MOCK TEST PAPER - 1

FINAL (NEW) COURSE: GROUP – II

PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

1. (a) Computation of "Book Profit" for levy of MAT under section 115JB for A.Y.2018-19

Particulars	Rs.	Rs.
Net Profit as per Statement of Profit and Loss		15,00,000
Add: Net profit to be increased by the following amounts as per *Explanation 1* to section 115JB:		
- Provision for the loss of subsidiary	70,000	
- Provision for doubtful debts, being the amount set aside as provision for diminution in the value of any asset	75,000	
- Provision for income-tax	1,05,000	
As per Explanation 2 to section 115JB, income-tax shall include, inter alia, any interest charged under the Act, therefore, whole of the amount of provision for income-tax including Rs. 45,000 towards interest payable has to be added back]		
- Depreciation	3,60,000	6,10,000
		21,10,000
Less: Net profit to be decreased by the following amounts as per *Explanation 1* to section 115JB:		
- Share in income of an AOP as a member	1,00,000	
[In a case, where AOP has paid tax on its total income at maximum marginal rate, no income-tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to profit and loss account]		
- Income from units in UTI	75,000	
[Income from units in UTI shall be reduced while computing the book profits, since the same is exempt under section 10(35)]		
- Depreciation other than depreciation on revaluation of assets (Rs. 3,60,000 – Rs. 1,50,000)	2,10,000	
- Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account.		
Lower of unabsorbed depreciation Rs. 4,00,000 and brought forward business loss Rs. 6,00,000 as per books of accounts has to be reduced while computing the book profit]	4,00,000	7,85,000
Book Profit		**13,25,000**

Computation of MAT liability under section 115JB

Particulars	Rs.
18.50% of book profit	2,45,125
Add: Education cess@2%	4,903
Secondary and higher education cess@1%	2,451
Minimum Alternate Tax liability	2,52,479
MAT liability (rounded off)	**2,52,480**

Notes:

(1) It is only the specific items mentioned under *Explanation 1* to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:

- Interest to financial institution (unpaid before filing of return) and
- Penalty for infraction of law

(2) Provision for gratuity based on actuarial valuation is an ascertained liability *[CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)]*. Hence, the same should not be added back to compute book profit.

(3) As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT.

(4) Long-term capital gains cannot be deducted while computing book profit even if such amount of capital gains is invested in specified assets under section 54EC, since book profit has to be computed by adding/deducting the items mentioned under *Explanation 1* to section 115JB alone. Capital Gains reflected in the statement of profit and loss shall be part of book profit under section 115JB. Capital gains exempted under section 54EC cannot also be excluded for computing book profit. *[CIT v. Veekaylal Investment Co. P. Ltd. (2001) 249 ITR 597 (Bom.) & N J Jose and Co. (P) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.)]*

(b) Computation of taxable income and tax payable of Ms. Mamta for A.Y. 2018-19

Particulars	Rs.	Rs.
Profits and gains from business and profession		
Income from sole proprietary concern in India	50,00,000	
Share of profit from a partnership firm in India of Rs. 30 lakhs, is exempt	Nil	
Business profit	50,00,000	
Less: Business Loss in Country A (USD 10,000 x Rs. 64/USD), since eight assessment years has not expired from the assessment year in which such business loss was incurred.	6,40,000	43,60,000
Income from Other Sources		
Agricultural income from tea estate in Country XYZ is taxable in India (USD 70,000 x Rs. 64/USD)		44,80,000
Gross Total Income/ Total Income		**88,40,000**

