between ₹ 5 lakhs and ₹ 9 lakhs), no tax has to be collected at source whether the consideration is received by way of cash or otherwise. Accordingly, the answer would not undergo a change if part of consideration is received in cash.

9. (i) As per the third proviso to section 147, the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Therefore, even when an appeal is pending before Commissioner (Appeals), the Assessing Officer can initiate reassessment proceedings in respect of income chargeable to tax which has escaped assessment, provided such income is not the subject matter of the appeal before the Commissioner (Appeals) i.e., such income which has escaped assessment does not form part of the additions of ₹22 lakhs to the returned income, which is the subject matter of appeal.

- (ii) As per section 154(1A), the Assessing Officer can pass an order under 154(1) to rectify a mistake apparent from the record, provided the rectification is in relation to a matter, other than the matter which has been considered and decided in the appeal before Commissioner (Appeals).

Since the issue under consideration in this case relates to rectification of a mistake in respect of a matter which is not the subject matter of appeal, the Assessing Officer can pass an order under section 154 for rectification of the same provided the same is a mistake apparent from the record.

- (iii) As per section 264(4), the Principal Commissioner or Commissioner shall not revise any order under section 264, where such order has been made the subject of an appeal to the Commissioner (Appeals).

Therefore, under section 264, the Principal Commissioner or Commissioner cannot revise an order which is pending before the Commissioner (Appeals), even if the revision pertains to a matter, other than the matter(s) covered in the appeal.

- (iv) As per section 263, the Commissioner has the power to revise an order prejudicial to the interests of revenue, even if the order is the subject matter of appeal before Commissioner (Appeals). However, the power of the Commissioner under section 263 shall extend to only such matters as had not been considered and decided in such appeal.

In a case where the appeal is pending but not yet decided, the Commissioner cannot exercise his revisionary jurisdiction in respect of those issues which are the subject matter of appeal [*CWT v. Sampathmal Chordia* (2002) 256 ITR 440 (Mad.)].

10. (i) The statement is **not** correct.

As per section 249(3) of the Income-tax Act, 1961, the Commissioner (Appeals) may admit an appeal after the expiry of the period of 30 days specified in section 249(2), if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the prescribed time.

- (ii) The statement is **not** correct.

Section 254(2A) provides that the Appellate Tribunal, where it is possible, may hear and decide an appeal within a period of four years from the end of the financial year in which such appeal is filed.

The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order. The Appellate Tribunal has to dispose of the appeal within this period of stay.

Where the appeal has not been disposed of within this period and the delay in disposing the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. However, the aggregate of period originally allowed and the period so extended should not exceed 365 days even if the delay in disposing of the appeal is not attributable to the assessee. The Appellate Tribunal is required to dispose off the appeal within this extended period. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

11. (i) As per section 245D(6B), the Settlement Commission may amend any order passed by it under section 245D(4) to rectify a mistake apparent from the record, within six months from the end of the month in which the order was passed. Where an application for rectification is made by the Principal Commissioner or Commissioner or the applicant within six months from the end of the month in which the order was passed, the Settlement Commission may amend its order within a period of six months from the end of the month in which such application has been made.

However, an amendment which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission –

- (1) has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so; and
- (2) has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

- (ii) The power of Settlement Commission to grant immunity from prosecution and penalty is provided for in section 245H.

In respect of an application made on or after 1st June, 2007, the Settlement Commission's power to grant immunity from prosecution is restricted to offences

under the Income-tax Act, 1961 and Wealth-tax Act, 1957. The Settlement Commission can also grant immunity from penalty imposed under the Income-tax Act, 1961. Such immunity from prosecution and penalty may be granted subject to conditions as it may think fit to impose.

However, the Settlement Commission may grant immunity only if the person who has made the application has co-operated with the Settlement Commission and made a full and true disclosure of his income and the manner in which it was derived. Further, the Settlement Commission while granting immunity to any person from prosecution shall record the reasons in writing in the order passed by it.

Also, the Settlement Commission cannot grant immunity if the prosecution proceeding for any such offence has been instituted before the date of receipt of application for settlement under section 245C.

12. This issue came up before the Supreme Court in *K. Lakshmansa and Co. v. Commissioner of Income-tax and Anr* [2017] 399 ITR 657. The Supreme Court observed that the right to claim refund is automatic once the statutory provisions have been complied with. The statutory obligation to refund, being non-discretionary, carries with it the right to interest. Section 244A is clear and plain – it grants a substantive right of interest and is not procedural.

Under section 244A, it is enough if the refund becomes due under the Income-tax Act, 1961, in which case, the assessee shall, subject to the provisions of that section, be entitled to receive simple interest. The expression “due” only means that a refund becomes due pursuant to an order under the Act which either reduces or waives tax or interest. It does not matter that the interest being waived is discretionary in nature; the moment that discretion is exercised and refund becomes due consequently, a concomitant right to claim interest springs into being in favour of the assessee.

The Supreme Court, thus, did not agree with the Karnataka High Court opinion that when discretionary power has been exercised, no concomitant right to claim interest on refund arises in favour of the assessee. Overruling the High Court Decision, the Supreme Court held that the assessee has a right to interest on refund under section 244A.

Applying the rationale of the Supreme Court ruling to the case on hand, the action of the Settlement Commission in refusing to grant interest on refund is **not** correct.

13. (i) **Where Xylo Inc., a US company, does not have a PE in India**

In this case, Xylo Inc. would be eligible for a concessional rate of tax@10% of ₹ 2 crore under section 115A on the fees for technical services received from Alpha Ltd., an Indian company, since the same is in pursuance of an agreement entered into after 31.3.1976, which has been approved by the Central Government. No deduction, however, would be allowed in respect of expenditure of ₹ 8 lakhs incurred to earn such income. Also, Xylo Inc. has to file its return of income in India under section 139 and there is no exemption in this regard.

(ii) **Where Xylo Inc., a US company, has a PE in India and rendering technical services is effectively connected with the PE in India.**

Since Xylo Inc. carries on business through a PE in India, in pursuance of an agreement with Alpha Ltd. or other Indian companies entered into after 31.3.2003, and the income by way of fees for technical services is effectively connected with the PE in India as per section 44DA, such income shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of the Income-tax Act, 1961.

Accordingly, expenses of ₹ 23 lakhs (₹ 8 lakhs + ₹ 15 lakhs) incurred for earning fees for technical services of ₹ 6 crore (₹ 2 crore + ₹ 4 crore) is allowable as deduction therefrom. However, expenditure of ₹ 6 lakhs which is not incurred wholly and exclusively for the business of the PE and the amount of ₹ 12 lakhs paid by the PE to the Head Office is **not** allowable as deduction.

Xylo Inc. is required to maintain books of account under section 44AA and get the same audited under section 44AB and furnish report along with the return of income under section 139.

14. **Computation of total income of Mr. Hari for A.Y.2019-20**

Particulars	₹	₹
Income from House Property [House situated in Country Q]		
Gross Annual Value ²	3,30,000	
Less: Municipal taxes paid in Country Q	<u>10,000</u>	
Net Annual Value	3,20,000	
Less: Deduction under section 24 – 30% of NAV	<u>96,000</u>	
		2,24,000
Profits and Gains of Business or Profession		
Income from business carried on in India		4,40,000
Income from Other Sources		
Interest on savings bank with HDFC Bank	42,000	
Agricultural income in Country P [Not exempt]	94,000	
Dividend received from a company in Country Q	2,65,000	
Royalty income from a book of art in Country P (after deducting expenses of ₹ 50,000)	<u>7,30,000</u>	
		<u>11,31,000</u>
Gross Total Income		17,95,000

² Rental income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income of a resident from a work of art ³		3,00,000
Under section 80TTA – Interest on savings bank account, subject to a maximum of ₹10,000.		<u>10,000</u>
Total Income		14,85,000

Note – Since adjusted total income (i.e., ₹ 17,95,000) does not exceed ₹ 20 lakhs, AMT would not be attracted in this case.

Computation of tax liability of Mr. Hari for A.Y.2019-20

Particulars	₹
Tax on total income [30% of ₹ 4,85,000 + ₹ 1,12,500]	2,58,000
Add: Health and education cess @4%	<u>10,320</u>
	2,68,320
Less: Rebate under section 91 (See Working Note below)	<u>1,72,197</u>
Tax Payable	<u>96,123</u>
Tax payable (rounded off)	96,120

Calculation of Rebate under section 91:		₹
Average rate of tax in India [i.e., ₹ 2,68,320 / ₹ 14,85,000 x 100]	18.069%	
Average rate of tax in country P	16%	
Doubly taxed income pertaining to country P⁴	₹	
Agricultural Income	94,000	
Royalty Income [₹ 7,80,000 – ₹ 50,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)]	4,30,000	
	5,24,000	
Rebate under section 91 on ₹ 5,24,000 @16% [being the lower of average Indian tax rate (18.069%) and foreign tax rate (16%)]		83,840

³ It is assumed that the royalty earned outside India has been brought into India in convertible foreign exchange within a period of six months from the end of the previous year.

⁴ Doubly taxed income includes only that part of income which is included in the assessee's total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount – *CIT v. Dr. R.N. Jhanji* (1990) 185 ITR 586 (Raj.).

Average rate of tax in country Q	20%	
Doubly taxed income pertaining to country Q		
Income from house property	2,24,000	
Dividend	<u>2,65,000</u>	
	<u>4,89,000</u>	
Rebate under section 91 on ₹ 4,89,000 @18.069% (being the lower of average Indian tax rate (18.069%) and foreign tax rate (20%)]		88,357
Total rebate under section 91 (Country A + Country B)		<u>1,72,197</u>

Note: Mr. Hari shall be allowed deduction under section 91, since the following conditions are fulfilled:-

- (a) He is a resident in India during the relevant previous year i.e., P.Y.2018-19.
 - (b) The income in question accrues or arises to him outside India in foreign countries P & Q during that previous year and such income is not deemed to accrue or arise in India during the previous year.
 - (c) The income in question has been subjected to income-tax in the foreign countries "P" and "Q" in his hands and it is presumed that he has paid tax on such income in those countries.
 - (d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries P and Q where the income has accrued or arisen.
15. (i) Provision of scientific research services falls within the scope of international transaction under section 92B. Research & Co. and B Inc. are deemed to be associated enterprises as per section 92A(2), since B Inc. guarantees not less than 10% of the total borrowings of Research & Co. Since there is an international transaction between associated enterprises, transfer pricing provisions are attracted in this case.
- (ii) Where the Assessing Officer has made a primary adjustment of ₹ 225 lakhs to the transfer price and the same has been accepted by Research & Co., secondary adjustment has to be made in the books of account. The excess money determined based on the primary adjustment has to be repatriated to India within 90 days from the date of order, failing which the same would be deemed as an advance and interest would be attracted at the one year marginal cost of fund lending rate of State Bank of India as on 1.4.2018 + 3.25%, since the international transaction has been denominated in Indian Rupees. In this case, since the excess money has not been repatriated within 90 days, the same would be deemed to be an advance made by Research & Co. to B Inc. and interest would be attracted @11.40% (8.15% + 3.25%).
16. If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise (AE) and such

interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since M/s Tweed Inc holds 40% of voting power i.e., more than 26% of voting power in both Narmada Ltd and M/s Tyne Inc, Narmada Ltd. and M/s Tyne Inc are deemed to be associated enterprises.

Since loan of ₹ 80 crores taken by Narmada Ltd., an Indian company from M/s Thames Inc, is guaranteed by M/s Tyne Inc, an associated enterprise of Narmada Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s Thames Inc shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of interest to be disallowed as per section 94B in the computation of income under the head profits and gains of business or profession of M/s.Narmada Ltd.

Particulars	₹
Net profit	7,00,00,000
Add: Interest already debited (₹ 80 crores x 10%)	8,00,00,000
Depreciation	4,00,00,000
Income tax	3,00,00,000
EBITDA	<u>22,00,00,000</u>
Interest paid or payable by Narmada Ltd.	8,00,00,000
Lower of the following would be disallowed	
- Total interest paid or payable in excess of 30% of EBITDA (₹ 8,00,00,000 – ₹ 6,60,00,000)	₹ 1,40,00,000
- Interest paid or payable to non-resident AE	₹ 8,00,00,000
Interest to be disallowed as deduction	1,40,00,000

PAPER 7: DIRECT TAX LAWS

SECTION – A: STATUTORY UPDATE

The direct tax laws, as amended by the Finance Act, 2017, including significant notifications/circulars issued upto 30th April, 2018 are applicable for November, 2018 examination. The relevant assessment year for November, 2018 examination is A.Y.2018-19. The significant notifications/circulars issued upto 30th April, 2018, relevant for November, 2018 examination but not covered in the August 2017 edition of the Study Material, are given hereunder.

STUDY MATERIAL MODULE - 1

CHAPTER 1: BASIC CONCEPTS

Clarification regarding attaining prescribed age of 60 years/80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April [Circular No. 28/2016, dated 27.07.2016]

An individual who is resident in India and of the age of 60 years or more (senior citizen) and 80 years or more (very senior citizen) is eligible for a higher basic exemption limit of ₹ 3,00,000 and ₹ 5,00,000, respectively.

The contentious issue is regarding the attainment of the aforesaid qualifying ages for availing higher basic exemption limit in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have completed a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

The Supreme Court had an occasion to consider a similar issue in the case of *Prabhu Dayal Sesma vs. State of Rajasthan & another* 1986, AIR, 1948 wherein it has dealt with on the general rules to be followed for calculating the age of the person. The Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the day preceding, the anniversary of his birthday. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

The CBDT has, vide this Circular, clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would be decided on the basis of above criteria.

Therefore, a resident individual whose 60th birthday falls on 1st April, 2018, would be treated as having attained the age of 60 years in the P.Y.2017-18, and would be eligible for higher basic exemption limit of ₹ 3 lakh in computing his tax liability for A.Y.2018-19. Likewise, a resident individual whose 80th birthday falls on 1st April, 2018, would be treated as having

attained the age of 80 years in the P.Y.2017-18, and would be eligible for higher basic exemption limit of ₹ 5 lakh in computing his tax liability for A.Y.2018-19.

CHAPTER 2: RESIDENCE AND SCOPE OF TOTAL INCOME

Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank [Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017]

Income by way of salary, received by non-resident seafarers, for services rendered outside India on-board foreign ships, is being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer. On receiving representations in this regard, the CBDT examined the matter and noted that section 5(2)(a) of the Income-tax Act, 1961 provides that only such income of a non-resident shall be subjected to tax in India that is either received or is deemed to be received in India.

Accordingly, the CBDT has, vide this circular, clarified that that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

Notification of Eligible Investment funds in respect of which certain conditions specified under section 9A(3) would not apply [Notification No. 77/2017, dated 03.08.2017]

Section 9A provides for special taxation regime to facilitate location of fund managers of off-shore funds in India. Under this regime, in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund, subject to fulfilment of certain conditions.

Eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils, *inter alia*, the following conditions, namely -

- (e) the fund should have a minimum of twenty-five members who are, directly or indirectly, not connected persons;
- (f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;
- (g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent.

The above conditions, however, would not apply in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund as the Central Government may subject to conditions, if any, by notification, specify in this behalf.

Accordingly, the Central Government has, vide this notification, specified that these conditions would not apply to an investment fund set up by a Category-I or Category-II Foreign Portfolio Investor registered under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, made under the Securities and Exchange Board of India Act, 1992.

Clarification related to guidelines for establishing 'Place of Effective Management' (PoEM) in India [Circular No. 25/2017, dated 23.10.2017]

The concept of 'Place of Effective Management' (PoEM) for deciding residential status of a company, other than an Indian company, was introduced in the Income-tax Act, 1961 which has become effective from 1.4.2017, i.e., Assessment Year 2017-18 onwards.

The guiding principles for determination of PoEM of a company were issued on 24.01.2017 vide Circular No 06/2017. Further, vide Circular No 08/2017 dated 23.02.2017, it has been clarified that the PoEM provisions shall not apply to a company having turnover or gross receipts of ₹ 50 crore or less in a financial year.

Thereafter, stakeholders had expressed concerns that as per the extant guidelines, PoEM may be triggered in cases of certain multinational companies with regional headquarter structure merely on the ground that certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working from India, and consequently, their income from operations outside India may be taxed in India.

In this regard, it may be mentioned that Para 7 of the guidelines provides that the place of effective management in case of a company engaged in active business outside India (ABOI) shall be presumed to be outside India if the majority meetings of the board of directors (BoD) of the company are held outside India.

However, Para 7.1 of the guidelines provides that if on the basis of facts and circumstances, it is established that the Board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person(s) resident in India, then, the PoEM shall be considered to be in India.

It has also been provided that for this purpose, merely because the BoD follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Pay roll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; would not constitute a case of BoD of companies standing aside.

In view of the above, it is clarified that so long as the Regional Headquarter operates for subsidiaries/ group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the field of Pay roll functions, Accounting,

HR functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; it would, in itself, not constitute a case of BoD of companies standing aside and such activities of Regional Headquarter in India alone will not be a basis for establishment of PoEM for such subsidiaries/ group companies.

It is further mentioned in the said Circular that the provisions of General Anti-Avoidance Rule contained in Chapter X-A of the Income-tax Act, 1961 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.

Clarification on applicability of section 9(1)(i) relating to indirect transfer in case of redemption of share or interest outside India [Circular No. 28/2017, dated 7-11-2017]

Section 9(1)(i) provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India or through the transfer of a capital asset situate in India, shall be deemed to accrue or arise in India.

Explanation 5 to section 9(1)(i), clarifies that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

Concerns were raised by investment funds, including private equity funds and venture capital funds that on account of the extant indirect transfer provisions in the Act, non-resident investment funds investing in India, which are set up as multi-tier investment structures, suffer multiple taxation of the same income at the time of subsequent redemption or buyback.

However, in respect of investments in Category I and II FPIs by non-residents, which are already exempted from indirect transfer provisions through insertion of second proviso to *Explanation 5* to section 9(1)(i) by the Finance Act, 2017 with effect from 1.4.2015, such multiple taxation will not take place. In other cases, such taxability arises firstly at the level of the fund in India on its short-term capital gain/business income and then at every upper level of investment in the fund chain on subsequent redemption or buyback. The CBDT has received representations to exclude investors above the level of the direct investor who is already chargeable to tax in India on such income from the ambit of indirect transfer provisions of the Act.

In order to address this concern, the CBDT has, vide this Circular, clarified that the provisions of section 9(1)(i) read with *Explanation 5*, shall not apply in respect of income accruing or arising to a non-resident on account of redemption or buyback of its share or interest held indirectly (i.e. through upstream entities registered or incorporated outside India) in the specified funds (namely, investment funds, venture capital company and venture capital funds) if such income accrues or arises from or in consequence of transfer of shares or securities held in India by the specified funds and such income is chargeable to tax in India.

However, the above benefit shall be applicable only in those cases where the proceeds of redemption or buyback arising to the non-resident do not exceed the pro-rata share of the non-resident in the total consideration realized by the specified funds from the said transfer of shares or securities in India. It is further clarified that a non-resident investing directly in the specified funds shall continue to be taxed as per the extant provisions of the Act.

CHAPTER 6: PROFITS AND GAINS OF BUSINESS OR PROFESSION

Lease rent from letting out buildings/developed space along with other amenities in an Industrial Park /SEZ - to be treated as business income [Circular No. 16/2017, dated 25.04.2017]

The issue whether income arising from letting out of premises/developed space along with other amenities in an Industrial Park/SEZ is to be charged under head 'Profits and Gains of Business' or under the head 'Income from House Property' has been subject matter of litigation in recent years. Assessee claim the letting out as business activity, the income arising from which to be charged to tax under the head 'Profits and Gains of Business', whereas the Assessing Officers hold it to be chargeable under the head 'Income from House Property'.

The CBDT has considered the matter. Income from the Industrial Parks/SEZ established under various schemes framed and notified under section 80-IA(4)(iii) is liable to be treated as income from business provided the conditions prescribed under the schemes are met.

In the case of *Velankani Information Systems Pvt Ltd* (NJRS Citation [2013-LL-0402-44]), the Karnataka High Court observed that any other interpretation would defeat the object of section 80-IA and Government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Supreme Court.

In a subsequent judgment dated 30.04.2014 in ITA No. 76 & 78/2012 in the case of *CIT v. Information Technology Park Ltd.* (NJRS Citation [2014-LL-0430-141]), the Karnataka High Court has reaffirmed its earlier views. It has held that, since the assessee-company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out buildings along with other amenities in a software technology park would be chargeable to tax under the head "Profits and gains of business or profession" and not under the head "Income from house property". The judgment has been accepted by the CBDT.

In view of the above, it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out of premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

Applicability of income-tax provisions under section 40A(3), section 269ST and Rule 114B to cash sale of agricultural produce by cultivators/agriculturists to traders [Circular No. 27/2017, dated 3-11-2017]

The provisions of section 40A(3) provide for the disallowance of expenditure exceeding ₹ 10,000 made otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account. However, Rule 6DD carves out certain exceptions from application of the provisions of section 40A(3) in some specific cases and circumstances, which *inter alia*, include payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A(3) can be made if the trader makes cash purchases of agricultural produce from the cultivator.

Further, section 269ST, subject to certain exceptions, prohibits receipt of ₹ 2 lakh or more, otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank account from a person in a day or in respect of a single transaction or in respect of transactions relating to an event or occasion from a person. Therefore, any cash sale of an amount of ₹ 2 lakh or more by a cultivator of agricultural produce is prohibited under section 269ST.

Furthermore, the provisions relating to quoting of PAN or furnishing of Form No. 60 under Rule 114B do not apply to the sale transaction of ₹ 2 lakh or less.

In view of the above, it is clarified by the CBDT that cash sale of the agricultural produce by its cultivator to the trader for an amount less than ₹ 2 lakh will **not** -

- (a) result in any disallowance of expenditure under section 40A(3) in the case of trader.
- (b) attract prohibition under section 269ST in the case of the cultivator; and
- (c) require the cultivator to quote his PAN/ or furnish Form No. 60.

CHAPTER 7: CAPITAL GAINS

Long-term specified asset notified for the purpose of claiming exemption under section 54EC [Notification No. 47/2017, dated 08.06.2017 and Notification No. 79/2017, dated 08.08.2017]

Section 54EC provides exemption from chargeability of capital gain from the transfer of a long-term capital assets where the assessee has invested the whole or any part of the capital gain in a long-term specified asset. As per clause (ba) of *Explanation* to section 54EC "long term specified asset" means any bond redeemable after three years and issued on or after 01.04.07 by the National Highways Authority of India (NHAI) or by the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf.

Accordingly, the Central Government has, vide these notifications, notified any bond redeemable after three years and issued by the **Power Finance Corporation Limited** on or

after 15.06.17 or by the **Indian Railway Finance Corporation Limited** on or after 08.08.17 as 'long-term specified asset'.

