PAPER 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

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.

PART – I : DIRECT TAX LAWS

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 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.

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. Assessees 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 to fall within the definition of deemed dividend under section 2(22)(e) *[CIT vs. Creative Dyeing & Printing Pvt. Ltd. [NJRS] 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 to be treated as deemed dividend.

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.

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 XVIIB 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.

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 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 assessees having presumptive income from business or profession. Thus, eligible assessees 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 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 Tax Return Preparer: (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	***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 Tax Return Preparer.***
Preparation of and furnishing	An eligible person may, at his option, furnish his return of income under section 139 for any assessment year after getting it prepared

the Return of Income by the Tax Return Preparer	through a Tax Return Preparer: However, the following eligible persons (an individual or a HUF) cannot furnish a return of income for an assessment year through a Tax Return Preparer: (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 Tax Return Preparer unless he has furnished the original return of income for that assessment year through such or any other Tax Return Preparer. 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 Tax Return Preparer.

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.

PART – II : INTERNATIONAL TAXATION

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 assessees 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 assessees 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 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.
	Information and documents required to be kept and maintained: 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)	**Due date for furnishing report:** 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)	**Furnishing of report in case of more than one constituent entity:** 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)	**Period for which such information and document to be kept or maintained:** 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)	**Intimation in prescribed from:** 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)	**Due date for the Intimation:** 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)	**Entities which are required to furnish report in Form No. 3CEAD:** 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)	**Non-applicability of provisions of section 286** 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 revue 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

PART – I: DIRECT TAX LAWS

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.

21. Mr. Ganesh is a resident of the Contracting States, namely, Country "M" and Country "N", as per the domestic tax laws of the respective countries. Explain the manner of determining the single status of residence of Mr. Ganesh as per the UN Model Convention.

22. Explain the following terms in the context of interpretation of tax treaties:

(a) Principle of *Contemporanea Expositio*

(b) Teleological Interpretation

23. What is meant by Thin Capitalisation? Why is it considered as an anti avoidance measure? Which action plan of BEPS addresses Thin Capitalisation? Explain the provision incorporated in the Income-tax Act, 1961 to address Thin Capitalisation.

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, 2013[1] 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, 2013[2] 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.

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

---

[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

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 in 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	72,000	
			1,32,000
III	**Income from Other Sources**		
	Interest received from another co-operative society	12,000	
	Dividend received from another co-operative society	15,000	
			27,000
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)	50,000	
			97,000
Total Income			**1,37,000**

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 assessees 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]	4,30,000	
	Less: Deduction under section 24(a)		
	30% of Net Annual Value	1,29,000	
			3,01,000
II	**Profits and gains of business and profession**		
	Profits from manufacturing business **[See Working Note below]**	70,88,000	
	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]**	1,80,000	
			69,08,000
III	**Capital Gains**		
	Sale consideration	52,00,000	
	Less: Indexed Cost of Acquisition [₹ 50,00,000 × 272/254]	53,54,331	
	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	(1,54,331)	
IV	**Income from Other Sources**		
	Rent received from vacant land	2,05,000	
	Interest received on income-tax refund	42,000	
	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]	40,00,000	
			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.

	Gross Total Income		**1,14,56,000**
	***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		

[5] Assumed to be paid by a mode other than cash

of tax at source is not attracted. Also, since payment is made by account payee cheque, no disallowance under section 40A(3) is attracted].		
B(v) Bonus to employees	3,20,000	
[Since the payment is made after the due date of filing return of income, disallowance under section 43B is attracted]		
B(vi) Provision for income-tax (including interest of ₹ 70,000 thereon)	4,20,000	
[Not allowable as deduction. Disallowance under section 40(a)(ii) is attracted]		
B(viii) Loss from trading in derivatives in shares in a recognized stock exchange [See Note below]	1,80,000	
[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]		
		11,40,000
		88,40,000
Add: **Cash Payment for purchase of raw material deemed as income**		45,000
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)]		
		88,85,000
Less: **Expenditure to be allowed**		
B(i) & AI(1) Depreciation	5,00,000	
[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 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	2,00,000
	16,00,000
Add: Depreciation@15% on EPABX = 15% of ₹ 5,00,000	75,000
Correct Depreciation as per Income-tax Act, 1961	**16,75,000**

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	50,000	

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

[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

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]		9,20,000
		79,65,000
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"]	2,00,000	
		8,77,000
Profits and gains from the business of manufacturing		**70,88,000**

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 lacs)
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)]	800
	1326
Less: Deduction under section 10AA [**See Working Note below**]	348
Total Income	**978**
Tax on total income@30%	293.40
Add: Surcharge@12%, since total income > ₹1 crore	35.21
	328.61
Add: Education cess @2% & SHEC@1%	9.85
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	348
Adjusted Total Income	1326
Tax@18.5% of Adjusted Total Income	254.31
Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	29.44
	274.75
Add: Education cess @2% & SHEC @1%	8.24
Alternate Minimum Tax as per section 115JC	**282.99**

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	**1200**

included therein. Since freight and insurance has been excluded from export turnover, the same has to be excluded from total turnover also [9]	
Export Turnover of Unit P	
Export sale proceeds received in India	1040
Less: Insurance and freight not includible in export turnover	140
	900
Profit "derived from" Unit P	
Net profit for the year	502
Add: Disallowance under section 43B	24
	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 24	
	62
	464
Deduction under section 10AA	
Profit derived from Unit P x (Export turnover of Unit P / Total turnover of Unit P) x 100%	
= 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.