Tax on total income		
Tax on Rs. 88,40,000 [30% x Rs. 78,40,000 plus Rs. 1,12,500]		24,64,500
Add: Surcharge@10%, since total income exceeds Rs. 50 lakhs		2,46,450
		27,10,950
Add: Education cess & SHEC @3%		81,329
		27,92,279
Average rate of tax in India [i.e., Rs. 27,92,279/Rs. 88,40,000 x 100]	31.59%	
Average rate of tax in Country XYZ [i.e., USD 10,500/USD 70,000]	15%	
Doubly taxed income [Rs. 44,80,000 – Rs. 6,40,000]	38,40,000	
Rebate under section 91 on Rs. 38,40,000 @15% (lower of average Indian tax rate and rate of tax in Country XYZ]		5,76,000
Tax payable in India [Rs. 27,92,279 – Rs. 5,76,000]		**22,16,279**
Tax payable (rounded off)		**22,16,280**

Note:

Since Ms. Mamta is resident in India for the P.Y.2017-18, her global income would be subject to tax in India. She would be allowed deduction under section 91 provided all the following conditions are fulfilled:-

(a) She is a resident in India during the relevant previous year.

(b) Income accrues or arises to her outside India during that previous year.

(c) Such income is not deemed to accrue or arise in India during the previous year.

(d) The income in question has been subjected to income-tax in Country XYZ in her hands and she has paid tax on such income in Country XYZ.

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

Ms. Mamta is eligible for deduction under section 91 since all the conditions specified thereunder stand fulfilled by her during the previous year.

2 (a) Computation of total income of M/s. LMN for the A.Y. 2018-19

Particulars	Rs.	Rs.
Net profit as per profit & loss account		1,50,000
Add: Interest to partners on capital accounts for the period from 1.4.2017 to 30.9.2017 disallowed (total interest Rs. 1,00,000 but deduction limited to 6 months only hence 50% thereof is deductible and the balance is added) **[Note (i)]**	50,000	
Interest to partners on current accounts from 1.4.2017 to 31.3.2018 – not authorized by the deed, hence disallowed **[Note (ii)]**.	50,000	
100% of Rs. 25,000 paid towards purchase of refrigerators otherwise than by way of account payee cheque, bank draft or through ECS (being stock in trade, hence disallowed) **[Note (iv)]**.	25,000	
Difference on account of valuation of closing stock-in-trade at market value (Rs. 65,000 less Rs. 60,000) **[Note (ix)]**	5,000	
Salary paid to working partners considered separately.	2,50,000	3,80,000
		5,30,000

Less: Additional depreciation on new machinery (Rs. 5,00,000 x 20%) = Rs. 1,00,000. Only 50% is allowable as deduction. **[Note (vii)]**		50,000
		4,80,000
Less: Interest received from bank on fixed deposits considered separately (since not taxable as business income) **[Note (viii)]**		25,000
		4,55,000
Less: Salary to working partners -		
(i) As per limit in section 40(b)		
On first Rs. 3,00,000 @ 90%	2,70,000	
On the balance of Rs. 1,55,000 @ 60%	93,000	
	3,63,000	
(ii) Salary actually paid	2,50,000	
Deduction allowed being (i) or (ii) whichever is less		2,50,000
		2,05,000
Less: Business loss relating to assessment year 2017-18 set off		50,000
Income from business		**1,55,000**
Income from other sources		
Interest received from bank on fixed deposits		25,000
Total Income		**1,80,000**

Explanation for the treatment of various items

(i) Interest to partners authorised by the partnership deed will be allowed as deduction only for the period beginning with the date of the partnership deed and not for any earlier period as per section 40(b)(iv). Therefore, interest paid to the partners on the balances standing to the credit of their capital accounts from 1.10.2017 alone is eligible for deduction, since the partnership deed was executed only on 1.10.2017. Interest for the period prior to 1.10.2017 is not allowed.

(ii) The partnership deed of 1.10.2017 provides for payment of interest on balances in capital accounts of partners only. As such, the interest paid on the balances standing to the credit of the current accounts of partners is not allowable under section 40(b). The Kerala High Court has, in *Novel Distributing Enterprises v. DCIT (2001) 251 ITR 704 (Ker)*, on identical facts, held that interest paid to the partners on their current account balances is not allowable.