CHAPTER 8: INCOME FROM OTHER SOURCES

Clarification regarding trade advance not to be treated as deemed dividend under section 2(22)(e) – [Circular No. 19/2017, dated 12.06.2017]

Section 2(22)(e) provides that "dividend" includes any payment by a company in which public are not substantially interested, of any sum by way of **advance or loan** to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

The CBDT observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e) and such views have attained finality.

Some illustrations/examples of trade advances/commercial transactions held to be **not** covered under section 2(22)(e) are as follows:

- (i) Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not fall within the definition of deemed dividend under section 2(22)(e) [*CIT vs. Creative Dyeing & Printing Pvt. Ltd.* [NJSR] 2009-LL-0922-2, ITA No. 250 of 2009, Delhi High Court].
- (ii) Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) [*CIT vs Amrik Singh*, [NJSR] 2015-LL-0429-5, ITA No. 347 of 2013, P & H High Court]
- (iii) A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22)(e) [*CIT, Agra vs Atul Engineering Udyog*, [NJSR] 2014-LL-0926-121, ITA No. 223 of 2011, Allahabad High Court]

In view of the above, the CBDT has, vide this circular, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not be treated as deemed dividend.

STUDY MATERIAL MODULE - 2
CHAPTER 11: DEDUCTIONS FROM GROSS TOTAL INCOME
Admissibility of deduction under Chapter VI-A on the profits enhanced due to disallowance of expenditure related to business activity [Circular No.37/2016, Dated 02.11.2016]

Chapter VI-A of the Income-tax Act, 1961, provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times, disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits.

The issue is whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

The courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

- (i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) would qualify for deduction under section 80-IB.
- (ii) If deduction under section 40A(3) is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB.

In view of the aforesaid judgements, the CBDT has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

Transport, Power and Interest subsidies received by an Industrial Undertaking - Eligibility for deduction under sections 80-IB, 80-IC etc., [Circular No. 39/2016, dated 29.11.2016]

The issue of whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 and, thus, eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers.

The Hon'ble Supreme Court in its judgment dated 9.3.2016 in the case of *Meghalaya Steels Ltd* and other cases has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-1B/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking.

In view of the above, the CBDT has clarified that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking/eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Income-tax Act, 1961.

Contributory Health Service Scheme notified for the purpose of section 80D [Notification No. 9 /2018 dated 16-2-2018]

Under section 80D, a deduction to the extent of ₹ 25,000 (₹ 30,000, in case of resident senior citizens) is allowed in respect of premium paid to effect or keep in force an insurance on the health of self, spouse and dependent children or any contribution made to the Central Government Health Scheme or such other health scheme as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification, notified the Contributory Health Service Scheme of the Department of Atomic Energy, contribution to which would qualify for deduction under section 80D.

CHAPTER 12: ASSESSMENT OF VARIOUS ENTITIES

Relaxation in the provisions relating to levy of Minimum Alternate Tax (MAT) in case of companies against whom an application for corporate insolvency resolution process has been admitted under the Insolvency and Bankruptcy Code, 2016 [Press Release, dated 6-1-2018]

The existing provisions of section 115JB, *inter alia*, provide, that, for the purposes of levy of Minimum Alternate Tax (MAT) in case of a company, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account shall be reduced from the book profit.

In this regard, the CBDT has received representations from various stakeholders that the companies against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the

Insolvency and Bankruptcy Code, 2016, are facing hardship due to restriction in allowance of brought forward loss for computation of book profit under section 115JB.

With a view to minimize the genuine hardship faced by such companies, with effect from Assessment Year 2018-19 (i.e. Financial Year 2017-18), in case of a company, against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the IBC, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB.

STUDY MATERIAL MODULE - 3

CHAPTER 15: DEDUCTION, COLLECTION AND RECOVERY OF TAX

Deduction of tax at source on interest income accrued to minor child, where both the parents have deceased [Notification No. 05/2017, dated 29.05.2017]

Under Rule 31A(5) of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of, *inter alia*, the statements and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements in the manner so specified.

The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), specified that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

Deduction of tax at source on interest on deposits made under Capital Gains Accounts Scheme, 1988 where depositor has deceased - Notification No. 08/2017, dated 13.09.2017

The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), vide this notification, specified that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

- (i) TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and
- (ii) TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir,

unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

Guidelines for waiver of interest charged under section 201(1A) of the Income-tax Act, 1961 – [Circular No. 11/2017, dated 24.03.2017]

In exercise of the powers conferred under section 119(2)(a), the CBDT has directed that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 201(1A)(i) in the classes of cases specified below for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under sections 200A, 201(1) or 234E, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

The class of cases in which the reduction or waiver of interest under section 201(1A)(i) can be considered, are as follows:

- (i) Where during the course of proceedings for search and seizure under section 132, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVIIIB of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account.
- (ii) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.
- (iii) Where the default under section 201 relates to non-deduction or a lower deduction of tax under section 195 in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 90 or 90A of the Act, and where —
 - (a) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 44H of the Income-tax Rules, 1962 under the said agreement under section 90 or 90A of the Act;
 - (b) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 201;

- (c) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and
- (d) the person in default under section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of Rule 44H(4) of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him.

Even if the interest under section 201(1A)(i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

The Chief Commissioner of Income-tax or Director General of Income-tax examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant.

The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by Chief Commissioner of Income-tax or Director General of Income-tax, as the case may be, and issue suitable directions to these authorities for proper implementation of this order. However, no review of or appeal against the orders passed on merits by such authorities would be entertained by the CBDT.

No requirement to deduct tax at source under section 194-I on remittance of Passenger Service Fees by an Airline to an Airport Operator [Circular No. 21/2017, dated 12.06.2017]

Section 194-I requires deduction of tax at source at specified percentage on any income payable to a resident by way of rent. *Explanation* to this section defines the term “rent” as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any (a) land; or (b) building; or (c) land appurtenant to a building; or (d) machinery; (e) plant; (f) equipment (g) furniture; or (h) fitting, whether or not any or all of them are owned by the payee.

On the issue of whether payment of passenger service fees (PSF) by an airline to an Airport Operator qualifies as rent to attract TDS under section 194-I, the Bombay High Court relied on the Apex Court ruling in *Japan Airlines and Singapore Airlines* case, wherein it was observed that the primary requirement for any payment to qualify as rent is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I. Accordingly, the Bombay High Court declined to admit the ground relating to applicability of the provisions of section 194-I on PSF charges holding that no substantial question of law arises.

The CBDT, accepting the view of the Bombay High Court, has clarified that the provisions of section 194-I shall **not** be applicable on payment of PSF by an airline to Airport Operator.

Clarification regarding TDS on Goods and Services Tax (GST) component comprised in payments made to residents [Circular No. 23/2017 dated 19.07.2017]

The CBDT had, vide Circular No. 1/2014 dated 13.01.2014, clarified that wherever in terms of the agreement or contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such service tax component.

In order to harmonize the same treatment with the new system for taxation of services under the GST regime w.e.f. 01.07.2017, the CBDT has, vide this circular, clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component.

GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

Further, for the purposes of this Circular, any reference to "service tax" in an existing agreement or contract which was entered into prior to 01.07.2017 shall be treated as "GST on services" with respect to the period from 01.07.2017 onward till the expiry of such agreement or contract.

Guidance on income-tax deduction from salaries under section 192 during the financial year 2017-18 [Circular No. 29/2017, dated 05-12-2017]

This CBDT Circular contains the rates for deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2017-18 and explains certain provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962, including the broad scheme of TDS from Salaries, persons responsible for deducting tax at source from Salaries and their duties, computation of income under the head "Salaries" etc.

Students may read/download this circular by using the following link - https://www.incometaxindia.gov.in/communications/circular/circular29_2017.pdf

CHAPTER 17: ASSESSMENT PROCEDURE

Persons who are not required to quote Aadhar Number or Enrolment ID in application form for allotment of PAN and in return of income [Notification No. 37/2017 dated 11.05.2017]

Section 139AA requires every person who is eligible to obtain Aadhar Number to mandatorily quote Aadhar Number or Enrolment ID of Aadhar application form, on or after 1st July, 2017 in the application form for allotment of PAN and in the return of income. However, this provision shall not be applicable to such person or class or classes of persons or any State or part of any State as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhar Number would not apply to an individual who does not possess the Aadhar number or Enrolment ID and is:

- (i) residing in the States of Assam, Jammu & Kashmir and Meghalaya;
- (ii) a non-resident as per Income-tax Act, 1961;
- (iii) of the age of 80 years or more at any time during the previous year;
- (iv) not a citizen of India.

Income Tax Return Forms notified for Assessment Year 2018-19 [Notification No. 16/2018, dated 3-4-2018]

The CBDT has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2018-19 *vide* this Notification. The ITR Forms and its applicability have been detailed below:

ITR Form No	Applicability
1	A one page simplified ITR 1 (SAHAJ) can be filed by an individual who is resident other than not ordinarily resident , having income from salaries, one house property, income from other sources (interest etc.). and having total income upto ₹ 50 lakh.
2	Individuals and HUFs having not having income from business or profession shall be eligible to file ITR 2.
3	Individuals and HUFs having income under the head "Profits and gains of business or profession" have to file ITR 3.
4	ITR 4 (SUGAM) can be used by eligible assesseees having presumptive income from business or profession. Thus, eligible assesseees having only presumptive income under section 44AD, 44ADA or 44AE, under the head "Profits and gains of business or profession" have to file return in ITR 4. In addition, they may have salary income, income from house property and income from other sources (excluding winnings from lottery and income from race horses, income taxable under section 115BBDA and income of the nature referred to in section 115BBE). Any person having agricultural income in excess of ₹ 5,000 cannot use ITR 4. Further, a person claiming relief of foreign tax paid under section 90, 90A or 91 cannot use this form. Also, this form cannot be used by a resident having any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India and by a resident having income from any source outside India.
5	ITR 5 can be used by persons other than individual, HUF, company and person filing Form ITR 7.

6	ITR 6 can be used by companies other than companies claiming exemption under section 11.
7	ITR 7 can be used by persons including companies required to furnish return under sections 139(4A) or 139(4B) or 139(4C) or 139(4D) or 139(4E) or 139(4F).

All these ITR Forms are to be filed electronically. However, where return is furnished in ITR Form-1 (SAHAJ) or ITR-4 (SUGAM), the following persons have an option to file return in paper form:

- (i) an Individual of the age of 80 years or more at any time during the previous year; or
- (ii) an Individual or HUF whose income does not exceed five lakh rupees and who has not claimed any refund in the Return of Income.

Amendments to the Tax Return Preparer Scheme, 2006 as notified u/s 139B [Notification No. 4/2018, dated 19-01-2018]

Section 139B provides that for the purpose of enabling any specified class or classes of persons in preparing and furnishing returns of income, the CBDT may, without prejudice to the provisions of section 139, frame a Scheme, by notification in the Official Gazette, providing that such persons may furnish their returns of income through a Tax Return Preparer (TRP) authorised to act as such under the Scheme.

Accordingly, vide Notification No 358/2006 dated 28.11.2006, the CBDT had notified the "Tax Return Preparer Scheme, 2006". Later on, the said scheme was amended vide Notification No 84/2010 dated 22.11.2010. Vide this notification, the said scheme is further amended so as to widen the scope of the Scheme. The amended portion is given in ***bold italics*** in the second column below:

Particulars	Contents
Applicability of the scheme	The scheme is applicable to all eligible persons.
Eligible person	Any person being an individual or a Hindu undivided family.
Tax Return Preparer	Any individual who has been issued a "Tax Return Preparer Certificate" and a "unique identification number" under this Scheme by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the Scheme. However, the following person are not entitled to act as TRP: (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings. (ii) any legal practitioner who is entitled to practice in any civil court in India. (iii) an accountant.

Educational qualification for Tax Return Preparers	<i>An individual, who holds a bachelor degree from a recognised Indian University or institution, or has passed the intermediate level examination conducted by the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India or the Institute of Cost Accountants of India, shall be eligible to act as TRP.</i>
Preparation of and furnishing the Return of Income by the Tax Return Preparer	An eligible person may, at his option, furnish his return of income u/s 139 for any assessment year after getting it prepared through a TRP: However, the following eligible persons (an individual or a HUF) cannot furnish a return of income for an assessment year through a TRP: (i) who is carrying out business or profession during the previous year and accounts of the business or profession for that previous year are required to be audited under section 44AB or under any other law for the time being in force; or (ii) who is not a resident in India during the previous year. An eligible person cannot furnish a revised return of income for any assessment year through a TRP unless he has furnished the original return of income for that assessment year through such or any other TRP. Further, a return of income which is required to be furnished in response to a notice under section 142(1)(i) or under section 148 or under section 153A cannot be prepared or furnished through a TRP.

CHAPTER 18: APPEALS AND REVISIONS

Notification No. SO 1696(E) [F.No.A.-50050/9/2016-Ad1C(CESTAT) Pt. I], dated 26.05.2017

Part XIV of Chapter VI to the Finance Act, 2017 contains amendments to certain Acts to provide for merger of tribunals and other authorities and conditions of service of chairpersons, members, etc. Section 184 of the Finance Act, 2017 lays down the qualifications, appointment, term and conditions of service, salary and allowances, etc., of Chairperson, Vice Chairperson and Members, etc., of the Tribunal, Appellate Tribunal and other Authorities.

Section 252A has been inserted in the Income-tax Act, 1961 to provide that the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017 would be governed by the provisions of section 184 of that Finance Act, 2017.

However, the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act i.e., section 252 and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

Section 156 of the Finance Act, 2017 provides the provisions of Part XIV of Chapter VI of the Finance Act, 2017 shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint. Accordingly, the Central Government has, vide this notification, appointed 26.05.2017 as the date on which the provisions of the Part XIV of Chapter VI of the Finance Act, 2017 shall come into force.

CHAPTER 23: MISCELLANEOUS PROVISIONS

Clarifications in respect of section 269ST [Circular No. 22/2017, Dated 03.07.2017]

With a view to promote digital economy and create a disincentive against cash economy, new section 269ST has been inserted in the Income-tax Act, 1961 vide Finance Act, 2017. The said section *inter-alia* prohibits receipt of an amount of two lakh rupees or more by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. Penal provisions have also been introduced by way of a new section 271DA, which provides that if a person receives any amount in contravention to the provisions of section 269ST, it shall be liable to pay penalty of a sum equal to the amount of such receipt.

Subsequently, representations were received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST shall apply to one instalment of loan repayment or the whole amount of such repayment.

Accordingly, the CBDT has, vide this circular, clarified that in respect of receipt, in the nature of repayment of loan, by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in section 269ST(b) and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

STUDY MATERIAL MODULE - 4

CHAPTER 2: DOUBLE TAXATION RELIEF

Procedure for filing Statement of income from a country or specified territory outside India and Foreign Tax Credit [Notification No. 9/2017, dated 19.09.2017]

An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax

in India, in the manner and to the extent as specified in Rule 128 of the Income-tax Rules, 1962.

As per rule 128(9), the statement in Form No. 67 referred to in Rule 128(8)(i) and the certificate or the statement referred to in rule 128(8)(ii) has to be furnished on or before the due date specified for furnishing the return of income under section 139(1), in the manner specified for furnishing such return of income.

Accordingly, the Principal Director General of Income-tax (Systems), has, in exercise of the powers delegated by the CBDT, vide this notification, laid down the following procedures in this regard:

- (i) **Online filing of Form 67:** All assesseees who are required to file return of income electronically under section 139(1) as per Rule 12(3), are required to prepare and submit Form 67 online along with the return of income, if credit for the amount of any foreign tax paid by the assessee in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.
- (ii) **Preparation and Submission of Form 67:** Form 67 shall be available to all assesseees when they login into the e-filing portal using their valid credentials. A link for filing the Form has been provided under "e-File → Prepare and Submit Online Forms (Other than ITR)". Select Form 67 and assessment year from the drop down. The completed Form 67 can be submitted by clicking on "Submit" button. Digital Signature Certificate or Electronic Verification Code is mandatory to submit Form 67.
- (iii) **Submission of Form 67** shall precede filing of return of income.

CHAPTER 3: TRANSFER PRICING & OTHER ANTI-AVOIDANCE MEASURES

Rules for maintaining information and documents and furnishing report in respect of international group in line with BEPS Action Plan - Country-by-Country reporting and of Master File prescribed [Notification No. 92/2017, dated 31.10.2017]

Section 286 was inserted to implement the recommendations of 2015 Final Report on Action 13, titled "Transfer Pricing Documentation and Country-by-Country (CbC) Reporting", identified under the OECD Base Erosion and Profit Shifting (BEPS) Project, to provide for a specific reporting regime in respect of CbC reporting and also the master file in the Income-tax Act, 1961.

Section 286 provides that every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority, on or before the prescribed date, in the form and manner, as may be prescribed,

- whether, it is the alternate reporting entity of the international group or
- the details of the parent entity or the alternate reporting entity of the international group and the country or territory of which the said entities are resident.

Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, furnish a report, in respect of the international group of which it is a constituent, on or before the due date specified under section 139(1), in the form and manner, as may be prescribed.

The proviso to section 92D requires a person, being a constituent entity of an international group, to also keep and maintain such information and document in respect of an international group as may be prescribed. Further, section 92D(4) requires such person to furnish such information and documents to the authority prescribed under section 286(1) in the prescribed manner on or before the prescribed date.

Accordingly, the CBDT has, vide this notification, prescribed the following rules for maintaining and furnishing CbC report and Master File by a constituent or parent entity of an International group:

I. Information and documents to be kept and maintained [Rule 10DA]	
Rule	Particulars
10DA(1)	<u>Persons required to keep and maintain the information and documents:</u> Every person, being a constituent entity of an international group shall - (i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds ₹ 500 crore; and (ii) the aggregate value of international transactions - (A) during the accounting year, as per the books of accounts, exceeds ₹ 50 crore, or (B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ₹ 10 crore. Note – The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate (TTBR) of such currency on the last day of the accounting year. [Rule 10DA(8)] Part A of Form No. 3CEAA (Master File), however, shall be furnished by every person, being a constituent entity of an international group, whether or not the above conditions are satisfied [Rule 10DA(3)]. Part B of Form No.3CEAA has to be furnished by a person, being a constituent entity of an international group, in those cases where the above conditions are satisfied.
	<u>Information and documents required to be kept and maintained:</u> The constituent entity shall keep and maintain the following information and documents of the international group, namely:-

	(a) a list of all entities of the international group along with their addresses; (b) a chart depicting the legal status of the constituent entity and ownership structure of the entire international group; (c) a description of the business of international group during the accounting year including,- (I) the nature of the business or businesses; (II) the important drivers of profits of such business or businesses; (III) a description of the supply chain for the five largest products or services of the international group in terms of revenue and any other products including services amounting to more than five per cent. of consolidated group revenue; (IV) a list and brief description of important service arrangements made among members of the international group, other than those for research and development services; (V) a description of the capabilities of the main service providers within the international group; (VI) details about the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services; (VII) a list and description of the major geographical markets for the products and services offered by the international group; (VIII) a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent. of the revenues or assets or profits of such group; and (IX) a description of the important business restructuring transactions, acquisitions and divestments; (d) a description of the overall strategy of the international group for the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management; (e) a list of all entities of the international group engaged in development and management of intangible property along with their addresses; (f) a list of all the important intangible property or groups of intangible property owned by the international group along with the names and addresses of the group entities that legally own such intangible property; (g) a list and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements; (h) a detailed description of the transfer pricing policies of the
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	international group related to research and development and intangible property; (i) a description of important transfers of interest in intangible property, if any, among entities of the international group, including the name and address of the selling and buying entities and the compensation paid for such transfers; (j) a detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders; (k) a list of group entities that provide central financing functions, including their place of operation and of effective management; (l) a detailed description of the transfer pricing policies of the international group related to financing arrangements among group entities; (m) a copy of the annual consolidated financial statement of the international group; and (n) a list and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries.
10DA(2)	<u>Due date for furnishing report:</u> The report of the information shall be furnished in Form No. 3CEAA and it shall be furnished on or before the due date for furnishing the return of income specified under section 139(1).
10DA(4)/(5)	<u>Furnishing of report in case of more than one constituent entity:</u> Where there are more than one constituent entities resident in India of an international group, then the report or information, as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity in Form 3CEAB. Such intimation shall be made at least 30 days before the due date of filing the report as specified in Rule 10DA(2).
10DA(7)	<u>Period for which such information and document to be kept or maintained:</u> The information and documents shall be kept and maintained for a period of eight years from the end of the relevant assessment year.
II. Furnishing of Report in respect of an International Group [Rule 10DB]	
Rule	Provision
10DB(1)	<u>Intimation in prescribed from:</u> For the purposes of section 286(1), every constituent entity resident in India,

	shall, if its parent entity is not resident in India, intimate the DGIT (Risk Assessment) in Form No. 3CEAC, the following, namely - (a) whether it is the alternate reporting entity of the international group; or (b) the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.
10DB(2)	<u>Due date for the Intimation:</u> Every intimation shall be made at least two months prior to the due date for furnishing of report i.e., on or before the due date for furnishing return of income as specified under section 139(1).
10DB(3)/ (4)/(5)	<u>Entities which are required to furnish report in Form No. 3CEAD:</u> Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall, for every reporting accounting year, furnish the report to the DGIT (Risk Assessment) in Form No.3CEAD (Country by Country Reporting). A constituent entity of an international group, resident in India, other than the parent entity or the alternate reporting entity, has to furnish the report in Form No.3CEAD if the parent entity is resident of a country or territory with which India does not have an agreement providing for exchange of the report or there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity. If there are more than one constituent entities resident in India of an international group, other than the parent entity or the alternate reporting entity, then the report in Form No.3CEAD may be furnished by that entity which has been designated by the international group to furnish the said report and the same has been intimated to the DGIT (Risk Assessment) in Form No.3CEAE.
10DB(6)	<u>Non-applicability of provisions of section 286</u> The provisions of section 286 shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed ₹ 5,500 crore. Note - Where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate (TTBR) of such currency on the last day of the accounting year preceding the accounting year. [Rule 10DB(7)]

Explanatory Notes to the provisions of the Finance Act, 2017 [Circular No. 2/2018, Dated 15-2-2018]

Explanatory notes to the provisions of Finance Act, 2017 as assented by President on 31st March, 2017 have been given by way of this circular. This circular, thus, explains the substance of the direct tax provisions contained in the Finance Act, 2017.

This Circular is available at the Income-tax Department's website at https://www.incometaxindia.gov.in/communications/circular/circular2_2018.pdf. This Circular has also been hosted at the BoS Knowledge Portal on the Institute's website at <https://resource.cdn.icai.org/48797bos32735.pdf>.

Note - The limit for gratuity notified under the Payment of Gratuity Act, 1972 has been increased from ₹ 10 lakh to ₹ 20 lakh with effect from 29.3.2018.