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

(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]	6,00,000	1,14,00,000
Less: 15% of income of ₹ 114 lakhs accumulated or set apart under section 11(1)(a)		17,10,000
		96,90,000
Less: Amount applied for the purposes of hospital		93,50,000
		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)**		5,00,000
		8,40,000
Add: Anonymous donation taxable @30% under section 115BBC **(See Note 2 below)**		2,00,000
Total Income		**10,40,000**
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%	68,000	80,500
		1,40,500
Education cess @2%		2,810
Secondary and higher education cess@1%		1,405
Tax payable		**1,44,715**
Tax payable (rounded off)		**1,44,720**

[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).

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 ***except in the case of a resident applicant*** *where the question raised in the application is already pending* ***in the applicant's case*** *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)	12,000	
Net Annual Value	3,08,000	
Less: Deduction under section 24 – 30% of NAV	92,400	
		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]	70,000	
	5,50,000	
Royalty income from a literary book from Country P (after deducting expenses of ₹ 30,000)	4,90,000	10,40,000
Income from Other Sources		
Agricultural income in Country P	82,000	
Dividend received from a company in Country Q	97,000	
		1,79,000
Gross Total Income		**14,34,600**

[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.

Less: **Deduction under Chapter VIA**		
Under section 80QQB – Royalty income of a resident from literary work[13]		3,00,000
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
Add: Education cess@2%	3,058
Secondary and higher education cess @ 1%	1,529
	1,57,466
Less: Rebate under section 91 **(See Working Note below)**	66,313
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 80QQB)][14]	1,90,000	
	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	

[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.

[14] Doubly taxed income includes only that part of income which is included in the assessees 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.).*

Dividend	97,000	
	3,12,600	
Less: Business loss set-off	70,000	
	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%)]		33,673
Total rebate under section 91 (Country P + Country Q)		**66,313**

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.

21. Since Mr. Ganesh is an individual resident of two Contracting States, namely, Country M and Country N, the UN Model Convention provides for a series of tie-breaker rules to determine single state of residence for him:

(i) **Permanent Home**: The first test is based on where he has a permanent home. Permanent home would mean a dwelling place available to him at all times continuously and not occasionally and includes place taken on rent for a prolonged period of time. Any place taken for a short duration of stay or for temporary purpose,

may be for reasons such as short business travel, or a short holiday etc. is not regarded as a permanent home.

(ii) **Personal and economic relations**: If that test is inconclusive for the reason that he has permanent home available to him in both Contracting States, he will be considered a resident of the Contracting State where his personal and economic relations are closer, in other words, the place where lies his centre of vital interests. Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural and other activities of the individual.

(iii) **Habitual abode**: In the following distinct and different situations, preference is given to the Contracting State where he has an habitual abode:

- The case where he has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of vital interests;
- The case where he has a permanent home available to him in neither Contracting State.

(iv) **National**: If he has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is a national.

(v) **Competent Authority**: If he is a national of both or neither of the Contracting States, the matter would be left to be considered by the competent authorities of the respective Contracting States.

22. (a) Principle of *Contmporanea Expositio*

A treaty's terms are normally to be interpreted on the basis of their meaning at the time the treaty was concluded. However, this is not a universal principle.

In *Abdul Razak A. Meman's* (2005) 276 ITR 306, the AAR observed that "there can be little doubt that while interpreting treaties, regard should be had to material *contemporanea expositio*. This proposition is embodied in article 32 of the Vienna Convention and is also referred to in the decision of the Hon'ble Supreme Court in *K. P. Varghese v. ITO [1981] 131 ITR 597*.

(b) Teleological Interpretation

In this approach the treaty is to be interpreted so as to facilitate the attainment of the aims and objectives of the treaty. This approach is also known as the 'objects and purpose' method.

In case of *Union of India v. Azadi Bachao Andolan 263 ITR 706*, the Supreme Court observed that "the principles adopted for interpretation of treaties are not the same as those in interpretation of statutory legislation. The interpretation of provisions of an international treaty, including one for double taxation relief, is that the treaties

are entered into at a political level and have several considerations as their bases."

One instance is where the Apex Court agreed with the contention of the Appellant that "the preamble to the Indo-Mauritius DTAA recites that it is for 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty.

23. A company is typically financed or capitalized through a mixture of debt and equity. The manner in which company raises capital has a significant impact on the amount of profit it reports for tax purposes. This is due to the reason that tax legislations of countries typically allow a deduction for interest paid or payable in arriving at the profit for tax purposes while the dividend paid on equity contribution is not deductible. Therefore, the higher the level of debt in a company, and thus, the amount of interest it pays, the lower will be its taxable profit. For this reason, debt is often a more tax efficient method of finance than equity. Since in such a structure, equity financing is less, it is referred to as Thin Capitalization. Thin capitalization, thus, refers to the process of funding an entity by debt instead of equity with a view to take advantage of interest deduction benefits.

Multinational groups are often able to structure their financing arrangements to maximize these benefits. To prevent tax erosion on account of such arrangements, country's tax administrations often introduce rules that place a limit on the amount of interest that can be deducted in computing a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, and thus aim to protect a country's tax base. Under the initiative of the G-20 countries, the Organization for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) project had taken up the issue of base erosion and profit shifting by way of excess interest deductions by the MNEs in its Action Plan 4. The OECD has recommended several measures in its final report to address this issue. In view of the above, new section 94B has been inserted in the Income-tax Act, 1961, in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest paid or payable by an entity to its non-resident associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to non-resident associated enterprises, whichever is less.