SECTION – B: QUESTIONS & ANSWERS**QUESTIONS**

1. ABC Inc., a company incorporated in London has entered into an agreement with XYZ Limited, an Indian company for rendering technical services to the latter for setting up a steel plant in Madhya Pradesh. As per the agreement, ABC Inc. rendered both off-shore services and on-shore services to XYZ Limited at fee of ₹ 75 lakhs and ₹ 90 lakhs, respectively. ABC Inc. is of the view that it is not liable to tax in India in respect of fee of ₹ 75 lakhs as it is for rendering services outside India. Discuss the correctness of the view of ABC Inc.
2. XYZ Ltd. is a company engaged in the manufacture of paints. The company incurred preliminary expenses of ₹ 42 lakhs. The cost of the project was ₹ 400 lakhs and the capital employed in the business of the company was ₹ 700 lakhs. For the purpose of claiming deduction under section 35D, the company restricted the said expenditure to ₹ 35 lakhs, i.e., 5% of ₹ 700 lakhs, being the capital employed in the business of the company. For this purpose, the company treated share premium of ₹ 100 lakhs as part of the capital employed. For the A.Y.2018-19, it claimed deduction of ₹ 7 lakhs, being 1/5th of ₹ 35 lakhs, under section 35D. The Assessing Officer disallowed ₹ 1 lakh, being the portion relating to share premium (1/5th of 5% of ₹ 100 lakhs), contending that the same was not part of capital employed. Whether “premium” on subscribed share capital is “capital employed in the business of the company” under section 35D to be eligible for a deduction? Examine the correctness of contention of the Assessing Officer, with the aid of a case law.
3. Mr. Krishnan owned vast area of agricultural land in Tamil Nadu. The State Government acquired the property for development of a techno park. Mr. Krishnan was awarded compensation of ₹ 15 lakhs. Aggrieved by the amount, he initiated negotiations with the

Collector, further to which compensation was fixed at ₹ 35 lakhs. Mr. Krishnan claimed exemption from capital gains under section 10(37) since the transfer of agricultural land was on account of compulsory acquisition. The Assessing Officer contended that exemption under section 10(37) would not be available in this case, as it was not a compulsory acquisition but a voluntary sale, since he had received higher compensation consequent to negotiation.

Examine whether the claim for exemption under section 10(37) is tenable in law in this case.

4. Ms. Poorna purchased a residential flat at Pune from her friend Ms. Leena at ₹ 12 lakhs on 15th November, 2017. The value determined by the Stamp Valuation Authority for stamp duty purpose amounted to ₹ 20 lakhs. Ms. Leena had purchased the flat on 3rd March, 2016 at a cost of ₹ 5 lakhs. Ms. Poorna sold the flat for ₹ 27 lakhs on 27th March, 2018.

Determine the effect of the above transactions on the assessments of Ms. Poorna and Ms. Leena for the assessment year 2018-19, assuming that the stamp duty value of the flat on 27.3.2018 is ₹ 32 lakhs.

5. PQR Manufacturing Ltd., a manufacturing company, was transporting its machines from one unit to another unit at a distance of 275 kms on 29th November, 2017 by a truck. On account of a civil disturbance, the machines were destroyed. The insurance company paid ₹ 12 lakhs for the destroyed machines. On these facts, for submitting the return of income for the previous year ending 31st March, 2018, your advice is sought as to:
- (i) Does the destruction of machines result in any transfer?
 - (ii) How would the amounts received from the insurance company be treated for taxability?
 - (iii) Would there be any impact on the written down value of the block of plant and machinery as at 31st March, 2018?
6. Aadarsh HUF holds 35% shares of M/s. Best Fertilizers (P.) Ltd., a closely held company. During the P.Y.2017-18, it received loans and advances from the company. Its return was scrutinized by the Assessing Officer who treated the loans and advances as deemed dividend under section 2(22)(e). As per the company's annual return, the HUF is the shareholder. However, the share certificates were issued in the name of the HUF's Karta, Mr. Aadarsh. Thus, there was some dispute as to who was the shareholder - the Karta, Mr. Aadarsh or the HUF, as share certificates were issued in the name of the former but the annual return mentioned the latter.

Aadarsh HUF contended that as a HUF cannot be a registered or beneficial shareholder of a company, the amount of loan cannot be taxed as deemed dividend.

Examine whether the loan given by a closely held company to a HUF is chargeable to tax as deemed dividend under section 2(22)(e).

7. ABC Ltd., engaged in development of housing projects, filed its return of income for A.Y.2018-19 after claiming deduction of ₹ 25 lakhs under section 80-IBA. The return was selected for scrutiny. In the assessment, a sum of ₹ 12.60 lakhs, being 30% of ₹ 42 lakhs, towards sub-contract payment was disallowed for non-deduction of tax at source by invoking section 40(a)(ia). The Assessing Officer, however, limited the deduction under section 80-IBA to the original amount claimed by ABC Ltd. ABC Ltd. contended that it was eligible for a higher deduction of ₹ 37.60 lakhs under section 80-IBA consequent to disallowance under section 40(a)(ia). Examine the correctness of contention of ABC Ltd.
8. Mysore Co-operative Society derives income during financial year 2017-18 from the following sources:
- | | |
|--|----------|
| (i) Income from processing with the aid of power | ₹ 40,000 |
| (ii) Income from collective disposal of labour of its members | ₹ 20,000 |
| (iii) Interest from another co-operative society | ₹ 12,000 |
| (iv) Income from house property (Computed) | ₹ 75,000 |
| (v) Income from other business | ₹ 72,000 |
| (vi) Income by way of dividend from another co-operative society | ₹ 15,000 |

Determine the total income of Mysore Co-operative Society for the A.Y.2018-19.

9. Alpha Diagnostics is a diagnostic laboratory in Cochin and has a branch at Allepey. A survey under section 133A was conducted, consequent to which the assessee filed return of income. On the basis of certain incriminating documents and materials unearthed during the survey, a notice under section 148 was issued. Subsequently, the incomes were assessed for assessment years 2014-15 and 2015-16 under section 143(3) read with section 147.

The assessee raised additional jurisdictional grounds before the Appellate Tribunal. The assessee contended that for the relevant assessment years, the assessment was completed under section 143(3) read with section 147. However, a notice under section 143(2) was not issued by the Assessing Officer for those years. The Tribunal held that in view of section 292BB, the assessee's participation in the reassessment proceedings would condone the omission to issue a notice.

Discuss, with the aid of a Supreme Court case law, whether failure to issue notice under section 143(2) would vitiate the assessment notwithstanding the assessee's participation in the proceedings. Would section 292BB come to the rescue of the Revenue authority if they omit to issue notice under section 143(2)? Examine.

10. "Fashion Trends" filed its return of income as a partnership firm for the relevant assessment year admitting a total income of ₹ 150 lakhs. The firm consisted of fifteen individuals and two firms. The return of income was selected for scrutiny which led to disallowance of certain deductions to the tune of ₹ 70 lakhs. The assessee preferred an

appeal. The CIT (Appeals) invoked section 251 and issued a show cause notice proposing to change the assessee's status to AOP on the reasoning that a partnership firm cannot be a partner in another firm. Discuss the correctness of the contention of the CIT (Appeals). Also, examine whether the CIT (Appeals) has the power to change the status of the assessee.

11. The statement of profit & loss of LMN Private Ltd., a resident company engaged in manufacturing, shows net profit of ₹ 77,00,000 for the financial year ended on 31st March, 2018, after debit/credit of the following items.

A. Credited to the Statement of Profit and Loss:

- (i) Rent received from vacant land ₹ 2,05,000
- (ii) Rent received (gross) from a commercial property owned by the company ₹ 4,30,000 (Tax deducted by tenant @ 10%)
- (iii) Interest received on income tax refund ₹ 42,000
- (iv) Profit on sale of unused land ₹ 2,00,000.

B. Debited to the Statement of Profit and Loss:

- (i) Depreciation charged to the Statement of Profit and Loss ₹ 11,75,000.
- (ii) Donation of ₹ 70,000 paid to Swachh Bharat Kosh.
- (iii) Contribution to Political Party amounting to ₹ 1,50,000 paid in cash.
- (iv) Payment made to transporter ₹ 60,000 by account payee cheque, but no tax has been deducted at source. (Transporter is having PAN and furnished declaration that he is covered under section 44AE and not having more than 10 goods carriages at any time during the previous year).
- (v) Bonus to employees ₹ 3,20,000 provided. However, payment was made on the occasion of Diwali festival on 18th October, 2018.
- (vi) Provision made for income-tax ₹ 4,20,000 (including interest of ₹ 70,000 thereon)
- (vii) Contribution of ₹ 1,00,000 to a University approved and notified under section 35(1)(ii)
- (viii) Loss of ₹ 1,80,000 incurred by way of trading in derivatives in shares in a recognized stock exchange.

Additional information:

- (1) Depreciation as per Income-tax Act, 1961 ₹ 18,00,000. However, while calculating such depreciation, rate applicable to computers has been adopted for (i) accessories like printers and scanners, and (ii) EPABX. The written down value of these items as on 01.04.2017 is given below:

- (a) Printers and Scanners ₹ 3,00,000
 (b) EPABX ₹ 5,00,000
- (2) Additional depreciation on plant and machinery purchased for ₹ 34,00,000 on 18th November, 2017 has not been considered while calculating depreciation as per Income-tax Act, 1961 as above.
- (3) Provision for audit fee ₹ 1,00,000 was made in the books for the year ended on 31st March, 2017 without deducting tax at source.
 Such fee was paid to auditors in September 2017 after deducting tax at source under Section 194J and tax so deducted was deposited on 6th October, 2017.
- (4) The company during the financial year 2016-17 made a provision for an outstanding bill of ₹ 90,000 for purchase of raw material. Out of such outstanding amount, the company has paid ₹ 45,000 in cash on 20th August, 2017.
- (5) During the year, the company has issued 1,00,000 equity shares of face value of ₹ 10 each at premium of ₹ 90 each. The fair market value is ₹ 60 per share at the time of issue of shares.
- (6) Unused land which was sold in March, 2018 for ₹ 52,00,000 was acquired by the company in January, 2016 for ₹ 50,00,000.
- (7) Cost Inflation Index – FY 2015-16: 254; FY 2017-18: 272

Compute total income of the company for the Assessment Year 2018-19 stating reasons for treatment of each item. Ignore provisions relating to Minimum Alternate Tax.

12. PQR LLP, a limited liability partnership in India is engaged in development of software and providing IT enabled services through two units, namely, Unit P and Unit Q. Unit P is setup in Special Economic Zone (SEZ) and Unit Q is set up in a Domestic Tariff Area (DTA). The LLP furnishes the following information relating to its 3rd year of operation ended on 31-3-2018:

Items	(Amount in ₹ Lacs)	
	Unit P	Unit Q
Export Turnover	1200	920
Domestic Turnover	200	460
Duty Draw Back	38	38
Profit on sale of Import Entitlement	24	Nil
Salaries paid	540	192
Other expenses	420	473
Net Profit of the year	502	753

Additional Information:

- (i) **Unit P:** Expenses of ₹ 24 lacs are disallowable under section 43B and export sales proceeds received in India amounted to ₹ 1040 lacs. Export sales of ₹ 1200 lacs include freight and insurance of ₹ 200 lacs and realization of ₹ 1040 lacs includes amount of insurance and freight charges of ₹ 140 lacs.
- (ii) **Unit Q:** Export sales received in India was ₹ 850 lacs. Expenses charged and are to be disallowed as per section 40A(3) are of ₹ 47 lacs.

Compute tax payable by PQR LLP for the Assessment Year 2018-19.

13. Mr. Vishwas, aged 61 years, is a resident and ordinarily resident in India for the A.Y.2018-19. He owns an apartment in Abu Dhabi, which he purchased on 1.6.2008, and he also has a bank account in the Bank of Abu Dhabi.
 - (a) Mr. Vishwas contends that since his total income of ₹ 2,95,000 for the P.Y.2017-18, comprising of income from house property and bank interest, is less than the basic exemption limit, he need not file his return of income for A.Y.2018-19.
 - (b) Mr. Vishwas also contends that the notice issued by the Assessing Officer under section 148 in September, 2017 for A.Y.2009-10 is not valid due to the following reasons –
 - (i) There is no escaped income relating to that year; and
 - (ii) The time period prescribed in section 149 for issuing notice under section 148 for A.Y.2009-10 has since lapsed.

Discuss the correctness of the above contentions of Mr. Vishwas.

14. The Assessing Officer within his jurisdiction surveyed a popular restaurant (bar cum restaurant) at 10.15 p.m. for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The restaurant is kept open for business every day between 8 a.m. and 11.30 p.m. The owner of the restaurant claims that the Assessing Officer could not enter the restaurant for survey after sunset. The Assessing Officer wanted to take away with him the books of account kept at the restaurant. Examine the validity of the claim made by the owner and the proposed action of the Assessing Officer.
15. Medicare Trust running hospitals is registered under section 12AA. From the following particulars relevant for the previous year ended 31st March, 2018, you are required to compute taxable income and tax liability of the trust for A.Y.2018-19.
 - (i) Income from running of hospitals ₹ 108 lakhs.
 - (ii) Income from medical college (gross receipts ₹ 95 lakhs) ₹ 24 lakhs
 - (iii) Donation received (including anonymous donation ₹ 3 lakhs) ₹ 8 lakhs.

- (iv) Amount applied for the purposes of hospital ₹ 93.50 lakhs.
 - (v) The trust had accumulated ₹ 20 lakhs under section 11(2) in the financial year 2011-12 for a period of five years for extension of one of its hospitals. The trust has spent ₹ 15 lakhs for the said purpose till 31st March, 2017. No amount was spent in the year 2017-18.
16. Unipro Ltd., a manufacturer of automobiles, sells premium model cars, the value of which ranges from above ₹ 10 lakh to ₹ 25 lakh and small cars, value of which ranges from ₹ 5 lakh upto ₹ 10 lakh to its dealers across the country. Examine whether Unipro Ltd. is liable to collect tax at source under section 206C on sale of these cars to the different dealers across the country.
- Also, examine the liability, if any, of dealers to collect tax at source on sale of these cars to the retail customers, if no part of the consideration is received in cash.
17. Examine whether transfer pricing provisions under the Income-tax Act, 1961 would be attracted in respect of the following cases -
- (i) Scientific research services provided by Lambda Sicom, an Italian company to XYZ Ltd., an Indian company. Lambda Sicom is a “specified foreign company” as defined in section 115BBD, in relation to XYZ Ltd.
 - (ii) Purchase of commodities by Omega Ltd., an Indian company, from Cylo AG, a German company. Omega Ltd. is the subsidiary of Cylo AG.
 - (iii) EF Ltd., an Indian company, has two units, E & F. Unit E, which commenced business two years back, is engaged in the development of a highway project, for which purpose an agreement has been entered into with the Central Government. Unit F is carrying on the business of trading in steel. Unit F transfers 20,000 metric tons of steel of the value of ₹ 32,000 per MT to Unit E for ₹ 20,000 per MT.
 - (iv) Ms. Geetha, a resident Indian, is a director of Theta Ltd, an Indian company. Theta Ltd. pays salary of ₹ 40 lakhs per annum to Samyukta, who is Ms. Geetha's daughter.
 - (v) Transfer of technical knowhow by Y Ltd., an Indian company, to Alcatel Lucent, a French company, which guarantees 15% of the borrowings of Y Ltd.
18. An Irish company, Phi plc., entered into a contract with an Indian company, Beta Ltd., for provision of technical know-how and made an application to the Authority for Advance Rulings for advance ruling on the rate of withholding tax on receipts from Beta Ltd.. Beta Ltd. had also made an application to the Assessing Officer for determination of the rate at which tax is deductible on the said payment to Phi plc The Authority for Advance Rulings rejected the application of Phi plc on the ground that the question raised in the application is already pending before an income tax authority. Is the rejection of the application of Phi plc justified in law?

19. Mr. Ranjit, an individual resident in India aged 32 years, furnishes you the following particulars of income earned in India, Country P and Country Q for the previous year 2017-18. India has not entered into double taxation avoidance agreement with these two countries.

Particulars	₹
Income from profession carried on in India	6,20,000
Agricultural income in Country P (gross)	82,000
Dividend received from a company incorporated in Country Q (gross)	97,000
Royalty income from a literary book from Country P (gross)	5,20,000
Expenses incurred for earning royalty	30,000
Business loss in Country Q (Proprietary business)	70,000
Rent from a house situated in Country Q (gross)	3,20,000
Municipal tax in respect of the above house (not allowed as deduction in country Q)	12,000

Notes:

- (1) Business loss in Country Q not eligible for set off against other incomes as per law of that country.
 - (2) Agricultural income is not exempt in Country P.
 - (3) No statutory deduction is allowable against income from house property in Country Q.
- The rates of tax in Country P and Country Q are 12% and 15%, respectively.
- Compute total income and tax payable by Mr. Ranjit in India for A.Y.2018-19.
20. Examine the tax consequence for Assessment Year 2018-19 in respect of fees for technical services (FTS) received by Mr. Tom Sawyer, a non-resident, from Ganga Ltd., an Indian company, in pursuance of an agreement approved by the Central Government, if -
- (a) India has no Double Tax Avoidance Agreement (DTAA) with Country A
 - (b) India has a DTAA with Country A, which provides for taxation of such FTS @5%.
 - (c) India has a DTAA with Country A, which provides for taxation of such FTS @15%.
- The technical services are utilised by Ganga Ltd. for its business in Calcutta. Assume that Tom Sawyer is a resident of Country A and he has no fixed place of his profession in India.
- Would your answer change if he has a fixed place of his profession in India and he renders technical services through that place? Examine, in a case where India has no DTAA with Country A.

SUGGESTED ANSWERS/HINTS

1. The *Explanation* to section 9(1) clarifies that income by way of, *inter alia*, fees for technical services from services utilized in India would be deemed to accrue or arise in India under section 9(1)(vii) in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

In this case, the technical services rendered by the foreign company, ABC Inc., were for setting up a steel plant in Madhya Pradesh. Therefore, the services were utilized in India. Consequently, as per section 9(1)(vii) read with the above *Explanation*, the fee of ₹ 1.65 crore for technical services rendered by ABC Inc (both off-shore and on-shore services) to XYZ Ltd. is deemed to accrue or arise in India and includible in the total income of ABC Inc.

Therefore, the view of ABC Inc. that it is not liable to tax in India in respect of fee of ₹ 75 lakh (as it is for rendering services outside India) is not correct.

2. The issue under consideration is whether “premium” on subscribed share capital can be treated “capital employed in the business of the company” under section 35D to be eligible for increased deduction

This issue came up before the Supreme Court in *Berger Paints India Ltd v. CIT* [2017] 393 ITR 113. The Supreme Court observed that the share premium collected by the assessee on its subscribed issued share capital could not be part of “capital employed in the business of the company” for the purpose of section 35D(3)(b). If it were the intention of the legislature to treat share premium as being “capital employed in the business of the company”, it would have been explicitly mentioned. Moreover, Sl. No. IV(i) in Form MGT- 7 read with section 92 of the Companies Act, 2013¹ dealing with capital structure of the company provides the break-up of “issued share capital” and “subscribed share capital” which does not include share premium at the time of subscription. Hence, in the absence of the reference in section 35D, share premium is not a part of the capital employed. Also, section 52 of the Companies Act, 2013² requires a company to transfer the premium amount to be kept in a separate account called “securities premium account”.

Accordingly, the amount qualifying for deduction under section 35D would be ₹ 30 lakhs, being 5% of ₹ 600 lakhs [i.e., ₹ 700 lakhs (-) share premium of ₹ 100 lakhs]. The deduction under section 35D for A.Y.2018-19 would be ₹ 6 lakhs, being 1/5th of ₹ 30 lakhs. The contention of the Assessing Officer is, therefore, correct.

¹ Corresponding to column III of the form of the annual return in Part II of Schedule V to the Companies Act, 1956 under section 159

² Corresponding to section 78 of the erstwhile Companies Act, 1956

3. The issue under consideration is whether receipt of higher compensation on account of negotiation would transform the character of compulsory acquisition into a voluntary sale, so as to deny exemption under section 10(37).

This issue came up before the Supreme Court in *Balakrishnan v. Union of India & Others* (2017) 391 ITR 178 (SC). The Apex Court observed that the acquisition process was initiated under the Land Acquisition Act, 1894. The assessee entered into negotiations only for securing the market value of the land without having to go to the Court. Merely because the compensation amount is agreed upon, the character of acquisition will not change from compulsory acquisition to a voluntary sale. The Court also drew attention to a recently enacted legislation titled, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which empowers the Collector to pass an award with the consent of the parties. Despite the provision for consent, the acquisition would continue to be compulsory.

Accordingly, the Supreme Court held that when proceedings were initiated under the Land Acquisition Act, 1894, even if the compensation is negotiated and fixed, it would continue to remain as compulsory acquisition.

Applying the rationale of the Supreme Court ruling to the case on hand, the claim of exemption from capital gains under section 10(37) in this case by Mr. Krishnan is tenable in law.

4. Tax treatment in the hands of the seller, Ms. Leena

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

In the instant case, Ms. Leena sold the residential flat at Pune to her friend Ms. Poorna for ₹ 12 lakhs, whereas the stamp duty value was ₹ 20 lakhs. Therefore, stamp duty value shall be deemed to be the full value of consideration for sale of the property. Since the period of holding does not exceed 24 months, the capital gain is short-term. Therefore, short-term capital gain arising to Ms. Leena for assessment year 2018-19 will be ₹ 15 lakhs (i.e., ₹ 20 lakhs - ₹ 5 lakhs).

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

The taxability provisions under section 56(2)(x), includes within its scope, any immovable property, being land or building or both, received for inadequate consideration by an individual or HUF.

As per section 56(2)(x), where any immovable property is received for a consideration which is less than the stamp duty by an amount exceeding ₹ 50,000, the difference between the stamp duty value and the consideration shall be chargeable to tax in the

hands of the recipient as income from other sources. The provisions of section 56(2)(x) would be attracted in this case, since the difference exceeds ₹ 50,000. Therefore, ₹ 8 lakhs, being the difference between the stamp duty value of the property (i.e., ₹ 20 lakhs) and the actual consideration (i.e., ₹ 12 lakhs) would be taxable in the hands of Ms. Poorna, under the head 'Income from Other Sources'.

As per section 49(4), the cost of acquisition of such property for computing capital gains would be the value which has been taken into account for section 56(2)(x). Accordingly, ₹ 20 lakhs would be taken as the cost of acquisition of the flat. Here again, the stamp duty value on the date of sale has to be considered since the same is higher than actual consideration. Therefore, on sale of the flat by Ms. Poorna, ₹ 12 lakhs (i.e. ₹ 32 lakhs – ₹ 20 lakhs) would be chargeable to tax as short-term capital gains in her hands for A.Y. 2018-19. Since this is a case covered by section 49(4) and not section 49(1), the period of holding of the previous owner, namely, Ms. Leena, will NOT be considered for determining whether the capital gain is short term or long term. Accordingly, the capital gain would be short-term, since the period of holding does not exceed 24 months.

5. As per section 45(1A), receipt of insurance compensation in the form of money or any asset is to be treated as consideration and capital gain is accordingly to be charged to tax. The two qualifying conditions prescribed are (a) the compensation should have been received because of damage or destruction of capital asset and (b) the damage or destruction is as a result of, *inter alia*, civil disturbance.

As per the facts of the case, both the conditions are satisfied and therefore, the compensation is to be treated as consideration. Applying section 45(1A), the answers to the issues are:

- (i) in the case of damage or destruction as a result of civil disturbance, there is no actual transfer; but it will be treated as deemed transfer and profit and gains from receipt of insurance compensation will be chargeable to tax as capital gain;
 - (ii) the receipt of insurance compensation of ₹ 12 lakhs has to be treated as consideration in accordance with the provisions of section 45(1A).
 - (iii) in the instant case, as per the provisions of section 43(6)(c) the receipt of compensation of ₹ 12 lakhs calls for adjustment in the written down value of the block of assets. If the written down value is more than ₹ 12 lakhs, then ₹ 12 lakhs should be deducted from written down value and depreciation would be calculated accordingly. On the other hand, if the written down value is less than ₹ 12 lakh, the difference would be treated as short term capital gain.
6. When a loan is given by a closely held company, it is chargeable to tax as deemed dividend if the loan is given to:
 - (i) a shareholder (having 10% or more voting power in the company) or
 - (ii) a concern in which such shareholder is a member or partner and in which he has substantial interest (entitled to 20% of the income of such concern).

The issue under consideration in this case is whether loan to HUF by a closely held company is chargeable to tax as deemed dividend, where the share certificates were in the name of the Karta of the HUF but the annual return mentioned the HUF as a shareholder.

This issue came up before the Supreme Court in *Gopal & Sons (HUF) v. CIT* (2017) 391 ITR 1, wherein it was observed that, in either scenario, section 2(22)(e) would be attracted. If the HUF was the shareholder, as it held more than 10% voting power, the provisions of section 2(22)(e) would be covered under (i) above. If the Karta was the shareholder, the HUF would be the concern in which the Karta is a member, and hence, the case would be covered under (ii) above.

As per *Explanation 3* to section 2(22)(e), "concern" has been defined to mean a HUF, or a firm or an AOP or a BOI or a company. The Supreme Court, accordingly, held that the loan to HUF is to be assessed as deemed dividend under section 2(22)(e).

Applying the rationale of the above Supreme Court ruling to the case on hand, the loan given by Best Fertilizers (P.) Ltd. to Aakash HUF would be deemed as dividend under section 2(22)(e).

7. The issue under consideration in this case is whether the increase in gross total income on account of disallowance of expenditure under section 40(a)(ia) can be considered for the purpose of deduction under section 80-IBA.

The Bombay High Court, in *CIT v. Sunil Vishwambharnath Tiwari* (2016) 388 ITR 630, observed that if on account of non-deduction of tax at source by a company, expenses have been disallowed under section 40(a)(ia) which goes to increase the income chargeable under the head 'Profits and gains of business or profession', such enhanced income becomes eligible for deduction as profit-linked deduction under Chapter VI-A is with reference to an assessee's gross total income.

The High Court held that the company is entitled to claim profit-linked deduction under Chapter VI-A in respect of the enhanced gross total income as a consequence of disallowance of expenditure under section 40(a)(ia).

Further, the CBDT has, in its *Circular No.37/2016 dated 2.11.2016*, mentioned that the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Thus, the settled position is that the disallowances made under, *inter alia*, section 40(a)(ia), relating to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

Accordingly, applying the rationale of the Bombay High Court ruling and the CBDT Circular in this regard to the facts of this case, ABC Ltd. would be entitled to claim deduction under section 80-IBA in respect of the enhanced profits of ₹37.60 lakhs, consequent to disallowance under section 40(a)(ia).

8. Computation of total income of Mysore Co-operative Society for A.Y.2018-19

Particulars	₹	₹
I Income from house property		75,000
II Profits and Gains of Business or Profession		
From processing with the aid of power	40,000	
From collective disposal of labour	20,000	
From other business	<u>72,000</u>	
		1,32,000
III Income from Other Sources		
Interest received from another co-operative society	12,000	
Dividend received from another co-operative society	<u>15,000</u>	
		<u>27,000</u>
Gross Total Income		2,34,000
Less: Deduction under section 80P		
Interest and dividend from another co-operative society [₹ 12,000 + ₹ 15,000] - fully deductible under section 80P(2)(d)	27,000	
Income from collective disposal of labour – fully deductible under section 80P(2)(a)(vi), assuming that the stipulated conditions are fulfilled.	20,000	
Income from other business ₹ 72,000, deduction restricted to ₹ 50,000 under section 80P(2)(c)(ii)	<u>50,000</u>	
		<u>97,000</u>
Total Income		<u>1,37,000</u>

Note: Since the gross total income exceeds ₹ 20,000, in case of a co-operative society engaged in manufacturing operations with the aid of power, income from house property is not eligible for deduction under section 80P(2)(f)

9. The issue under consideration in this case is, whether omission to issue notice under section 143(2) is a defect not curable in spite of section 292BB

This issue came up before the Apex Court in *Asstt. CIT v. Hotel Blue Moon* (2010) 321 ITR 362, wherein it was held that without the statutory notice under section 143(2), the Assessing Officer could not assume jurisdiction. In that case, the Assessing Officer recorded his inability to generate a notice due to certain reasons. Such defect cannot be cured subsequently, since it is not procedural but one that goes to the root of the jurisdiction. Even though the assessee had participated in the proceedings, in the

absence of mandatory notice, section 292BB cannot help the Revenue officers who have no jurisdiction, to begin with. Section 292BB helps Revenue in countering claims of assesseees who have participated in proceedings once a due notice has been issued.

Applying the rationale of the Supreme Court ruling to the case on hand, the failure to issue notice under section 143(2) would vitiate the assessment proceedings notwithstanding the assessee's participation in the proceedings. Section 292BB would not come to the rescue of the Revenue Authority if they omit to issue notice under section 143(2).

10. The issues under consideration are:

- (1) whether a firm can be a partner of another firm;
- (2) whether the CIT (Appeals) has the power to change the status of assessee.

These issues came up before the Madras High Court in *Mega Trends Inc. v. CIT* (2016) 388 ITR 16. The Court observed that since a partnership firm is a relationship between persons who have agreed to share the profits of the business carried on by all or any of them acting for all, and the term "persons" can connote only natural persons. Since some of the partners are other firms, the assessment cannot be carried out as a firm, as per the Supreme Court's ruling in *Dhulichand Laxminarayan v. CIT* (1956) 29 ITR 535.

The contention of the Commissioner (Appeals) that a firm cannot be a partner of another firm is, therefore, correct.

In *Mega Trends Inc's* case, the Madras High Court further observed that, under section 251(1), the powers of the first appellate authority are co-terminous with those of the Assessing Officer and the appellate authority can do what the Assessing Officer ought to have done and also direct him to do what he had failed to do. If the Assessing Officer had erred in concluding the status of the assessee as a firm, it could not be said that the Commissioner (Appeals) had no jurisdiction to go into the issue. The appeal was in continuation of the original proceedings and unless fetters were placed upon the powers of the appellate authority by express words, the appellate authority could exercise all the powers of the original authority.

The High Court thus, held that the power to change the status of the assessee is available to the assessing authority and when it is not used by him, the appellate authority is empowered to use such power and change the status. The Court relied on a full bench decision of the Madras High Court in *State of Tamil Nadu v. Arulmurugan and Co.* reported in [1982] 51 STC 381 to come to such conclusion.

Accordingly, applying the rationale of the Madras High Court ruling to the case on hand, the CIT (Appeals) has the power to change the status of the assessee.

11. Computation of Total Income of LMN Private Ltd. for the A.Y.2018-19

	Particulars	Amount (₹)	
I	Income from house property [Rental income from commercial property] Gross Annual Value ³ /Net Annual Value ⁴ Less: Deduction under section 24(a) 30% of Net Annual Value	4,30,000 <u>1,29,000</u>	3,01,000
II	Profits and gains of business and profession Profits from manufacturing business [See Working Note below] Less: Set-off of losses from trading in derivatives in shares in a recognized stock exchange [allowed to be set-off against profits from the business of manufacturing as per section 70(1) since it is not speculative in nature [See Note below]	70,88,000 <u>1,80,000</u>	69,08,000
III	Capital Gains Sale consideration Less: Indexed Cost of Acquisition [₹ 50,00,000 × 272/254] Long-term capital loss to be carried forward to A.Y.2019-20 for set-off against long-term capital gains, if any, in that year	52,00,000 <u>53,54,331</u> (1,54,331)	
IV	Income from Other Sources Rent received from vacant land Interest received on income-tax refund Excess of issue price of shares over the fair market value of shares is taxable as per section 56(2)(viib) in the case of LMN Private Ltd., not being a company in which public are substantially interested [₹ 40 (i.e., ₹ 100 – ₹ 60) × 1,00,000 shares] Gross Total Income	2,05,000 42,000 40,00,000 — <u>1,14,56,000</u>	42,47,000

³ Rent received has been taken as the Gross Annual Value (GAV) in the absence of information relating to Municipal Value, Fair Rent and Standard rent.

⁴ Since the question does not contain information about municipal taxes paid, the net annual value is the same as the GAV.

Less: Deductions under Chapter VI-A		
Deduction under section 80G		
Donation to Swachh Bharat Kosh ⁵ [qualifies for 100% deduction – assuming that the same has not been spent in pursuance of corporate social responsibility under section 135(5) of the Companies Act, 2013]	70,000	
Deduction under section 80GGB		
Contribution to Political Party [Not allowable as deduction since the contribution is made in cash]	Nil	70,000
Total Income		1,13,86,000

Working Note:**Computation of profits and gains from the business of manufacturing**

Particulars	Amount (₹)	
Net profit as per statement of profit and loss		77,00,000
Add: Items debited but to be considered separately or to be disallowed		
B(ii) Donation paid to Swachh Bharat Kosh, considered separately	70,000	
[not an expenditure incurred wholly and exclusively for the manufacturing business. Hence, not allowable under section 37]		
B(iii) Contribution to political party	1,50,000	
[not an expenditure incurred wholly and exclusively for the manufacturing business. Hence, not allowable u/s 37]		
B(iv) Payment to transport contractor	-	
[As per section 194C(6), no tax is required to be deducted at source since the payment is to a transport contractor not having more than 10 goods carriages at any time during the previous year and he has given a declaration to that effect along with his PAN. Hence, disallowance under section 40(a)(ia) for non-deduction of tax at source is not attracted. Also, since payment is made by account payee cheque, no disallowance under section 40A(3) is attracted].		

⁵ Assumed to be paid by a mode other than cash

B(v) Bonus to employees [Since the payment is made after the due date of filing return of income, disallowance under section 43B is attracted]	3,20,000	
B(vi) Provision for income-tax (including interest of ₹ 70,000 thereon) [Not allowable as deduction. Disallowance under section 40(a)(ii) is attracted]	4,20,000	
B(viii) Loss from trading in derivatives in shares in a recognized stock exchange [See Note below] [Since loss from trading in derivatives in shares is not related to the business of manufacturing, the same is not incurred wholly and exclusively for this business, and hence, is not allowable as deduction under section 37 while computing profits from the business of manufacturing]	1,80,000	
		11,40,000
Add: Cash Payment for purchase of raw material deemed as income AI(4) [Since the provision for outstanding bill for purchase of raw material has been allowed as deduction during the P.Y.2016-17, cash payment in excess of ₹ 10,000 against such bill in the P.Y.2017-18 would be deemed as income of P.Y.2017-18 as per section 40A(3A)]		88,40,000 45,000
		88,85,000
Less: Expenditure to be allowed B(i) & AI(1) Depreciation [Difference between the normal depreciation of ₹ 16.75 lakhs as per Income-tax Act, 1961 [See Note below] and depreciation charged to the statement of profit and loss of ₹ 11.75 lakhs]. Note – ⁶ Printers and scanners form an integral part of the computer system and they cannot be used without the computer. Hence, they are part of the computer	5,00,000	

⁶ CIT v. BSES Yamuna Powers Ltd (2013) 358 ITR 47 (Delhi)

system, they would be eligible for depreciation at the higher rate of 40% applicable to computers including computer software. However, EPABX is not a computer and is, hence, not entitled to higher depreciation@40%⁷

Particulars	₹
Depreciation computed as per Income-tax Act, 1961	18,00,000
Less: Depreciation@40% wrongly provided in respect of EPABX = 40% of ₹ 5,00,000	<u>2,00,000</u>
	16,00,000
Add: Depreciation@15% on EPABX = 15% of ₹ 5,00,000	<u>75,000</u>
Correct Depreciation as per Income-tax Act, 1961	<u>16,75,000</u>

AI(2) Additional depreciation on new plant and machinery

Since plant and machinery was purchased only on 18.11.2017, it was put to use for less than 180 days during the year. Hence additional depreciation is to be restricted to 10% (i.e., 50% of 20%) of ₹ 34 lakhs.⁸

3,40,000

AI(3) Audit Fees relating to P.Y.2016-17

[₹ 30,000, being 30% of audit fees of ₹ 1,00,000 provided for in the books of account of F.Y.2016-17 would have been disallowed due to non-deduction of tax at source. Since tax has been deducted in September, 2017 and paid on 6.10.2017, the amount of ₹ 30,000 is deductible while computing business income of P.Y.2017-18].

30,000

B(vii) Contribution to University

[Contribution to a University approved and notified under section 35(1)(ii) would qualify for weighted deduction@150%. Since ₹ 1,00,000 has already been debited to the statement of profit and loss, the balance ₹ 50,000 has to be deducted while computing business income]

50,000

9,20,000

79,65,000

⁷ Federal Bank Ltd. v. ACIT (2011) 332 ITR 319 (Kerala)

⁸ Balance additional depreciation of ₹ 3.40 lakhs can be claimed in the next year i.e., A.Y.2019-20

Less: Items credited to statement of profit and loss, but not includible in business income.		
A(i) Rent received from vacant land [Chargeable to tax under the head "Income from other sources"]	2,05,000	
A(ii) Rent received from commercial property owned by the company [Chargeable to tax under the head "Income from house property"]	4,30,000	
A(iii) Interest received on income tax refund [Chargeable to tax under the head "Income from other sources"]	42,000	
A(iv) Profit on sale of unused land [Chargeable to tax under the head "Capital Gains"]	<u>2,00,000</u>	
		8,77,000
Profits and gains from the business of manufacturing		<u>70,88,000</u>

Note: As per section 43(5), an eligible transaction of trading in derivatives in shares in a recognized stock exchange is not a speculative transaction.

In this case, the company is engaged in the business of manufacturing and hence, the loss on account of trading in derivatives is not incurred wholly and exclusively in relation to such business and hence, has to be disallowed while computing profits from the business of manufacturing. Trading in derivatives in shares is also not incidental to the business of manufacturing. Therefore, it has to be assumed that the company is also carrying on the business of trading in derivatives in shares in addition to its manufacturing business.

In this case, the loss has to be disallowed at the first instance while computing income from the business of manufacturing since it is not wholly and exclusively incurred for the said business and thereafter, loss from trading in derivatives has to be set-off against the profits from manufacturing business applying the provisions of section 70(1) permitting inter-source set-off of losses.

12. Computation of total income of PQR LLP

Particulars	₹ (in lakh)
Profit from Unit P [₹ 502 lakhs + ₹ 24 lakhs, being disallowance u/s 43B]	526
Profit from Unit Q [₹ 753 lacs + ₹ 47 lacs, being disallowance u/s 40A(3)]	<u>800</u>
	1326
Less: Deduction under section 10AA [See Working Note below]	<u>348</u>
Total Income	<u>978</u>

Particulars	₹ (in lakh)
Tax on total income@30%	293.40
Add: Surcharge@12%, since total income > ₹1 crore	<u>35.21</u>
	328.61
Add: Education cess @2% & SHEC@1%	<u>9.85</u>
Tax liability (as per normal provisions)	338.46

**Computation of Adjusted total income and Alternate Minimum tax of PQR LLP
as per the provisions of section 115JC for A.Y. 2018-19**

Particulars	₹ (in lakh)
Total income as per the normal provisions	978
Add: Deduction under section 10AA	<u>348</u>
Adjusted Total Income	<u>1326</u>
Tax@18.5% of Adjusted Total Income	254.31
Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	<u>29.44</u>
	274.75
Add: Education cess @2% & SHEC @1%	<u>8.24</u>
Alternate Minimum Tax as per section 115JC	<u>282.99</u>

Since the tax payable as per the normal provisions of the Act is more than the alternate minimum tax payable, the total income as per normal provisions shall be liable to tax and the tax payable for A.Y. 2018-19 shall be ₹ 338.46 lakhs.

Working Note:

Computation of deduction under section 10AA in respect of Unit P located in a SEZ

Particulars	₹ (in lacs)
Total turnover of Unit P = (₹ 1200 lacs + ₹ 200 lacs) – ₹ 200 lacs, being freight and insurance included therein. Since freight and insurance has been excluded from export turnover, the same has to be excluded from total turnover also ⁹	1200
Export Turnover of Unit P	
Export sale proceeds received in India	1040
Less: Insurance and freight not includible in export turnover	<u>140</u>
	<u>900</u>

⁹ CIT v. Dell International Services India P. Ltd. (2012) 206 Taxman 107 (Karnataka)

Profit “derived from” Unit P		
Net profit for the year		502
Add: Disallowance under section 43B		<u>24</u>
		526
Less: Items of business income which are in the nature of ancillary profits and hence, do not constitute profit ‘derived from’ business for the purpose of deduction under section 10AA		
Duty drawback	38	
Profit on sale of import entitlement	<u>24</u>	
		<u>62</u>
		<u>464</u>
Deduction under section 10AA		
Profit derived from Unit P	x	Export turnover of Unit P ----- x 100%
		Total turnover of Unit P
= 100% of 464 x 900/1200 =		348

13. (a) The first contention of Mr. Vishwas is not correct.

Section 139(1) requires every resident other than not ordinarily resident, who at any time during the previous year, holds as a beneficial owner or otherwise, any asset (including financial interest in any entity) located outside India or has signing authority in any account located outside India or is a beneficiary of any asset located outside India, to file a return of income compulsorily whether or not he has income chargeable to tax.

Mr. Vishwas has a house property in Abu Dhabi and a bank account in the Bank of Abu Dhabi. Therefore, Mr. Vishwas has to file his return of income mandatorily for the A.Y.2018-19, even though his total income of ₹ 2,95,000, comprising solely of income from house property and bank interest, is less than the basic exemption limit of ₹ 3,00,000 applicable to a senior citizen.

(b) Mr. Vishwas’s second contention is also not correct.

Income chargeable to tax shall be deemed to have escaped assessment for the purpose of section 147, where a person is found to have any asset (including financial interest in any entity) located outside India. Accordingly, the Assessing Officer can serve a notice under section 148 on such assessee requiring him to furnish a return of income within the specified period, for the purpose of making an assessment, reassessment or re-computation under section 147.

Further, section 149 prescribes an extended time limit of sixteen years for issue of notice under section 148, in case income in relation to such assets located outside India has escaped assessment.

In this case, since Mr. Vishwas has a house property located outside India in the P.Y.2008-09, income is deemed to have escaped assessment for A.Y.2009-10. Notice under section 148 issued to Mr. Vishwas in September 2017 in respect of A.Y.2009-10 is valid, since the extended time limit of sixteen years from the end of the relevant assessment year has not expired.

14. The Assessing Officer can exercise his power of survey under section 133A only after obtaining the approval of the Joint Commissioner or Joint Director, as the case may be. Assuming that he has obtained such approval in this case, he is empowered under section 133A to enter any place of business of the assessee within his jurisdiction only during the hours at which such place is open for the conduct of business.

In the case given, the restaurant is open from 8.00 a.m. to 11.30 p.m. for the conduct of business. The Assessing Officer entered the restaurant at 10.15 p.m. which falls within the working hours of the restaurant. Therefore, the claim made by the owner to the effect that the Assessing Officer could not enter the restaurant after sunset is not valid.

Further, as per section 133A(3)(ia), the Assessing Officer may, impound and retain in his custody for such period as he thinks fit, any books of account or other documents inspected by him. However, he shall not impound any books of account or other documents except after recording his reasons for doing so. He shall not retain in his custody any such books of account or other documents for a period exceeding 15 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. The proposed action of the Assessing Officer is valid provided he satisfies the stipulated conditions.

15. **Computation of taxable income of Medicare Trust for A.Y. 2018-19**

Particulars	₹	
Income from running of hospitals	1,08,00,000	
Income from medical college [exempt u/s 10(23C)(iiiad)]	Nil	
Donation other than anonymous donation of ₹ 2,00,000 taxable @30% (₹ 3,00,000, being reduced by 5% of ₹ 8,00,000 or ₹ 1,00,000, whichever is higher) ¹⁰ [₹ 8,00,000 – ₹ 2,00,000]	<u>6,00,000</u>	1,14,00,000

¹⁰ A view is taken that 15% of ₹ 1 lakh, representing anonymous donations exempt from applicability of 30% tax, is also eligible for retention/accumulation without conditions in line with other voluntary contributions. A contrary view may also be possible due to the language used in section 13(7).

Less: 15% of income of ₹ 114 lakhs accumulated or set apart under section 11(1)(a)		<u>17,10,000</u>
		96,90,000
Less: Amount applied for the purposes of hospital		<u>93,50,000</u>
		3,40,000
Add: Amount accumulated for extension of a hospital but not spent deemed to be income under section 11(3) (₹ 20 lakhs – ₹ 15 lakhs) (See Note 1 below)		<u>5,00,000</u>
		8,40,000
Add: Anonymous donation taxable @30% under section 115BBC (See Note 2 below)		<u>2,00,000</u>
Total Income		<u>10,40,000</u>
Tax on total income		
Tax on anonymous donation of ₹ 2 lacs at 30% (See Note 2 below)		60,000
Tax on other income of ₹ 8,40,000 at normal rates		
Upto ₹ 2,50,000	Nil	
Over ₹ 2,50,000 up to ₹ 5,00,000 @ 5%	12,500	
Over ₹ 5,00,000 upto ₹ 8,40,000 @ 20%	<u>68,000</u>	<u>80,500</u>
		1,40,500
Education cess @2%		2,810
Secondary and higher education cess @1%		<u>1,405</u>
Tax payable		<u>1,44,715</u>
Tax payable (rounded off)		<u>1,44,720</u>

Notes:

- (1) Section 11(3) provides that if the income accumulated for certain purpose is not utilized for the said purpose within the period (not exceeding 5 years) for which it was accumulated, or in the year immediately following the expiry thereof, then the unutilised amount is deemed to be the income of the charitable institution for the previous year immediately following the expiry of the period of accumulation. In the instant case, Medicare Trust accumulated ₹ 20,00,000 in the previous year 2011-12 for extension of one of its hospitals for a period of 5 years. Period of accumulation thus expired on 31.3.2017. The assessee has spent ₹ 15,00,000 out of accumulated sum of ₹ 20,00,000 up to 31.3.2017. Therefore, the unutilised

amount of ₹ 5,00,000, which is not utilized in the P.Y.2017-18 also, is deemed to be income of the previous year 2017-18 (A.Y. 2018-19).

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

The exemption limit is the higher of the following –

- (1) 5% of the total donations received by the assessee [i.e., ₹ 40,000 (5% x ₹ 8 lakhs)]; or
- (2) ₹ 1 lakh.

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

The total tax payable by such institution would be –

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

16. Section 206C(1F) provides for collection of tax at source@1% by the seller from the buyer, at the time of receipt of consideration for sale of motor vehicle, the value of which exceeds ₹ 10 lakhs. CBDT Circular No.22/2016 dated 8.6.2016 clarifies that this section has been inserted to cover all transactions of retail sales and accordingly, it will not apply to sale of motor vehicles by manufacturers to dealers. Hence, car manufacturers are not liable to collect tax at source under section 206C(1F).

In respect of sale of premium model cars (of value ranging above ₹ 10 lakhs and upto ₹25 lakhs) by dealers to retail customers, tax has to be collected at source@1% under section 206C(1F), even if no part of the consideration is received in cash.

As regards small cars of value ranging from ₹ 5 lakhs upto ₹ 10 lakhs, there is no requirement to collect tax at source.

17. (i) Clause (i) of *Explanation* to section 92B amplifies the scope of the term “international transaction”. According to the said *Explanation*, international transaction includes, *inter alia*, provision of scientific research services. Lambda Sicom is a specified foreign company in relation to XYZ Ltd. Therefore, the condition of XYZ Ltd. holding shares carrying not less than 26% of the voting power in Lambda Sicom is satisfied, assuming that all shares carry equal voting rights. Hence, Lambda Inc. and XYZ Ltd. are deemed to be associated enterprises under section 92A(2). Since the provision of scientific research services by Lambda Sicom to XYZ Ltd. is an “international transaction” between associated enterprises, transfer pricing provisions are attracted in this case.

- (ii) Purchase of tangible property falls within the scope of “international transaction”. Tangible property includes commodity. Cylo AG and Omega Ltd. are associated enterprises under section 92A, since Cylo AG is a holding company of Omega Ltd.. Therefore, purchase of commodities by Omega Ltd., an Indian company, from Cylo AG, a German company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.
 - (iii) Unit E is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, namely, a highway project in this case) under section 80-IA. However, Unit F is not engaged in any “eligible business”. Since Unit F has transferred steel to Unit E at a price lower than the fair market value, it is an inter-unit transfer of goods between eligible business and other business, where the consideration for transfer does not correspond with the market value of goods. Therefore, this transaction would fall within the meaning of “specified domestic transaction” to attract transfer pricing provisions, since the aggregate value of such transactions during the year exceeds a sum of ₹ 20 crore.
 - (iv) In this case, salary payment has been made to a related person referred to in section 40A(2)(b) i.e., relative (i.e., daughter) of Ms. Geetha, who is a director of Theta Ltd. However, with effect from A.Y.2018-19, section 92BA has been amended to exclude such transactions from the scope of “specified domestic transaction”. Consequently, transfer pricing provisions would not be attracted in this case.
 - (v) The scope of the term “intangible property” has been amplified to include, *inter alia*, technical knowhow, which is a technology related intangible asset. Transfer of intangible property falls within the scope of the term “international transaction”. Since Alcatel Lucent, a French company, guarantees not less than 10% of the borrowings of Y Ltd., an Indian company, Alcatel Lucent and Y Ltd. are deemed to be associated enterprises under section 92A(2). Therefore, since transfer of technical knowhow by Y Ltd., an Indian company, to Alcatel Lucent, a French company, is an international transaction between associated enterprises, the provisions of transfer pricing are attracted in this case.
18. This issue came up before the AAR in, *Nuclear Power Corporation of India Ltd. In Re*, [2012] 343 ITR 220, wherein it was held that an advance ruling is not only applicant specific, but is also transaction specific. The advance ruling is on a transaction entered into or undertaken by the applicant. That is why section 245S specifies that a ruling is binding on the applicant, the transaction and the Principal Commissioner or Commissioner of Income-tax and those subordinate to him, and not only on the applicant.
- What is barred by the first proviso to section 245R(2) of the Act in the context of clause (i) thereof is the allowing of an application under section 245R(2) of the Act where “the question raised in the application is already pending before any Income-tax authority, or

Appellate Tribunal or any court". The significance of the dropping of the words, "in the applicant's case" with effect from June 1, 2000, cannot be wholly ignored.

On the basis of this view expressed by the AAR in the above case, explaining the impact of the dropping of the words "in the applicant's case" with effect from 1.6.2000, a view can be taken that the AAR can reject the application made by Phi plc before the AAR on the ground that similar issue is pending before the Assessing Officer in respect of the same transaction i.e., provision of technical know to Beta Ltd.

Note – The issue relates to the admission or rejection of the application filed before the Advance Rulings Authority on the grounds specified in clause (i) of the first proviso to sub-section (2) of section 245R of the Income-tax Act, 1961.

The first proviso to section 245R(2) has been substituted by the Finance Act, 2000 with effect from 1.6.2000. Clause (i) of the first proviso, prior to and post amendment, reads as follows:

Prior to 1.6.2000	On or After 1.6.2000
Provided that the Authority shall not allow the application <u>except in the case of a resident applicant</u> where the question raised in the application is already pending <u>in the applicant's case</u> before any income-tax authority, the Appellate Tribunal or any court;	Provided that the Authority shall not allow the application where the question raised in the application is already pending before any income-tax authority or Appellate Tribunal or any court.

The words "except in the case of a resident applicant" and "in the applicant's case" has been removed in clause (i) of the first proviso with effect from 1.6.2000. However, the Explanatory Memorandum to the Finance Act, 2000, explaining the impact of the substitution, reads as follows "It is proposed to substitute the proviso to provide that the Authority shall not allow the application when the question raised is already pending in the applicant's case before any income-tax authority, Appellate Tribunal or any court in regard to a non-resident applicant and resident applicant in relation to a transaction with a non-resident". Therefore, according to the intent expressed in the Explanatory Memorandum, the AAR shall not allow the application both in the case of resident and non-resident applicant if the question raised is already **pending in the applicant's case** before any income-tax authority. Thus, as per the Explanatory Memorandum, it is possible to take a view that even post-amendment, the Authority shall not allow the application where a question is **pending in the applicant's case** before any income-tax authority. Thus, an alternative view is possible on the basis of the AAR ruling in *Ericsson Telephone Corporation India AB v. CIT* (1997) 224 ITR 203, which continues to hold good even after the amendment, if we consider the intent expressed in the Explanatory Memorandum. **Accordingly, based on this view, the AAR can allow the application made by Phi plc, even if the question raised in the application is pending before the Assessing Officer in Beta Ltd.'s case.**

19. Computation of total income of Mr. Ranjit for A.Y.2018-19

Particulars	₹	₹
Income from House Property [House situated in Country Q]		
Gross Annual Value ¹¹	3,20,000	
Less: Municipal taxes (assumed as paid in that country)	<u>12,000</u>	
Net Annual Value	3,08,000	
Less: Deduction under section 24 – 30% of NAV	<u>92,400</u>	
		2,15,600
Profits and Gains of Business or Profession		
Income from profession carried on in India	6,20,000	
Less: Business loss in Country Q set-off ¹²	<u>70,000</u>	
	5,50,000	
Royalty income from a literary book from Country P (after deducting expenses of ₹ 30,000)	<u>4,90,000</u>	10,40,000
Income from Other Sources		
Agricultural income in Country P	82,000	
Dividend received from a company in Country Q	<u>97,000</u>	
		<u>1,79,000</u>
Gross Total Income		14,34,600
Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income of a resident from literary work ¹³		<u>3,00,000</u>
Total Income		11,34,600

Computation of tax liability of Mr. Ranjit for A.Y.2018-19

Particulars	₹
Tax on total income [30% of ₹ 1,34,600 + ₹ 1,12,500]	1,52,880

¹¹ Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

¹² As per section 70(1), inter-source set-off of income is permitted.

¹³ It is assumed that the royalty earned outside India has been brought into India in convertible foreign exchange within a period of six months from the end of the previous year.

Add: Education cess@2%	3,058
Secondary and higher education cess @ 1%	<u>1,529</u>
	1,57,466
Less: Rebate under section 91 (See Working Note below)	<u>66,313</u>
Tax Payable	91,153
Tax payable (rounded off)	91,150

Working Note:

Calculation of Rebate under section 91	₹	₹
Average rate of tax in India [i.e., ₹ 1,57,466 / ₹ 11,34,600 x 100]	13.88%	
Average rate of tax in Country P	12%	
Doubly taxed income pertaining to Country P		
Agricultural Income	82,000	
Royalty Income [₹ 5,20,000 – ₹ 30,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QCB)] ¹⁴	<u>1,90,000</u>	
	2,72,000	
Rebate under section 91 on ₹ 2,72,000 @12% [being the lower of average Indian tax rate (13.88%) and foreign tax rate (12%)]		32,640
Average rate of tax in Country Q	15%	
Doubly taxed income pertaining to Country Q		
Income from house property	2,15,600	
Dividend	<u>97,000</u>	
	3,12,600	
Less: Business loss set-off	<u>70,000</u>	
	2,42,600	
Rebate under section 91 on ₹ 2,42,600 @13.88% (being the lower of average Indian tax rate (13.88%) and foreign tax rate (15%)]		<u>33,673</u>
Total rebate under section 91 (Country P + Country Q)		66,313

¹⁴ Doubly taxed income includes only that part of income which is included in the assessee's total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount – *CIT v. Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.)*.

Note: Mr. Ranjit shall be allowed deduction under section 91, since the following conditions are fulfilled :-

- (a) He is a resident in India during the relevant previous year (i.e., P.Y.2017-18).
- (b) The income in question accrues or arises to him outside India in foreign countries P and Q during that previous year and such income is not deemed to accrue or arise in India during the previous year.
- (c) The income in question has been subjected to income-tax in the foreign countries P and Q in his hands and it is presumed that he has paid tax on such income in those countries.
- (d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries P and Q where the income has accrued or arisen.

20. As per section 9(1)(vii)(b), income by way of fees for technical services payable by a resident is deemed to accrue or arise in India, except where the fees is payable, *inter alia*, in respect of services utilized in a business or profession carried on by such person outside India. In this case, since Ganga Ltd. utilizes the technical services for its business in Calcutta, the fees for technical services payable by Ganga Ltd. is deemed to accrue or arise in India in the hands of Mr. Tom Sawyer.

In accordance with the provisions of section 115A, where the total income of a non-corporate non-resident includes any income by way of royalty or fees for technical services other than the income referred to in section 44DA(1), received from an Indian concern in pursuance of an agreement made by him with the Indian concern and the agreement is approved by the Central Government, then, the special rate of tax at 10% of such fees for technical services is applicable. No deduction would be allowable under sections 28 to 44C and section 57 while computing such income.

Section 90(2) makes it clear that where the Central Government has entered into a DTAA with a country outside India, then, in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. Therefore, if the DTAA provides for a rate lower than 10%, then, the provisions of DTAA would apply.

- (a) In this case, since India does not have a DTAA with Country A, of which Tom Sawyer is a resident, the fees for technical services (FTS) received from Ganga Ltd., an Indian company, would be taxable @10%, by virtue of section 115A.
- (b) In this case, the FTS from Ganga Ltd. would be taxable @5%, being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since the tax rates specified in the DTAA are more beneficial. However, since Tom Sawyer is a non-resident, he has to furnish a tax residency certificate from the Government of Country A for claiming such benefit. Also, he has to furnish other

information, namely, his nationality, his tax identification number in Country A and his address in Country A.

- (c) In this case, the FTS from Ganga Ltd. would be taxable @10% as per section 115A, even though DTAA provides for a higher rate of tax, since the provisions of the Act (i.e. section 115A in this case) are more beneficial.

If Mr. Tom Sawyer has a fixed place of profession in India, and he renders technical services through the fixed place of profession, then, by virtue of section 44DA, such income by way of fees for technical services received by Mr. Tom Sawyer from Ganga Ltd., India, would be computed under the head "Profits and gains of business or profession" in accordance with the provisions of Income-tax Act, 1961, since technical services are provided from a fixed place of profession situated in India and fees for technical services is received from an Indian concern in pursuance of an agreement with the non-resident and is effectively connected with such fixed place of profession. No deduction would, however, be allowed in respect of any expenditure or allowance which is not wholly and exclusively incurred for the fixed place of profession in India.

Mr. Tom Sawyer is required to keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA and get his accounts audited by an accountant and furnish the report of such audit in the prescribed form duly signed and verified by such accountant along with the return of income.

It may be noted that the concessional rate of tax@10% under section 115A would not apply in this case.

PAPER 7 : DIRECT TAX LAWS

SECTION – A: STATUTORY UPDATE

The direct tax laws, as amended by the Finance Act, 2017, including significant notifications/circulars issued upto 31st October, 2017 are applicable for May, 2018 examination. The relevant assessment year for May, 2018 examination is A.Y.2018-19. The significant notifications/circulars issued upto 31.10.2017, relevant for May, 2018 examination but not covered in the August 2017 edition of the Study Material, are given hereunder.

MODULE - 1 OF STUDY MATERIAL

CHAPTER 1: BASIC CONCEPTS

Clarification regarding attaining prescribed age of 60 years/80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April [Circular No. 28/2016, dated 27.07.2016]

An individual who is resident in India and of the age of 60 years or more (senior citizen) and 80 years or more (very senior citizen) is eligible for a higher basic exemption limit of ₹ 3,00,000 and ₹ 5,00,000, respectively.

The contentious issue is regarding the attainment of the aforesaid qualifying ages for availing higher basic exemption limit in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have completed a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

The Supreme Court had an occasion to consider a similar issue in the case of *Prabhu Dayal Sesma vs. State of Rajasthan & another* 1986, AIR, 1948 wherein it has dealt with on the general rules to be followed for calculating the age of the person. The Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the day preceding, the anniversary of his birthday. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

The CBDT has, vide this Circular, clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would be decided on the basis of above criteria.

Therefore, a resident individual whose 60th birthday falls on 1st April, 2018, would be treated as having attained the age of 60 years in the P.Y.2017-18, and would be eligible for higher basic exemption limit of ₹ 3 lakh in computing his tax liability for A.Y.2018-19. Likewise, a resident individual whose 80th birthday falls on 1st April, 2018, would be treated as having

attained the age of 80 years in the P.Y.2017-18, and would be eligible for higher basic exemption limit of ₹ 5 lakh in computing his tax liability for A.Y.2018-19.

CHAPTER 2: RESIDENCE AND SCOPE OF TOTAL INCOME

Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank [Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017]

Representations were received by the CBDT that income by way of salary, received by non-resident seafarers, for services rendered outside India on-board foreign ships, are being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer.

The CBDT has examined the matter. It noted that section 5(2)(a) of the Income-tax Act, 1961 provides that only such income of a non-resident shall be subjected to tax in India that is either received or is deemed to be received in India.

Accordingly, the CBDT has, vide this circular, clarified that that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

Notification of Eligible Investment funds in respect of which certain conditions specified under section 9A(3) would not apply [Notification No. 77/2017, dated 03.08.2017]

Section 9A provides for special taxation regime to facilitate location of fund managers of off-shore funds in India. Under this regime, in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund, subject to fulfilment of certain conditions.

Eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils, *inter alia*, the following conditions, namely -

- (e) the fund should have a minimum of twenty-five members who are, directly or indirectly, not connected persons;
- (f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;
- (g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent.

The above conditions, however, would not apply in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund as the Central Government may subject to conditions, if any, by notification, specify in this behalf.

Accordingly, the Central Government has, vide this notification, specified that these conditions would not apply to an investment fund set up by a Category-I or Category-II Foreign Portfolio Investor registered under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, made under the Securities and Exchange Board of India Act, 1992.

Clarification related to guidelines for establishing 'Place of Effective Management' (PoEM) in India [Circular No. 25/2017, dated 23.10.2017]

The concept of 'Place of Effective Management' (PoEM) for deciding residential status of a company, other than an Indian company, was introduced in the Income-tax Act, 1961 which has become effective from 1.4.2017, i.e., Assessment Year 2017-18 onwards.

The guiding principles for determination of PoEM of a company were issued on 24.01.2017 vide Circular No 06/2017. Further, vide Circular No 08/2017 dated 23.02.2017, it has been clarified that the PoEM provisions shall not apply to a company having turnover or gross receipts of Rs 50 crore or less in a financial year.

Thereafter, stakeholders had expressed concerns that as per the extant guidelines, PoEM may be triggered in cases of certain multinational companies with regional headquarter structure merely on the ground that certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working from India, and consequently, their income from operations outside India may be taxed in India.

In this regard, it may be mentioned that Para 7 of the guidelines provides that the place of effective management in case of a company engaged in active business outside India (ABOI) shall be presumed to be outside India if the majority meetings of the board of directors (BoD) of the company are held outside India.

However, Para 7.1 of the guidelines provides that if on the basis of facts and circumstances, it is established that the Board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person(s) resident in India, then, the PoEM shall be considered to be in India.

It has also been provided that for this purpose, merely because the BoD follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Pay roll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; would not constitute a case of BoD of companies standing aside.

In view of the above, it is clarified that so long as the Regional Headquarter operates for subsidiaries/ group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the field of Pay roll functions, Accounting,

HR functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; it would, in itself, not constitute a case of BoD of companies standing aside and such activities of Regional Headquarter in India alone will not be a basis for establishment of PoEM for such subsidiaries/ group companies.

It is further mentioned in the said Circular that the provisions of General Anti-Avoidance Rule contained in Chapter X-A of the Income-tax Act, 1961 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.

CHAPTER 6: PROFITS AND GAINS OF BUSINESS OR PROFESSION

Lease rent from letting out buildings/developed space along with other amenities in an Industrial Park /SEZ - to be treated as business income [Circular No. 16/2017, dated 25.04.2017]

The issue whether income arising from letting out of premises/developed space along with other amenities in an Industrial Park/SEZ is to be charged under head 'Profits and Gains of Business' or under the head 'Income from House Property' has been subject matter of litigation in recent years. Assessee claim the letting out as business activity, the income arising from which to be charged to tax under the head 'Profits and Gains of Business', whereas the Assessing Officers hold it to be chargeable under the head 'Income from House Property'.

The CBDT has considered the matter. Income from the Industrial Parks/SEZ established under various schemes framed and notified under section 80-IA(4)(iii) is liable to be treated as income from business provided the conditions prescribed under the schemes are met.

In the case of *Velankani Information Systems Pvt Ltd* (NJRS Citation [2013-LL-0402-44]), the Karnataka High Court observed that any other interpretation would defeat the object of section 80-IA and Government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Supreme Court.

In a subsequent judgment dated 30.04.2014 in ITA No. 76 & 78/2012 in the case of *CIT v. Information Technology Park Ltd.* (NJRS Citation [2014-LL-0430-141]), the Karnataka High Court has reaffirmed its earlier views. It has held that, since the assessee-company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out buildings along with other amenities in a software technology park would be chargeable to tax under the head "Profits and gains of business or profession" and not under the head "Income from house property". The judgment has been accepted by the CBDT.

In view of the above, it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting

out of premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

CHAPTER 7: CAPITAL GAINS

Long-term specified asset notified for the purpose of claiming exemption under section 54EC [Notification No. 47/2017, dated 08.06.2017 and Notification No. 79/2017, dated 08.08.2017]

Section 54EC provides exemption from chargeability of capital gain from the transfer of a long-term capital assets where the assessee has invested the whole or any part of the capital gain in a long-term specified asset. As per clause (ba) of *Explanation* to section 54EC "long term specified asset" means any bond redeemable after three years and issued on or after 01.04.07 by the National Highways Authority of India (NHAI) or by the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf.

Accordingly, the Central Government has, vide these notifications, notified any bond redeemable after three years and issued by the **Power Finance Corporation Limited** on or after 15.06.17 or by the **Indian Railway Finance Corporation Limited** on or after 08.08.17 as 'long-term specified asset'.

CHAPTER 8: INCOME FROM OTHER SOURCES

Clarification regarding trade advance not to be treated as deemed dividend under section 2(22)(e) – [Circular No. 19/2017, dated 12.06.2017]

Section 2(22)(e) provides that "dividend" includes any payment by a company in which public are not substantially interested, of any sum by way of **advance or loan** to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

The CBDT observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e) and such views have attained finality.

Some illustrations/examples of trade advances/commercial transactions held to be **not** covered under section 2(22)(e) are as follows:

- (i) Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not fall within the definition of deemed dividend under section 2(22)(e) [*CIT vs. Creative Dyeing & Printing Pvt. Ltd.* [NJSR] 2009-LL-0922-2, ITA No. 250 of 2009, Delhi High Court].

- (ii) Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) [*CIT vs Amrik Singh, [NJRS] 2015-LL-0429-5, ITA No. 347 of 2013, P & H High Court*]
- (iii) A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22)(e) [*CIT, Agra vs Atul Engineering Udyog, [NJRS] 2014-LL-0926-121, ITA No. 223 of 2011, Allahabad High Court*]

In view of the above, the CBDT has, vide this circular, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not be treated as deemed dividend.

MODULE 2 OF STUDY MATERIAL

CHAPTER 11: DEDUCTIONS FROM GROSS TOTAL INCOME

Admissibility of deduction under Chapter VI-A on the profits enhanced due to disallowance of expenditure related to business activity [Circular No.37/2016, Dated 02.11.2016]

Chapter VI-A of the Income-tax Act, 1961, provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits.

The issue is whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

The courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

- (i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) would qualify for deduction under section 80-IB.

- (ii) If deduction under section 40A(3) is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB.

In view of the aforesaid judgements, the CBDT has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

Transport, Power and Interest subsidies received by an Industrial Undertaking - Eligibility for deduction under sections 80-IB, 80-IC etc., [Circular No. 39/2016, dated 29.11.2016]

The issue of whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 and, thus, eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers.

The Hon'ble Supreme Court in its judgment dated 9.3.2016 in the case of *Meghalaya Steels Ltd* and other cases has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-1B/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking.

In view of the above, the CBDT has clarified that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking/eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.

MODULE 3 OF STUDY MATERIAL

CHAPTER 15: DEDUCTION, COLLECTION AND RECOVERY OF TAX

Deduction of tax at source on interest income accrued to minor child, where both the parents have deceased [Notification No. 05/2017, dated 29.05.2017]

Under Rule 31A(5) of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of, *inter alia*, the statements and shall be responsible for the day-to-

day administration in relation to furnishing and verification of the statements in the manner so specified.

The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), specified that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

Deduction of tax at source on interest on deposits made under Capital Gains Accounts Scheme, 1988 where depositor has deceased - Notification No. 08/2017, dated 13.09.2017

The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), vide this notification, specified that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

- (i) TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and
- (ii) TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir,

unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

Guidelines for waiver of interest charged under section 201(1A) of the Income-tax Act, 1961 – [Circular No. 11/2017, dated 24.03.2017]

In exercise of the powers conferred under section 119(2)(a), the CBDT has directed that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 201(1A)(i) in the classes of cases specified below for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under sections 200A, 201(1) or 234E, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

The class of cases in which the reduction or waiver of interest under section 201(1A)(i) can be considered, are as follows:

- (i) Where during the course of proceedings for search and seizure under section 132, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVIIIB of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account.

- (ii) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.
- (iii) Where the default under section 201 relates to non-deduction or a lower deduction of tax under section 195 in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 90 or 90A of the Act, and where —
 - (a) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 44H of the Income-tax Rules, 1962 under the said agreement under section 90 or 90A of the Act;
 - (b) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 201;
 - (c) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and
 - (d) the person in default under section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of Rule 44H(4) of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him.

Even if the interest under section 201(1A)(i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

The Chief Commissioner of Income-tax or Director General of Income-tax examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant.

The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by Chief Commissioner of Income-tax or Director General of Income-tax, as the case may be, and issue suitable directions to these authorities for proper implementation of this order. However, no review of or appeal against the orders passed on merits by such authorities would be entertained by the CBDT.

No requirement to deduct tax at source under section 194-I on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator [Circular No. 21/2017, dated 12.06.2017]

Section 194-I requires deduction of tax at source at specified percentage on any income payable to a resident by way of rent. *Explanation* to this section defines the term “rent” as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any (a) land; or (b) building; or (c) land appurtenant to a building; or (d) machinery; (e) plant; (f) equipment (g) furniture; or (h) fitting, whether or not any or all of them are owned by the payee.

On the issue of whether payment of PSF by an airline to an Airport Operator qualifies as rent to attract TDS under section 194-I, the Bombay High Court relied on the Apex Court ruling in *Japan Airlines and Singapore Airlines* case, wherein it was observed that the primary requirement for any payment to qualify as rent is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I. Accordingly, the Bombay High Court declined to admit the ground relating to applicability of the provisions of section 194-I on PSF charges holding that no substantial question of law arises.

The CBDT, accepting the view of the Bombay High Court, has clarified that the provisions of section 194-I shall **not** be applicable on payment of PSF by an airline to Airport Operator.

Clarification regarding TDS on Goods and Services Tax (GST) component comprised in payments made to residents [Circular No. 23/2017 dated 19.07.2017]

The CBDT had, vide Circular No. 1/2014 dated 13.01.2014, clarified that wherever in terms of the agreement or contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such service tax component.

In order to harmonize the same treatment with the new system for taxation of services under the GST regime w.e.f. 01.07.2017, the CBDT has, vide this circular, clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component.

GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

Further, for the purposes of this Circular, any reference to “service tax” in an existing agreement or contract which was entered into prior to 01.07.2017 shall be treated as “GST on services” with respect to the period from 01.07.2017 onward till the expiry of such agreement or contract.

CHAPTER 17: ASSESSMENT PROCEDURE**Scope of qualifications for e-Return Intermediary extended to include Company Secretaries, Cost Accountants and Tax Return Preparer [Notification No 66/2016, dated 09.08.2016]**

Section 139(1B) provides for an alternative method to furnish return of income. Vide Notification No 210/2007, dated 27.07.2007, an Electronic Furnishing of Return of Income Scheme, 2007 was notified for the said purpose. The scheme, *inter alia* provides that an eligible person may, at his option, furnish his return of income which he is required to furnish under various provisions of the Act, to an e-Return Intermediary who shall digitize the data of such return and transmit the same electronically to a server designated for this purpose by the e-Return Administrator, on or before the due date.

Para 5 of the said Notification lays down the qualifications of an e-Return Intermediary. A firm of Chartered Accountants or Advocates, which has been allotted a Permanent Account Number, as well as a Chartered Accountant or an Advocate who has been allotted a Permanent Account Number, *inter alia*, qualified to be an e-Return intermediary.

Vide this Notification, a firm of Company Secretaries or Cost Accountants, if the firm has been allotted PAN as well as a Company Secretary or a Cost Accountant or Tax Return Preparer, who has been allotted a Permanent Account Number, would also qualify to be an e-Return intermediary.

Persons who are not required to quote Aadhar Number or Enrolment ID in application form for allotment of PAN and in return of income [Notification No. 37/2017 dated 11.05.2017]

Section 139AA requires every person who is eligible to obtain Aadhar Number to mandatorily quote Aadhar Number or Enrolment ID of Aadhar application form, on or after 1st July, 2017 in the application form for allotment of PAN and in the return of income. However, this provision shall not applicable to such person or class or classes of persons or any State or part of any State as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhar Number would not apply to an individual who does not possess the Aadhar number or Enrolment ID and is:

- (i) residing in the States of Assam, Jammu & Kashmir and Meghalaya;
- (ii) a non-resident as per Income-tax Act, 1961;
- (iii) of the age of 80 years or more at any time during the previous year;
- (iv) not a citizen of India.

CHAPTER 18: APPEALS AND REVISIONS

Notification No. SO 1696(E) [F.No.A.-50050/9/2016-Ad1C(CESTAT) Pt. I], dated 26.05.2017

Part XIV of Chapter VI to the Finance Act, 2017 contains amendments to certain Acts to provide for merger of tribunals and other authorities and conditions of service of chairpersons, members, etc. Section 184 of the Finance Act, 2017 lays down the qualifications, appointment, term and conditions of service, salary and allowances, etc., of Chairperson, Vice Chairperson and Members, etc., of the Tribunal, Appellate Tribunal and other Authorities.

Section 252A has been inserted in the Income-tax Act, 1961 to provide that the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017 would be governed by the provisions of section 184 of that Finance Act, 2017.

However, the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act i.e., section 252 and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

Section 156 of the Finance Act, 2017 provides the provisions of Part XIV of Chapter VI of the Finance Act, 2017 shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint. Accordingly, the Central Government has, vide this notification, appointed 26.05.2017 as the date on which the provisions of the Part XIV of Chapter VI of the Finance Act, 2017 shall come into force.

CHAPTER 23: MISCELLANEOUS PROVISIONS

Clarifications in respect of section 269ST [Circular No. 22/2017, Dated 03.07.2017]

With a view to promote digital economy and create a disincentive against cash economy, new section 269ST has been inserted in the Income-tax Act, 1961 vide Finance Act, 2017. The said section *inter-alia* prohibits receipt of an amount of two lakh rupees or more by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. Penal provisions have also been introduced by way of a new section 271DA, which provides that if a person receives any amount in contravention to the provisions of section 269ST, it shall be liable to pay penalty of a sum equal to the amount of such receipt.

Subsequently, representations were received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST shall apply to one instalment of loan repayment or the whole amount of such repayment.

Accordingly, the CBDT has, vide this circular, clarified that in respect of receipt, in the nature of repayment of loan, by NBFCs or HFCs, the receipt of one instalment of loan repayment in

respect of a loan shall constitute a 'single transaction' as specified in section 269ST(b) and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

MODULE 4 OF STUDY MATERIAL

CHAPTER 2 : DOUBLE TAXATION RELIEF

Procedure for filing Statement of income from a country or specified territory outside India and Foreign Tax Credit [Notification No. 9/2017, dated 19.09.2017]

An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in Rule 128 of the Income-tax Rules, 1962.

As per rule 128(9), the statement in Form No. 67 referred to in Rule 128(8)(i) and the certificate or the statement referred to in rule 128(8)(ii) has to be furnished on or before the due date specified for furnishing the return of income under section 139(1), in the manner specified for furnishing such return of income.

Accordingly, the Principal Director General of Income-tax (Systems), has, in exercise of the powers delegated by the CBDT, vide this notification, laid down the following procedures in this regard:

- (i) **Online filing of Form 67:** All assesseees who are required to file return of income electronically under section 139(1) as per Rule 12(3), are required to prepare and submit Form 67 online along with the return of income, if credit for the amount of any foreign tax paid by the assessee in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.
- (ii) **Preparation and Submission of Form 67:** Form 67 shall be available to all assesseees when they login into the e-filing portal using their valid credentials. A link for filing the Form has been provided under "e-File → Prepare and Submit Online Forms (Other than ITR)". Select Form 67 and assessment year from the drop down. The completed Form 67 can be submitted by clicking on "Submit" button. Digital Signature Certificate or Electronic Verification Code is mandatory to submit Form 67.
- (iii) **Submission of Form 67** shall precede filing of return of income.

CHAPTER 3 : TRANSFER PRICING & OTHER ANTI-AVOIDANCE MEASURES

Rules for maintaining information and documents and furnishing report in respect of international group in line with BEPS Action Plan - Country-by-Country reporting and of Master File prescribed [Notification No. 92/2017, dated 31.10.2017]

Section 286 was inserted to implement the recommendations of 2015 Final Report on Action 13, titled "Transfer Pricing Documentation and Country-by-Country (CbC) Reporting",

identified under the OECD Base Erosion and Profit Shifting (BEPS) Project, to provide for a specific reporting regime in respect of CbC reporting and also the master file in the Income-tax Act, 1961.

Section 286 provides that every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority, on or before the prescribed date, in the form and manner, as may be prescribed,

- whether, it is the alternate reporting entity of the international group or
- the details of the parent entity or the alternate reporting entity of the international group and the country or territory of which the said entities are resident.

Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, furnish a report, in respect of the international group of which it is a constituent, on or before the due date specified under section 139(1), in the form and manner, as may be prescribed.

The proviso to section 92D requires a person, being a constituent entity of an international group, to also keep and maintain such information and document in respect of an international group as may be prescribed. Further, section 92D(4) requires such person to furnish such information and documents to the authority prescribed under section 286(1) in the prescribed manner on or before the prescribed date.

Accordingly, the CBDT has, vide this notification, prescribed the following rules for maintaining and furnishing CbC report and Master File by a constituent or parent entity of an International group:

I. Information and documents to be kept and maintained [Rule 10DA]	
Rule	Particulars
10DA(1)	Persons required to keep and maintain the information and documents: Every person, being a constituent entity of an international group shall - (i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds ₹ 500 crore; and (ii) the aggregate value of international transactions - (A) during the accounting year, as per the books of accounts, exceeds ₹ 50 crore, or (B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ₹ 10 crore. Note – The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic

	<i>transfer buying rate (TTBR) of such currency on the last day of the accounting year. [Rule 10DA(8)]</i> Part A of Form No. 3CEAA (Master File), however, shall be furnished by every person, being a constituent entity of an international group, whether or not the above conditions are satisfied [Rule 10DA(3)]. Part B of Form No.3CEAA has to be furnished by a person, being a constituent entity of an international group, in those cases where the above conditions are satisfied.
	<u>Information and documents required to be kept and maintained:</u> The constituent entity shall keep and maintain the following information and documents of the international group, namely:- (a) a list of all entities of the international group along with their addresses; (b) a chart depicting the legal status of the constituent entity and ownership structure of the entire international group; (c) a description of the business of international group during the accounting year including, - (I) the nature of the business or businesses; (II) the important drivers of profits of such business or businesses; (III) a description of the supply chain for the five largest products or services of the international group in terms of revenue and any other products including services amounting to more than five per cent. of consolidated group revenue; (IV) a list and brief description of important service arrangements made among members of the international group, other than those for research and development services; (V) a description of the capabilities of the main service providers within the international group; (VI) details about the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services; (VII) a list and description of the major geographical markets for the products and services offered by the international group; (VIII) a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent. of the revenues or assets or profits of such group; and (IX) a description of the important business restructuring transactions, acquisitions and divestments; (d) a description of the overall strategy of the international group for

	the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management; (e) a list of all entities of the international group engaged in development and management of intangible property along with their addresses; (f) a list of all the important intangible property or groups of intangible property owned by the international group along with the names and addresses of the group entities that legally own such intangible property; (g) a list and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements; (h) a detailed description of the transfer pricing policies of the international group related to research and development and intangible property; (i) a description of important transfers of interest in intangible property, if any, among entities of the international group, including the name and address of the selling and buying entities and the compensation paid for such transfers; (j) a detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders; (k) a list of group entities that provide central financing functions, including their place of operation and of effective management; (l) a detailed description of the transfer pricing policies of the international group related to financing arrangements among group entities; (m) a copy of the annual consolidated financial statement of the international group; and (n) a list and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries.
10DA(2)	<u>Due date for furnishing report:</u> The report of the information shall be furnished in Form No. 3CEAA and it shall be furnished on or before the due date for furnishing the return of income specified under section 139(1). For the accounting year 2016-17, such report may, however, be furnished at any time on or before the 31.3.2018.

10DA(4)/(5)	<u>Furnishing of report in case of more than one constituent entity:</u> Where there are more than one constituent entities resident in India of an international group, then the report or information, as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity in Form 3CEAB. Such intimation shall be made at least 30 days before the due date of filing the report as specified in Rule 10DA(2).
10DA(7)	<u>Period for which such information and document to be kept or maintained:</u> The information and documents shall be kept and maintained for a period of eight years from the end of the relevant assessment year.
II. Furnishing of Report in respect of an International Group [Rule 10DB]	
Rule	Provision
10DB(1)	<u>Intimation in prescribed from:</u> For the purposes of section 286(1), every constituent entity resident in India, shall, if its parent entity is not resident in India, intimate the DGIT (Risk Assessment) in Form No. 3CEAC, the following, namely - - whether it is the alternate reporting entity of the international group; or - the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.
10DB(2)	<u>Due date for the Intimation:</u> Every intimation shall be made at least two months prior to the due date for furnishing of report i.e., on or before the due date for furnishing return of income as specified under section 139(1).
10DB(3)/(4)/(5)	<u>Entities which are required to furnish report in Form No. 3CEAD:</u> Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall, for every reporting accounting year, furnish the report to the DGIT (Risk Assessment) in Form No.3CEAD (Country by Country Reporting). A constituent entity of an international group, resident in India, other than the parent entity or the alternate reporting entity, has to furnish the report in Form No.3CEAD if the parent entity is resident of a country or territory with which India does not have an agreement providing for exchange of the report or there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such

	constituent entity. If there are more than one constituent entities resident in India of an international group, other than the parent entity or the alternate reporting entity, then the report in Form No.3CEAD may be furnished by that entity which has been designated by the international group to furnish the said report and the same has been intimated to the DGIT (Risk Assessment) in Form No.3CEAE.
10DB(6)	<u>Non-applicability of provisions of section 286</u> The provisions of section 286 shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed ₹ 5,500 crore. Note - Where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate (TTBR) of such currency on the last day of the accounting year preceding the accounting year. [Rule 10DB(7)]

SECTION B: QUESTIONS AND ANSWERS

QUESTIONS

- Mr. Rajiv is a retail trader and his total income for the last few years ranged between ₹ 8 lakh to ₹ 10 lakh. He celebrated his 25th wedding anniversary on a large scale on 2nd December, 2017 by hosting a cruise party in the luxury cruise liner "Ocean Princess", for which he had spent ₹ 30 lakh. The Assessing Officer, in the course of scrutiny assessment of Mr. Rajiv, asked him to explain the source of such expenditure. The explanation offered by Mr. Rajiv that the same was out of his savings for the last few years, was not found satisfactory by the Assessing Officer, since a couple of years ago, he had spent to tune of ₹ 60 lakh on the grand wedding celebrations of his daughter at Vijayaseshmahal in Chennai. You are required to examine the tax consequences.
- Examine, in the context of provisions of the Income-tax Act, 1961, the taxability or otherwise of the income/receipt in each of the following cases for the A.Y. 2018-19:
 - Income of ₹ 75,000 derived by a nursery from the sale of seedlings grown without carrying out all the basic operations on land.
 - Ms. Reema, born and brought up in the State of Sikkim, has a net profit of ₹ 4,28,000 from the business located in Sikkim and interest of ₹ 32,000 on the securities issued by the Central Government.

- (iii) Amount of ₹ 10 lakh transferred to the NPS Account of Mr. Sriram, an employee of Gamma Ltd., under Atal Pension Yojana, from an approved superannuation fund.
 - (iv) Receipt by Smt. Vidya, widow of Mr. Sharma (who was an employee of M/s. Phi Ltd.), on 25.10.2017 of ₹ 7.40 lakhs, being amount standing to the credit of Mr. Sharma's NPS Account, in respect of which deduction has been allowed under section 80CCD to Mr. Sharma in the earlier previous years. Such amount was received by her as a nominee on closure of the account.
 - (v) Amount of ₹ 1,20,000, being 10% of salary of Mr. Ganesh, contributed by his employer Alpha Ltd. to an approved superannuation fund.
3. A partnership firm consisting of three working partners A, B and C is engaged in the business of manufacturing and selling stationery.
- Turnover of the business for the year ended 31st March, 2018 amounts to ₹ 190 lakh. Bad debts written off in the books are ₹ 80,000. Interest at 12% is provided to partner B on his capital of ₹ 10 lakh as authorized by the partnership deed.
- The firm had business loss of ₹ 75,000 and unabsorbed depreciation of ₹ 1,20,000 carried forward from Assessment Year 2017-18. The firm did not pay tax under presumptive tax system in assessment year 2017-18. The firm opts for presumptive taxation under section 44AD for Assessment Year 2018-19. Assume that whole of the amount of turnover has been received by way of account payee cheque during the P.Y. 2017-18.
- (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 sections 234B and 234C, if the firm has not paid any advance tax? Assume that no TDS/TCS to its credit.
4. Delta Limited is engaged in growing and manufacturing rubber in India. It commenced its operations from 1st April, 2017. It acquired plant and machinery (second hand), factory building and furniture at a cost of ₹ 62 lakhs, ₹ 37 lakhs and ₹ 8 lakhs, respectively, in the P.Y. 2017-18 by way of ECS through bank account. Assuming that all the assets were put to use for more than 180 days during the P.Y. 2017-18, you are required to compute the written down value of each block as on 1st April, 2018.
5. Ms. Poorna purchased a residential house from her friend Ms. Leena at ₹ 20 lakhs in the city of Coimbatore on 17th December, 2017. The value determined by the Stamp Valuation Authority for stamp duty purpose amounted to ₹ 28 lakhs. Ms. Leena had purchased the house on 28th December, 2015 at a cost of ₹ 5 lakhs. Ms. Poorna sold the house for ₹ 30 lakhs on 26th February, 2018.
- Determine the effect of the above transactions on the assessments of Ms. Poorna and Ms. Leena for the A.Y. 2018-19, assuming that value for stamp duty purpose in case of the second sale was not more than the sale consideration.

6. (a) Mr. Sridhar gifted amount of ₹ 8,00,000 to his brother's wife, Ms. Lakshmi, which was used by her for the purchase of a house and simultaneously, on the same day, his brother Mr. Vishnu gifted shares owned by him in a foreign company worth ₹ 10,00,000 to Harsh, Mr. Sridhar's minor son. Examine the impact of such transfers in the hands of Mr. Sridhar and Mr. Vishnu.
- (b) Mr. Kumar held 18% equity shares in PQR (P) Ltd. He gifted all the shares held by him in PQR (P) Ltd., to his wife Sowmya on 17.7.2017. The transfer was made without adequate consideration. On 18.9.2017, Sowmya obtained a loan of ₹ 2 lakh from PQR (P) Ltd., when the company's accumulated profit was ₹ 1,50,000. Examine the tax implications of the above transactions.
7. A private limited company (not being an eligible start up referred to in section 80-IAC) has share capital in the form of equity share capital. The shares were held up till 31st March, 2016 by four members Akash, Bala, Chris and Dinesh equally. The company made losses/profits for the past three assessment years as follows:

Assessment Year	Business Loss ₹	Unabsorbed Depreciation ₹	Total ₹
2014-15	Nil	16,00,000	16,00,000
2015-16	Nil	12,00,000	12,00,000
2016-17	10,00,000	7,00,000	17,00,000
Total	10,00,000	35,00,000	45,00,000

The above figures have been accepted by the tax department.

During the previous year ended 31.3.2017, Akash sold his shares to Ganesh and during the previous year ended 31.3.2018, Bala sold his shares to Rajesh. The profits for the P.Y. 2016-17 and P.Y.2017-18 are as follows:

31.3.2017 ₹ 20,00,000 (before charging depreciation of ₹ 8,00,000)

31.3.2018 ₹ 50,00,000 (before charging depreciation of ₹ 10,00,000)

Compute taxable income for A.Y.2018-19. Workings must form part of your answer.

8. With brief reasons, answer the following in terms of Chapter VI-A of the Income-tax Act, 1961:
- (i) Mr. Harish, a resident Indian, deposited ₹ 90,000 with Life Insurance Corporation for the maintenance of his sister who suffers from disability of 80%. She is wholly dependent on him. How much amount is deductible from Gross Total Income?
- (ii) Mr. Rajesh, a resident Indian, has gross total income of ₹ 5,40,000 for A.Y. 2018-19. He has given the following donations:
- National Children's Fund ₹ 50,000 - by cheque

Indira Gandhi Memorial Trust ₹ 40,000 - by cheque

Clean Ganga Fund ₹ 30,000 - by cash

Swachh Bharat Kosh ₹ 60,000 - equally by cash and cheque.

Compute the amount deductible under section 80G.

- (iii) Mr. Vishal, a resident, who is a computer hardware engineer, co-authored a book on advanced computer programming alongwith his friend. He received ₹ 7,00,000 as lump sum royalty in December, 2017. How much of royalty is deductible?
9. Epsilon Ltd. is engaged in the business of manufacturing fertilizers since 1st April 2009. Its statement of profit and loss shows a net profit of ₹ 350 lakhs for the year ended 31-03-2018, after debiting and crediting the following items:
- ◆ Depreciation provided in accounts as per straight line basis ₹ 50 lakhs.
Note: Normal depreciation allowable as per the Income-tax Rules, 1962 is ₹ 62 lakhs.
 - ◆ The company has made cash payments for purchases and expenditure as below:
On 05-08-2017 ₹ 8 lakhs (Due to strike by bank staff)
On 17-08-2017 ₹ 5 lakhs (Due to cash demanded by the supplier)
Cash payments made to transport operator for hiring of lorry are as follows:
07-05-2017 ₹ 40,000; 08-01-2018 ₹ 35,000; 02-03-2018 ₹ 52,000.
 - ◆ ₹ 8 lakhs contribution to a National Laboratory approved under section 35(2AA).
 - ◆ GST of ₹ 2.10 lakhs, pertaining to P.Y.2017-18, was paid on 5-12-2018.
 - ◆ The company has also purchased goods of ₹ 63 lakhs from M/s. Gamma Ltd. in which directors have substantial interest. The market value of the goods is ₹ 58 lakhs.
 - ◆ The company has incurred legal expenses for the following:
Issue of bonus shares ₹ 5 lakhs
Issue of rights shares ₹ 4 lakhs
 - ◆ Donation paid to a registered political party by way of cheque ₹ 17 lakhs
- Compute the total income and tax liability of the company for the assessment year 2018-19 by integrating, analysing and applying the relevant provisions of the income-tax law and decided case laws. Give brief reasons for treatment of each item. Ignore MAT provisions.
- Note** – Turnover of Epsilon Ltd. for P.Y. 2015-16 is ₹ 52 crore.
10. M/s. Omega & Co., a partnership firm in India, is engaged in development of software and providing IT enabled services through two units, one of which is located in a notified

Special Economic Zone (SEZ) in Noida (commenced operations from 01.04.2007). The particulars relating to previous year 2017-18 furnished by the assessee are as follows:

Total Turnover: SEZ unit ₹ 180 lakhs and the other unit ₹ 120 lakhs

Export Turnover: SEZ unit ₹ 120 lakhs and the other unit ₹ 80 lakhs

Profit: SEZ unit ₹ 60 lakhs and the other unit ₹ 30 lakhs.

Amount debited to Statement of Profit and Loss and credited to Special Economic Zone Re-Investment Reserve Account ₹16 lakhs.

Considering that the firm has no other income during the year, compute the tax payable by the firm for the A.Y.2018-19 by integrating, analysing and applying the relevant provisions of income-tax law.

11. Examine the correctness or otherwise of the claims made by the following charitable trusts, registered under section 12AA, while computing income for the P.Y.2017-18:

- (a) Kamala charitable trust, having its main object as medical relief, earned the following income during the P.Y.2017-18:

	Particulars	₹ in lakh
(i)	Dividend income	0.50
(ii)	Income from mutual funds specified under section 10(23D)	0.85
(iii)	Agricultural income	3.25

The trust claims exemption under section 10(1), 10(34) and 10(35) in respect of its agricultural income, dividend and income from mutual funds, respectively, without complying with the conditions laid down under section 11.

- (b) Gandhi charitable trust, having its main object as promoting education in rural areas, purchased computers and laptops for ₹ 15 lakh in March, 2017 for the purposes of the trust and claimed the same as application of income in the P.Y.2016-17. It also claims depreciation @ 40% on such computers and laptops for P.Y.2017-18, while computing income for the purpose of application for that year.
12. Examine whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion. Give brief reasons for your answer.
- (i) Miss Aparna deposits ₹ 1,50,000 in PPF account so as to reduce her total income from ₹ 6,40,000 to ₹ 4,90,000, so as to fall in the 5% total income slab.
- (ii) Theta Ltd. maintains register of tax deduction at source effected by it to enable timely compliance.
- (iii) A company installed an air-conditioner costing ₹ 60,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control

section in the factory. This is with the objective of treating it as plant for the purpose of computing depreciation.

13. Sigma Consulting (P) Ltd., an Indian company established in the year 2005, reports total income of ₹ 15 lakh for the previous year ended 31st March, 2018. Tax deducted at source by different payers amounted to ₹ 1,35,600 and tax paid in foreign country on a doubly taxed income amounted to ₹ 22,000 for which the company is entitled to relief under section 90 as per the double taxation avoidance agreement.

During the year, the company paid advance tax as under:

Date of payment	Advance tax paid (₹)
14-06-2017	38,000
13-09-2017	73,000
14-12-2017	92,000
15-03-2018	77,000

The company filed its return of income for the A.Y. 2018-19 on 22nd October, 2018.

Compute interest, if any, payable by the company under sections 234A, 234B and 234C and fee payable under section 234F. Assume that transfer pricing provisions are not applicable.

Note – Turnover of Sigma Consulting (P) Ltd. for P.Y. 2015-16 is ₹ 55 crore.

14. M/s Cool Sip Limited entered into an agreement for the warehousing of its products with Topstore Warehousing and deducted tax at source as per provisions of section 194C out of warehousing charges paid during the year ended on 31.03.2018. The Assessing Officer, while completing the assessment for A.Y. 2017-18 of Cool Sip Limited in March 2018, treated the warehousing charges as rent as defined in section 194-I and asked the company to make payment of difference amount of TDS with interest. It was submitted by the company that the recipient had already paid tax on the entire amount of warehousing charges and therefore, now the difference amount of TDS cannot be recovered. However, it will make the payment of due interest on the difference amount of TDS. Examine critically in the context of provisions contained in Income-tax Act, 1961 as to the correctness of the submission of M/s. Cool Sip Ltd.
15. An Assessing Officer entered a hotel run by a person, in respect of whom he exercises jurisdiction, at 8.30 p.m. for the purpose of collecting information, which may be useful for the purposes of the Act. The hotel is kept open for business every day between 8 a.m. and 10 p.m. The hotelier claims that the Assessing Officer could not enter the hotel after sunset. The Assessing Officer wants to take away with him the books of account kept at the hotel.

Examine the validity of the claim made by the hotelier and the proposed action of the Assessing Officer with reference to the provisions of section 133B of the Income-tax Act, 1961.

16. (a) In an order of assessment for the A.Y. 2016-17, the assessee noticed a mistake for which application under section 154 was moved and the order was rectified. Subsequently, the assessee moved further application for rectification under section 154 which was rejected by the Assessing Officer on the ground that the order once rectified cannot be rectified again. Examine the correctness or otherwise of the contention of the Assessing Officer.
- (b) The return for A.Y.2018-19 was filed on time as per section 139(1) and proceedings were taken up for assessment under section 143(3). Later on, the assessee, noticed certain omissions and therefore filed a revised return on 18.4.2019. The Assessing Officer ignoring the revised return so filed framed the order on 27.4.2019. Is the action of Assessing Officer correct? Examine.
17. The assessment of Vindhyas Ltd. was completed under section 143(3) with an addition of ₹ 21 lakhs to the returned income. Vindhyas Ltd. preferred appeal before the Commissioner (Appeals) which is pending now.

In this backdrop, examine the following issues:

- (i) Based on fresh information that there was escapement of income for the same assessment year, can the Assessing Officer initiate reassessment proceedings when the appeal is pending before Commissioner (Appeals)?
- (ii) Can the Assessing Officer pass an order under section 154 for rectification of mistake in respect of issues not being subject matter of appeal?
- (iii) Can the assessee-company seek revision under section 264 in respect of matters other than those preferred in appeal?
- (iv) Can the Commissioner make a revision under section 263 both in respect of matters covered in appeal and other matters?
18. Explain the circumstances under which the Assessing Officer can resort to provisional attachment of the property of the assessee. Also, state the period of time for which such attachment can take place.

When can the Assessing Officer revoke provisional assessment of property? Discuss.

19. The details given hereunder for the A.Y.2018-19 relate to two foreign nationals (who are non-residents in India) - Mr. William Jones, an English cricket player and his brother, Mr. Frederick Jones, a singer:

	Particulars	Mr. William Jones	Mr. Frederick Jones
(1)	Participation in cricket tournaments in India	₹ 45 lakhs	

(2)	Winnings from lotteries (net)	₹ 69,100	
(3)	Contribution of an article relating to the sport of cricket in a sports magazine in India	₹ 10,000	
(4)	Performance in a music show in India		₹ 3 lakhs

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

- (i) Compute their tax liability for the A.Y.2018-19.
 - (ii) Examine whether the above income are subject to deduction of tax at source.
 - (iii) Decide whether it is necessary for them to file their return of income for A.Y.2018-19.
20. ABC Inc., a US company has a subsidiary, XYZ Ltd. in India. ABC Inc. sells LEDs to XYZ Ltd. for resale in India. ABC Inc. also sells LEDs to PQR Ltd., another LED reseller in India. It sells 30,000 LEDs to XYZ Ltd. at ₹ 22,000 per unit. The price fixed for PQR Ltd. is ₹ 18,000 per unit. The warranty in case of sale of LEDs by XYZ Ltd. is handled by XYZ Ltd. However, for sale of LEDs by PQR Ltd., ABC Inc. is responsible for the warranty for 6 months. Both ABC Inc. and XYZ Ltd. offer extended warranty at a standard rate of ₹ 2,500 per annum. On these facts, examine how the assessment of XYZ Ltd. is going to be affected.
21. The following are the particulars of income earned by Miss Anuradha, a resident Indian aged 25, for the A.Y. 2018-19:

Particulars	(₹ In lacs)
Income from playing hockey matches in country A	15.00
Tax paid in country A	3.00
Income from playing hockey matches in India	23.00
Deposit in PPF	1.50
Medical Insurance Premium paid for her mother aged 75 years (paid through credit card), who is not dependent on her.	0.40

Compute her total income and tax liability for the A.Y.2018-19. There is no Double Taxation Avoidance Agreement between India and country A.

22. Mr. Vallish, a non-resident, made an application to the Authority for Advance Rulings on 9.9.2017 in relation to a transaction proposed to be undertaken by him. On 1.11.2017, he decides to withdraw the said application. Can he withdraw the application on 1.11.2017? Examine.

SUGGESTED ANSWERS/HINTS

1. If any expenditure is incurred by an assessee in any financial year in respect of which he is not able to offer explanation about the source of such expenditure or the explanation

offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such unexplained expenditure may be deemed as income of the assessee for such financial year as per section 69C.

Therefore, in this case, since the Assessing Officer is not satisfied with the explanation offered by Mr. Rajiv, the expenditure of ₹ 30 lakh incurred by him in the financial year 2017-18 in hosting a grand cruise party may be deemed as his income for P.Y. 2017-18 as per section 69C.

Further, such unexplained expenditure which is deemed as the income of Mr. Rajiv shall not be allowed as deduction under any head of income.

Where the total income of Mr. Rajiv includes such unexplained expenditure of ₹ 30 lakh, which is deemed as his income under section 69C, such deemed income would be taxed at the rate of 60% as per section 115BBE *plus* surcharge@25% and cess@3%. The effective rate of tax would be 77.25%.

Further, no basic exemption or allowance or expenditure shall be allowed to him under any provision of the Income-tax Act, 1961 in computing such deemed income. No set-off of loss is permissible against such deemed income.

New section 271AAC has been inserted with effect from 1st April, 2017 in the Income-tax Act, 1961 to provide for levy of penalty@10% of tax payable under section 115BBE, in a case where income determined includes any income referred to in sections 68, 69, 69A to 69D for any previous year.

However, no such penalty would be levied on such income to the extent the same has been included by the assessee in return of income furnished under section 139 and tax in accordance with section 115BBE has been paid on or before the end of the relevant previous year.

2. (i) *Explanation 3* to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income, whether or not the basic operations were carried out on land. Accordingly, the income of ₹ 75,000 derived by a nursery from the sale of seedlings grown without carrying out all the basic operations on land shall be treated as agricultural income and exempt from tax under section 10(1).
- (ii) Section 10(26AAA) exempts the income which accrues or arises to a Sikkimese individual from any source in the State of Sikkim and the income by way of dividend or interest on securities. Therefore, the income of Ms. Reema from a business located in Sikkim and interest income on the securities issued by the Central Government shall not be subject to tax.
- (iii) Any payment from an approved superannuation fund made by way of transfer to the account of an employee under a notified pension scheme referred to in section 80CCD and notified by the Central Government is exempt under section 10(13). Since Atal Pension Yojana is a notified pension scheme under section 80CCD, the

amount of ₹ 10 lakhs transferred from an approved superannuation fund to the NPS Account of Mr. Sriram, an employee of Gamma Ltd., is exempt under section 10(13).

- (iv) The proviso to section 80CCD(3) provides that the amount received by the nominee, *inter alia*, on closure of NPS account on the death of the assessee, shall not be deemed to be the income of the nominee. Accordingly, the amount of ₹ 7.40 lakhs standing to the credit of Mr. Sharma's NPS Account, received by the nominee Smt. Vidya, on closure of the account after death of her husband, would not be deemed to be her income.
- (v) The amount of any contribution by the employer to an approved superannuation fund in respect of an employee would be a taxable perquisite under section 17(2), to the extent it exceeds ₹ 1,50,000. In this case, since the contribution by the employer, Alpha Ltd., is only ₹ 1,20,000, no part of the said contribution would be taxable as perquisite under section 17(2) in the hands of the employee, Mr. Ganesh.
3. (i) **Computation of income of the firm chargeable under the head “Profits and Gains of business or profession”**

Particulars	₹
Presumptive income under section 44AD (6% of ₹ 190 lakh) [See Note 1]	11,40,000
Less: Brought forward business loss under section 72 [See Note 4]	<u>75,000</u>
Income of the firm chargeable under the head “Profits and Gains of business or profession”	<u>10,65,000</u>
Tax liability at @ 30.9%	3,29,085

Notes: -

- (1) A partnership firm falls within the definition of “eligible assessee” under section 44AD. The threshold limit of turnover for applicability of presumptive taxation scheme under section 44AD is ₹ 200 lakh. In this case, since the turnover of the business of the firm is ₹ 190 lakh, it falls within the definition of “eligible business” and therefore, the firm is eligible to opt for presumptive taxation scheme under section 44AD. 6% of the total turnover would be deemed to be the business income of the firm as whole of the amount of turnover has been received by way of account payee cheque during the P.Y. 2017-18.
- (2) As per section 44AD(2), all deductions allowable under sections 30 to 38 shall be deemed to have been allowed in full and no further deduction shall be allowed.

Accordingly, no deduction shall be allowed for bad debts since the same is deductible under section 36(1)(vii). Likewise, unabsorbed depreciation is not deductible since the same is deductible under section 32(2).

- (3) Interest on capital and working partner salary are also not deductible while computing the presumptive income of a partnership firm under section 44AD for the assessment year 2018-19.
- (4) However, brought forward business loss of previous year 2016-17 can be set-off against current year business income as per section 72.
- (ii) Since the partnership firm has opted for computation of income on presumptive basis under section 44AD, it must pay the whole amount of advance tax in one installment on or before 15.03.2018. Further, any amount paid by way of advance tax on or before 31.3.2018 shall also be treated as advance tax paid during the financial year on or before 15th March 2018.

Since the firm has not paid advance tax –

- (a) it has to pay interest under section 234C at 1% on ₹ 3,29,085.
 - (b) it has to pay interest under section 234B @1% per month or part of a month on ₹ 3,29,085 from 1st April, 2018 to the date of determination of total income under section 143(1) and where regular assessment is made, to the date of regular assessment.
4. As per section 32, depreciation to be allowed has to be computed at the prescribed percentage on the written down value of any block of assets.

As per section 43(6), in the case of assets acquired before the previous year, the written down value means the actual cost to the assessee less all depreciation “actually allowed” to him under the Income-tax Act, 1961.

As per Rule 7A of the Income-tax Rules, 1962, only 35% of income from business of growing and manufacturing of rubber in India is deemed to be income liable to tax. The balance 65% would be agricultural income, which is not chargeable to tax.

Explanation 7 to section 43(6) provides that in cases of composite income, for the purpose of computing written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire composite income of the assessee is chargeable to tax under the head “Profits and gains of business or profession”. The depreciation so computed shall be deemed to have been “actually allowed” to the assessee.

Therefore, even if only 35% of Delta Limited’s income from sale of rubber grown and manufactured in India is taxable, full depreciation (and not 35%) should be taken as “actually allowed” for the purpose of computing WDV. Accordingly, the WDV of each block as on 1st April 2018 will be as follows:

Plant & Machinery = ₹ 62 lakhs – ₹ 9.30 lakhs (15% of ₹ 62 lakhs) = ₹ 52.70 lakhs.

Building (Factory) = ₹ 37 lakhs – ₹ 3.70 lacs (10% of ₹ 37 lakhs) = ₹ 33.30 lacs.

Furniture = ₹ 8 lakhs – ₹ 0.80 lakhs (10% of ₹ 8 lakhs) = ₹ 7.20 lakhs.

5. Tax treatment in the hands of the seller, Ms. Leena

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

In the instant case, Ms. Leena sold a residential house at Coimbatore to her friend Ms. Poorna for ₹ 20 lakhs, whereas the stamp duty value was ₹ 28 lakhs. Therefore, stamp duty value shall be deemed to be the full value of consideration for sale of the property. Therefore, short-term capital gain arising to Ms. Leena for A.Y. 2018-19 will be ₹ 23 lakhs (i.e. ₹ 28 lakhs - ₹ 5 lakhs). The capital gain is short-term since the period of holding of residential house is not more than 24 months.

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

The taxability provisions under section 56(2)(x), includes within its scope, any immovable property, being land or building or both, received for inadequate consideration by, *inter alia*, an individual.

As per section 56(2)(x), where any immovable property is received for a consideration which is less than the stamp duty by an amount exceeding ₹ 50,000, the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the recipient as the income from other sources. The provisions of section 56(2)(x) would be attracted in this case, since the difference exceeds ₹ 50,000. Therefore, ₹ 8 lakhs, being the difference between the stamp duty value of the property (i.e., ₹ 28 lakhs) and the actual consideration (i.e., ₹ 20 lakhs) would be taxable in the hands of Ms. Poorna, under the head 'Income from Other Sources'.

As per section 49(4), the cost of acquisition of such property for computing capital gains would be the value which has been taken into account for section 56(2)(x). Accordingly, ₹ 28 lacs would be taken as the cost of acquisition of the house. Therefore, on sale of the flat by Ms. Poorna, ₹ 2 lakhs (i.e. ₹ 30 lakhs – ₹ 28 lakhs) would be chargeable to tax as short-term capital gains in her hands for A.Y. 2018-19. Since this is a case covered by section 49(4) and not section 49(1), the period of holding of the previous owner, namely, Ms. Leena, will NOT be considered for determining whether the capital gain in short term or long term.

6. (a) In the given case, Mr. Sridhar is making a gift of ₹ 8,00,000 to his brother's wife for the purchase of a house by her and simultaneously, his brother, Mr. Vishnu, is making a gift of shares worth ₹ 10,00,000 owned by him in a foreign company to the minor son of Mr. Sridhar. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected

to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

The Supreme Court has, in *CIT vs. Keshavji Morarji* (1967) 66 ITR 142, held that if two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted.

Accordingly, the income arising to his brother's wife Ms. Lakshmi from the house property would be included in the total income of his brother, Mr. Vishnu and the dividend income from shares transferred to Mr. Sridhar's minor son would be taxable in the hands of Mr. Sridhar. This is because both Mr. Sridhar and his brother are the indirect transferors of the income yielding assets to their minor child and spouse, respectively, with an intention to reduce their burden of taxation. However, dividend income earned from shares of the value of ₹ 8,00,000 alone will be clubbed in the hands of Mr. Sridhar, since cross transfer is only to the extent of ₹ 8,00,000. Balance dividend income (in respect of shares of the value of ₹ 2,00,000) will be included in the hands of Mr. Sridhar or his spouse, as the case may be, whose total income excluding such income is greater under section 64(1A).

However, since husband's brother and father's brother fall within the definition of "relative" under section 56(2)(x), hence, the sum of money and property, respectively, received from them would be exempt in the hands of the concerned transferee.

- (b) Under section 2(22)(e), any payment by a closely-held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits.

Therefore, in order to attract the deeming provisions under section 2(22)(e), the recipient of loan should be a registered shareholder as well as the beneficial owner of shares.

Accordingly, in this case, ₹ 1,50,000 (i.e., loan to the extent of accumulated profits of PQR (P) Ltd.) would be deemed as dividend in the hands of Sowmya, who holds 18% equity shares in PQR (P) Ltd., under section 2(22)(e).

Thereafter, the clubbing provisions under section 64(1)(iv) would be attracted, as per which, income as arises, directly or indirectly, from asset transferred to spouse, otherwise than for adequate consideration, would be included in the hands of the transferor.

If the assets so transferred are shares in a company, the loan taken from the company is deemed as dividend income of the shareholder under section 2(22)(e) to the extent to which the company possesses accumulated profits. Thus, on account of this deeming provision, such loan is treated as income arising from the shares. It was so held by the Madras High Court in *CIT v. Vimalan (A.)* (1975) 98 ITR 529.

Accordingly, as per section 64(1)(iv), such income arising in the hands of the

shareholder, Sowmya, by virtue of section 2(22)(e) (i.e., deemed dividend of ₹ 1,50,000) would be included in the total income of Mr. Kumar, who had transferred the said shares to Sowmya without consideration.

7. Akash, Bala, Chris and Dinesh are the four shareholders of a private limited company. The shareholding pattern of the company in the three financial years are given below:

As on 31 st day of March	Akash	Bala	Chris	Dinesh	Ganesh	Rajesh
	%	%	%	%	%	%
2016	25	25	25	25	-	-
2017	-	25	25	25	25	-
2018	-	-	25	25	25	25

Section 79 provides that, in case of a closely held company not being an eligible start up referred to in section 80-IAC, no loss incurred in the previous year shall be carried forward and set off against the income of the subsequent previous year unless the shares carrying at least 51% of the voting power of the company are beneficially held on the last day of the previous year in which the loss is sought to be set off, by the same shareholders, who beneficially held the shares carrying at least 51% of the voting power on the last day of the previous year in which the loss was incurred.

Since shareholders holding at least 51% of the voting power are the same on 31st March 2016 and 2017, the restriction imposed by section 79 is not applicable for set-off of losses of the P.Y. 2015-16 against income of the P.Y. 2016-17. Thus, the taxable income for the assessment year 2017-18 would be:

Particulars	₹
Business profit	20,00,000
Less: Current year's depreciation	8,00,000
	12,00,000
Less: Brought forward business loss [as per section 72(2)]	10,00,000
Unabsorbed depreciation [section 32(2)]	2,00,000
Taxable income for A.Y. 2017-18	Nil

Balance unabsorbed depreciation relating to the earlier assessment years can be carried forward to the next assessment year i.e., A.Y. 2018-19. There is no brought forward business loss and section 79 is not applicable in case of carry forward of unabsorbed depreciation. Section 32 governs the carry forward and set off of depreciation for which the shareholding pattern is not relevant at all. Consequently, the income for A.Y.2018-19 will be determined as under -

Particulars	₹	₹
Business income		50,00,000
Less: Current year's depreciation		10,00,000

Less: Unabsorbed depreciation:-		40,00,000
Assessment year 2014-15	14,00,000	
Assessment year 2015-16	12,00,000	
Assessment year 2016-17	7,00,000	33,00,000
Taxable Income for A.Y.2018-19		7,00,000

8. **Allowability of deduction under Chapter VIA**

	Deduction (₹)	Reasons															
(i)	1,25,000	As per section 80DD, an assessee, being an individual or HUF, who is resident in India during the previous year, has – - incurred any expenditure for medical treatment (including nursing), training and rehabilitation of a dependent, or - paid or deposited any amount under a scheme framed by LIC or other insurer for the maintenance of a dependent, would be eligible for deduction of ₹ 75,000, in case such dependent is a person with disability. In case such dependent is a person with severe disability, the deduction under this section would be ₹ 1,25,000. Mr. Harish would be eligible for deduction under section 80DD since he has deposited money with LIC for maintenance of his sister (a dependent for the purpose of section 80DD), who suffers from severe disability (80% or more disability) and is wholly dependent on him. A flat deduction of ₹ 1,25,000 would be available to him under section 80DD, irrespective of the amount deposited with LIC.															
(ii)	1,00,000	Mr. Rajesh would be eligible for deduction under section 80G in respect of the donations made during the previous year as follows: <table><tr><th>Donation to</th><th>Amount of donation (₹)</th><th>Mode of donation</th><th>% eligible for deduction</th><th>Amount of deduction (₹)</th></tr><tr><td>National Children's Fund</td><td>50,000</td><td>Cheque</td><td>100%</td><td>50,000</td></tr><tr><td>Indira Gandhi Memorial Trust</td><td>40,000</td><td>Cheque</td><td>50%</td><td>20,000</td></tr></table>	Donation to	Amount of donation (₹)	Mode of donation	% eligible for deduction	Amount of deduction (₹)	National Children's Fund	50,000	Cheque	100%	50,000	Indira Gandhi Memorial Trust	40,000	Cheque	50%	20,000
Donation to	Amount of donation (₹)	Mode of donation	% eligible for deduction	Amount of deduction (₹)													
National Children's Fund	50,000	Cheque	100%	50,000													
Indira Gandhi Memorial Trust	40,000	Cheque	50%	20,000													

		Clean Ganga Fund	30,000	Cash	100%	Nil (Cash donation in excess of ₹ 2,000 would <u>not</u> qualify for deduction)
		Swachh Bharat Kosh	60,000	₹ 30,000 by cheque & ₹ 30,000 by cash	100%	30,000 (Amount of ₹ 30,000 contributed by cheque qualifies for deduction. ₹ 30,000 contributed by cash will not qualify for deduction u/s 80G)
(iii)	3,00,000	The entire royalty would be first included in Mr. Vishal's income under the head "Income from other sources". Thereafter, Mr. Vishal is eligible for deduction from gross total income under section 80QQB, of the whole of the income derived by him on account of any lumpsum consideration in the form of royalty in respect of a book, being a work of literary or scientific nature, or ₹ 3,00,000, whichever is less. Book on Advanced computer programming would fall within the description of work of literary or scientific nature [<i>Dassault Systems K.K. In Re. (2010) 322 ITR 125 (AAR)</i>]. In this case, the eligible deduction under section 80QQB would be the lower of ₹ 7,00,000, being the amount of lumpsum royalty received by Mr. Vishal or ₹ 3,00,000. The net effect is that out of ₹ 7,00,000 included in Vishal's income, he can claim deduction of ₹ 3,00,000 under section 80QQB. The balance of ₹ 4,00,000 would form part of his total income.				

9. Computation of Total Income of Epsilon Ltd. for the A.Y.2018-19

Particulars	Amount (₹)	
Profits and Gains from Business and Profession		
Net profit as per profit and loss account		3,50,00,000
Add: Items debited but to be considered separately or to be disallowed		
Depreciation provided on straight line basis (Note 1)	50,00,000	
Disallowance u/s 40A(3) for payment exceeding ₹ 10,000 made in cash for purchases and expenditure (Note 2)	5,00,000	
Disallowance under section 40A(3) for cash payment exceeding ₹ 35,000 in a day to transport operators for hiring of lorry (Note 3)	92,000	
Contribution to a National Laboratory (considered separately for weighted deduction) (Note 4)	8,00,000	
GST deposited on 5.12.2018 (Note 5)	2,10,000	
Disallowance under section 40A(2) for excess payment to related person (Note 6)	5,00,000	
Legal expenses for issue of bonus shares (Note 7)	-	
Legal expenses for issue of right shares (Note 7)	4,00,000	
Donation to a registered political party (Note 8)	17,00,000	92,02,000
		4,42,02,000
Less: Items credited but to be considered separately or to be allowed/ Expenditure to be allowed		
Depreciation allowable under the Income-tax Act, 1961 (Note 1)	62,00,000	
Weighted deduction @ 150% in respect of contribution of ₹ 8 lakhs to National Laboratory under section 35(2AA) (Note 4)	12,00,000	74,00,000
Gross Total Income		3,68,02,000
Less: Deduction under Chapter VI-A		
U/s 80GGB [Donation to registered political party] (Note 8)		17,00,000
Total Income		3,51,02,000

Computation of tax liability of Epsilon Ltd. for A.Y.2018-19

Particulars	₹
Tax@30% on total income of ₹ 3,51,02,000 [Since turnover of P.Y. 2015-16 > ₹ 50 crore]	1,05,30,600
Add: Surcharge@7% (since total income exceeds ₹ 1 crore but does not exceed ₹ 10 crores)	7,37,142

Tax payable including surcharge	1,12,67,742
Add: Education cess@2% and secondary and higher education cess@1%	<u>3,38,032</u>
Total tax payable	<u>1,16,05,774</u>
Tax payable (Rounded off)	1,16,05,770

Notes:

- (1) Depreciation provided in the accounts on straight line basis (i.e., ₹ 50 lakhs) has to be added back and depreciation calculated as per Income-tax Rules, 1962 (i.e. ₹ 62 lakhs) is allowable as deduction under section 32.
- (2) Cash payments exceeding ₹ 10,000 a day attracts disallowance under section 40A(3). However, Rule 6DD provides for certain exceptions, which includes, *inter alia*, payments which are required to be made on a day on which the banks were closed on account of strike. Therefore, cash payment of ₹ 8 lakhs made on the day of strike by bank staff would not attract disallowance under section 40A(3), assuming that the payment was required to be made on that specific date. However, cash payment of ₹ 5 lakhs made on 17-8-2017 due to demand of supplier would attract disallowance under section 40A(3), since the same is not covered under any of the exceptions laid out in Rule 6DD.
- (3) In respect of cash payments to transport operators, a higher limit of ₹ 35,000 per day is permissible. Therefore, cash payment of ₹ 35,000 on 8-1-2018 would not attract disallowance under section 40A(3). However, cash payments of ₹ 40,000 and ₹ 52,000 on 7.5.2017 and 2.3.2018, respectively, would attract disallowance under section 40A(3) since the same exceeds ₹ 35,000 per day.
- (4) Contribution to a National Laboratory under section 35(2AA) qualifies for weighted deduction@150%. Hence, the contribution of ₹ 8 lakhs is first added back and thereafter, deduction of ₹ 12 lakhs (i.e., 150% of ₹ 8 lakhs) has been provided under section 35(2AA).
- (5) GST liability of ₹ 2.10 lakhs would attract disallowance under section 43B, since it was paid only on 5.12.2018 (i.e., after the due date of filing return of income of A.Y.2018-19). It would be allowed in the year of payment (i.e., P.Y.2018-19). Hence, it has to be added back for computing business income.
- (6) Gamma Ltd. is a related person under section 40A(2), since the directors of Epsilon Ltd. have substantial interest in Gamma Ltd. Therefore, excess payment of ₹ 5 lakh to Gamma Ltd. for purchase of goods would attract disallowance under section 40A(2).
- (7) There is no fresh inflow of funds or increase in capital employed on account of issue of bonus shares and there is only reallocation of the company's fund. Consequently, since there is no increase in the capital base of the company, legal expenses of ₹ 5

lakhs in connection with issue of bonus shares is a revenue expenditure and is hence, allowable as deduction. It has been so held by Apex Court in case of *CIT vs. General Insurance Corpn. (2006) 286 ITR 232*.

However, ₹ 4 lakhs, being legal expenses in relation to issue of rights shares results in expansion of the capital base of the company and is, hence, a capital expenditure. Therefore, the same is not allowable as deduction. It has been so held in *Brooke Bond India Ltd. v. CIT (1997) 225 ITR 798 (SC)*.

- (8) Donation paid to a political party is not an allowable expenditure under section 37 since it is not laid out wholly or exclusively for the purposes of business or profession. Hence, the same has to be added back while computing business income. However, donation made by a company to a political party is allowable deduction under section 80GGB from gross total income, subject to the condition that payment is made otherwise than by way of cash. Since the donation is made by cheque the same is allowed as deduction under section 80GGB.

10. Computation of total income and tax liability of M/s. Omega & Co., a partnership firm, as per the normal provisions of the Act for A.Y. 2018-19

Particulars		₹ (in lakhs)
Business income (before deduction under section 10AA) (₹ 60 lakhs + ₹ 30 lakhs)		90.00
Add: Amount debited to SEZ Re-investment Reserve		<u>16.00</u>
		106.00
Less: Deduction u/s 10AA = ₹ 60 lakhs × ₹ 120 lakhs/₹ 180 lakhs = 40 × 50% (being the 11 th year)	20.00	
Amount credited to SEZ Re-investment Reserve Account - whichever is less is deductible	<u>16.00</u>	<u>16.00</u>
Total Income		<u>90.00</u>
Tax on total income@30%		27.00
Add: Education cess@2% & SHEC @1%		<u>0.81</u>
Tax liability (as per normal provisions)		<u>27.81</u>

Computation of Adjusted total income and Alternate Minimum tax of M/s. Omega & Co., a partnership firm, as per the provisions of section 115JC for A.Y.2018-19

Particulars	₹ (in lakh)
Total income as per the normal provisions	90.00
Add: Deduction under section 10AA	<u>16.00</u>
Adjusted total income	<u>106.00</u>
Tax@18.5% of Adjusted Total Income	19.6100

Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	<u>2.3535</u>
	21.9632
Add: Education cess @2% & SHEC @1%	<u>0.6589</u>
Alternate Minimum Tax as per section 115JC	<u>22.6221</u>

Since the tax payable as per the normal provisions of the Act is more than the alternate minimum tax payable, the total income as per normal provisions shall be liable to tax and the tax payable for A.Y. 2018-19 shall be ₹ 27.81 lakhs.

11. (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, a 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 Kamala 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 computers and laptops (i.e., ₹ 15 lakh) has been claimed and allowed as application of income under section 11 while computing the income of the trust for the P.Y.2016-17, depreciation on computers and laptops will not be allowed for the purpose of determining income for the purposes of application in the P.Y.2017-18.

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

12. Tax Planning / Tax Management / Tax Evasion

	Answer	Reason
(i)	Tax planning	Depositing money in PPF and claiming deduction u/s 80C is as per the provisions of income-tax law. Hence, it is a legitimate tax planning measure which enables Ms. Aparna to reduce her tax liability by claiming a deduction permissible under the Income-tax Act, 1961.

(ii)	Tax management	Maintaining register of payments subject to TDS helps in complying with the obligations under the Income-tax Act, 1961. Hence, such maintenance would fall within the meaning of Tax Management.
(iii)	Tax evasion	An air conditioner fitted at the residence of a director as per the terms of his appointment would be a furniture qualifying for depreciation @10%, whereas an air conditioner fitted in a factory would be a plant qualifying for a higher depreciation @15%. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduces profit and consequent tax liability. Treatment of air-conditioner fitted at the residence of a director as a plant fitted at the factory would tantamount to furnishing of false particulars with an attempt to evade tax.

13. **Interest under section 234A:** Since the return of income has been furnished by Sigma Consulting (P) Ltd. on 22nd October, 2018 i.e., 22 days after the due date for filing return of income (30.9.2018), interest under section 234A will be payable for 1 month @1% on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	₹
Tax on total income (₹ 15,00,000 x 30.9%) (Since turnover of P.Y. 2015-16 > ₹ 50 crore)	4,63,500
Less: Advance tax paid	2,80,000
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed u/s 90	<u>22,000</u>
Tax payable on self-assessment	<u>25,900</u>
Interest = ₹ 25,900 x 1% = ₹ 259	

Interest under section 234B : Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

Computation of assessed tax	₹
Tax on total income (₹ 15,00,000 x 30.9%)	4,63,500
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	<u>22,000</u>
Assessed tax	<u>3,05,900</u>
90% of assessed tax = ₹ 3,05,900 x 90% = ₹ 2,75,310	

Since the advance tax paid by Sigma Consulting (P) Ltd. (₹ 2,80,000) is more than 90% of the assessed tax (₹ 2,75,310), it is not liable to pay interest under section 234B.

Interest under section 234C

Particulars	₹
Tax on total income (₹ 15,00,000 x 30.9%)	4,63,500
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	<u>22,000</u>
Tax due on returned income/Total advance tax payable	<u>3,05,900</u>

Calculation of interest payable under section 234C:

Date	Advance tax paid till date (₹)	Advance tax payable till date %	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C (c)		Short-fall (₹)	Interest (₹)
			%	Amount (₹)		
15.06.2017	38,000	15%	12%	36,708	-	Nil (See Note below)
15.09.2017	1,11,000	45%	36%	1,10,124	-	Nil (See Note below)
15.12.2017	2,03,000	75%	75%	2,29,425	26,425	26,425 x 1% x 3 months = 793
15.03.2018	2,80,000	100%	100%	3,05,900	25,900	25,900 x 1% = 259
Interest payable under section 234C (Nil + Nil + ₹ 793 + ₹ 259)						₹ 1,052

Note: Since the advance tax paid by Sigma Consulting (P) Ltd. on 14th June, 2017 is more than 12% of the tax due on returned income (i.e., ₹ 3,05,900) and the advance tax paid on 13th September, 2017 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.

Fee under section 234F

₹ 5,000 is payable under section 234F by way of fee, since the return was filed after the due date but before 31.12.2018.

- The first proviso to section 201 provides that the payer (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such resident payee –

- (1) has furnished his return of income under section 139;
 - (2) has taken into account such sum for computing income in such return of income; **and**
 - (3) has paid the tax due on the income declared by him in such return of income,
- and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the resident payee.

However, where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee-in-default under section 201(1) as mentioned above, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Therefore, M/s Cool Sip Limited shall not be required to pay the difference tax in case the above mentioned conditions are fulfilled. However, the company shall be liable to make payment of interest from the date on which such tax was deductible to the date of furnishing of return of income by Topstore Warehousing.

Therefore, the submission of the assessee company, in this case, is correct.

15. Section 133B(2) of the Income-tax Act, 1961 empowers an income-tax authority to enter any place of business during the hours at which such place is open for the conduct of business. The hotel is open from 8.00 a.m. to 10.00 p.m. for the conduct of business. The Assessing Officer entered the hotel at 8.30 p.m. which falls within the working hours. The claim made by the hotelier to the effect that the Assessing Officer could not enter the hotel after sunset is not in accordance with law.

Section 133B(3) provides that an income tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account. In view of this clear prohibition in section 133B(3), the proposed action of the Assessing Officer to take away with him the books of account kept at the hotel is not valid in law.

16. (a) It has been held by the Apex Court in the case of *Hind Wire Industries Ltd. v. CIT (1995) 212 ITR 639* that the order once amended can also be rectified subsequently provided the mistake apparent from record is rectifiable under section 154. The Apex Court enlarged the scope of the words used in that section by stating that it does not necessarily mean the original order. It could be any order including the amended or rectified order. The action of the Assessing Officer is, therefore, incorrect.
- (b) The original return for A.Y.2018-19 was filed in time and the proceedings were already taken up for assessment under section 143(3). A revised return was filed by the assessee after the end of the relevant assessment year. The action of the Assessing Officer in making the assessment in disregard of the revised return filed on 18.4.2019

is correct because as per the provisions of section 139(5) the assessee can file the revised return only within the end of the relevant assessment year to which the return relates or before completion of the assessment, whichever is earlier.

17. (i) As per the third proviso to section 147, the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment. The doctrine of partial merger would apply in this case.

Therefore, even when an appeal is pending before Commissioner (Appeals), the Assessing Officer can initiate reassessment proceedings in respect of income chargeable to tax which has escaped assessment, provided such income is not the subject matter of the appeal before the Commissioner (Appeals) i.e., such income which has escaped assessment does not form part of the additions of ₹ 21 lakhs to the returned income, which is the subject matter of appeal.

- (ii) As per section 154(1A), the Assessing Officer can pass an order under 154(1) to rectify a mistake apparent from the record, provided the rectification is in relation to a matter, other than the matter which has been considered and decided in the appeal before Commissioner (Appeals). Thus, the doctrine of partial merger holds good for section 154 also.

Since the issue under consideration in this case relates to rectification of a mistake in respect of a matter which is not the subject matter of appeal, the Assessing Officer can pass an order under section 154 for rectification of the same provided the same is a mistake apparent from the record.

- (iii) As per section 264(4), the Commissioner shall not revise any order under section 264, where such order has been made the subject of an appeal to the Commissioner (Appeals). Thus, the concept of total merger would apply in the case of section 264.

Therefore, under section 264, the Commissioner cannot revise an order which is pending before the Commissioner (Appeals), even if the revision pertains to a matter, other than the matter(s) covered in the appeal.

- (iv) As per section 263, the Commissioner has the power to revise an order prejudicial to revenue, even if the order is the subject matter of appeal before Commissioner (Appeals). However, the power of the Commissioner under section 263 shall extend to only such matters as had not been considered and decided in such appeal. Here again, the doctrine of partial merger would apply.

In a case where the appeal is pending but not yet decided, the Commissioner cannot exercise his revisionary jurisdiction in respect of those issues which are the subject matter of appeal [*CWT v. Sampathmal Chordia* (2002) 256 ITR 440 (Mad.)].

18. As per the provisions of section 281B, there can be provisional attachment of property to protect the interest of Revenue in certain cases i.e. -

- (i) The proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment should be pending.
- (ii) Such attachment should be necessary for the purpose of protecting the interest of Revenue in the opinion of the Assessing Officer.
- (iii) The previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director has been obtained by the Assessing Officer.
- (iv) The Assessing Officer, may, by an order in writing attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

Such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of order made under section 281B(1). However, the period can be extended by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, as the case may be, for the reasons to be recorded in writing for a further period or periods as he thinks fit. The total period of extension in any case cannot exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

The Assessing Officer shall, by order in writing, revoke provisional attachment of a property made under section 281B(1) in a case where the assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.

19. (i) **Computation of tax liability of Mr. William Jones for the A.Y.2018-19**

Particulars	₹	₹
Income taxable u/s 115BBA		
Income from participation in cricket tournaments in India	45,00,000	
Contribution of article in a magazine in India	10,000	
Income taxable u/s 115BB		
Winnings from lotteries [₹ 69,100 / (100 - 30.9%)]	1,00,000	
Total Income	46,10,000	
Tax@20% u/s 115BBA on ₹ 45,10,000		9,02,000
Tax@30% u/s 115BB on income of ₹ 1,00,000 by way of winnings from lotteries		30,000
		9,32,000

Add: Education cess@2% and SHEC@1%	27,960
Total tax liability of Mr. William Jones	9,59,960

Mr. Frederick Jones is a non-resident entertainer, whose income of ₹ 3 lakh from a music show in India is taxable@20% under section 115BBA. Therefore, his tax liability is ₹ 61,800 (being 20% of ₹ 3 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. William Jones and Mr. Frederick Jones 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. William Jones 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.2018-19.

However, since Mr. Frederick Jones'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.2018-19, if tax has been so deducted.

20. ABC Inc., the foreign company and XYZ Ltd., the Indian company are associated enterprises since ABC Inc. is the holding company of XYZ Ltd. ABC Inc. sells LEDs to XYZ Ltd. for resale in India. ABC Inc. also sells identical LEDs to PQR Ltd., which is not an associated enterprise. The price charged by ABC Inc. for a similar product transferred in comparable uncontrolled transaction is, therefore, identifiable. Therefore, Comparable Uncontrolled Price (CUP) method for determining arm's length price can be applied.

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

For sale of LEDs by PQR Ltd., ABC Inc. is responsible for warranty for 6 months. The price charged by ABC Inc. to PQR Ltd. includes the charge for warranty for 6 months. Hence, the arm's length price for LEDs being sold by ABC Inc. to XYZ Ltd. would be:

Particulars	No.	₹
Sale price charged by ABC Inc. to PQR Ltd.		18,000
Less: Cost of warranty included in the price charged to PQR Ltd. (₹ 2,500 x 6 /12)		<u>1,250</u>
Arm's length price		16,750
Actual price paid by XYZ Ltd. to ABC Inc.		<u>22,000</u>
Difference per unit		<u>5,250</u>
No. of units supplied by ABC Inc. to XYZ Ltd.	30,000	
Addition required to be made in the computation of total income of XYZ Ltd. (₹ 5,250 × 30,000)		15,75,00,000

No deduction under Chapter VI-A would be allowable in respect of the enhanced income of ₹ 15.75 crores.

Note: It is assumed that XYZ Ltd. has not entered into an advance pricing agreement or opted to be subject to Safe Harbour Rules.

21. Computation of total income and tax liability of Miss Anuradha for the A.Y. 2018-19

Particulars	₹	₹
Indian Income [Income from playing hockey matches in India]		23,00,000
Foreign Income [Income from playing hockey matches in country A]		<u>15,00,000</u>
Gross Total Income		38,00,000
Less: Deduction under Chapter VI-A		
<u>Deduction under section 80C</u>		
PPF deposit of ₹ 1,50,000 made during the previous year is within the overall limit of 1.5 lakh. Hence, fully allowable as deduction	1,50,000	
<u>Deduction under section 80D</u>		
Medical insurance premium of ₹ 40,000 paid for her mother aged 75 years. Since her mother is a senior citizen, the deduction is allowable to a maximum of ₹ 30,000 (assuming that her mother is also a resident in India), even though she is not dependent on her. Further, deduction is allowable where payment is made by any mode other than cash. Here payment is made by credit card hence, eligible for deduction.	<u>30,000</u>	<u>1,80,000</u>
Total Income		<u>36,20,000</u>

<u>Tax on Total Income</u>		
Income-tax	8,98,500	
Add: Education cess@2%	17,970	
Add: Secondary and higher education cess@1%	<u>8,985</u>	9,25,455
Average rate of tax in India (i.e. ₹ 9,25,455/₹ 36,20,000 × 100)	25.57%	
Average rate of tax in foreign country "A" (i.e. ₹ 3,00,000/₹ 15,00,000 × 100)	20.00%	
Rebate u/s 91 on ₹ 15 lakh @ 20% (lower of average Indian-tax rate or average foreign tax rate)		<u>3,00,000</u>
Tax payable in India (₹ 9,25,455 – ₹ 3,00,000)		<u>6,25,455</u>

Note: Miss Anuradha shall be allowed deduction under section 91, since the following conditions are fulfilled:-

- (a) She is a resident in India during the relevant previous year.
 - (b) The income accrues or arises to her outside India during that previous year and such income is not deemed to accrue or arise in India during the previous year.
 - (c) The income in question has been subjected to income-tax in the foreign country A in her hands and she has paid tax on such income in the foreign country A.
 - (d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and country A where the income has accrued or arisen.
- 22.** Section 245Q(3) of the Income-tax Act, 1961 provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application. Since more than 30 days have elapsed from the date of application by Mr. Vallish to the Authority for Advance Rulings, he cannot withdraw the application.

However, the Authority for Advance Rulings (AAR), in *M.K. Jain AAR No.644 of 2004*, has observed that though section 245Q(3) provides that an application may be withdrawn by the applicant within 30 days from the date of the application, this, however, does not preclude the AAR from permitting withdrawal of the application after the said period with its permission, if the circumstances of the case so justify.