(iii) Since Lalit is a partner in his individual capacity, interest paid to the Hindu Undivided Family of partner Lalit does not attract disallowance under section 40(b)(iv).

(iv) Section 40A(3) provides for disallowances @100% of the expenditure incurred otherwise than by an account payee cheque / account payee bank draft or use of ECS through bank account. Since the firm has made payment of Rs. 25,000 towards purchase of refrigerators by a crossed cheque and not by an account payee cheque, 100% of such expenditure would be disallowed.

(v) Gold jewellery valued at Rs. 30,000 received as gift from a manufacturer for achieving sales target is taxable under section 28(iv), being a benefit arising from business.

(vi) Depreciation on motor car bought and used exclusively for the purposes of business is allowable though not registered in the name of the firm in view of the ratio of the decision of the Supreme Court in *Mysore Minerals Ltd. v. CIT (1999) 239 ITR 775*.

(vii) The firm is entitled to additional depreciation @ 20% under section 32(1)(iia) in respect of the new machinery installed for manufacture of footballs. Since the new machinery is put to use for less than 180 days during the relevant previous year, the additional depreciation is restricted to 50% of the prescribed rate of 20% i.e. it is restricted to 10%. The balance additional depreciation can be claimed in the immediately succeeding financial year.

(viii) Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Hence, it is not taken into account for the purpose of computing business profit.

(ix) As per para 24 of ICDS II: Valuation of Inventories, closing stock has to be valued at net realizable value in the case of a dissolved firm. As such, the closing stock-in-trade of the firm has to be valued at the net realizable value.

(x) Net profit shown in the profit and loss account computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners constitutes book profit as per *Explanation 3* to section 40(b). Carry forward and set off of business loss is covered under Chapter VI. Hence, brought forward business loss relating to the assessment year 2017-18 is not considered for calculation of book-profit.

(xi) Section 45(4) is not applicable to the firm for the assessment year 2018-19, though the dissolution of the firm took place on 31.3.2018, as there was no transfer by way of distribution of capital assets during the relevant previous year. The distribution of the capital assets took place on 20.4.2018. The capital gains will, therefore, be assessable in the assessment year 2019-20.

(b) (i) Computation of tax liability of Mr. Berlin Kidman for the A.Y.2018-19

Particulars	Rs.	Rs.
Income taxable under section 115BBA		
Income from participation in hockey tournaments in India	45,00,000	
Contribution of article in a magazine in India	10,000	
Income taxable under section 115BB		
Winnings from lotteries [Rs. 69,100 / (100 - 30.9%)]	1,00,000	
Total Income	**46,10,000**	
Tax @ 20% under section 115BBA on Rs. 45,10,000		9,02,000
Tax@30% under section 115BB on income of Rs. 1,00,000 by way of winnings from lotteries		30,000
		9,32,000
Add: Education cess@2% and SHEC@1%		27,960
Total tax liability of Mr. Berlin Kidman		**9,59,960**

Mr. Thomas Kidman is a non-resident entertainer, whose income of Rs. 3 lakh from entertainment shows in India is taxable@20% under section 115BBA. Therefore, his tax liability is Rs. 61,800 (being 20% of Rs. 3 lakh plus education cess@2% and secondary and higher education cess@1%)

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

In this case, although Mr. Berlin Kidman is a non-resident sportsman, he has winnings from lotteries as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he has to file his return of income for A.Y.2018-19.

However, since Mr. Thomas Kidman's income comprises of only income referred to in section 115BBA, in respect of which tax is deductible under section 194E, he need not file his return of income for A.Y.2018-19, if tax has been so deducted.

3. (a) (i) As per section 73(1), loss in speculation business can be set-off only against the profits of any other speculation business and not against any other business or professional income.

Explanation below section 73(1) clarifies that where any part of the business of a company consists in the purchase and sale of the shares of other companies, such a company shall be deemed to be carrying on speculation business to the extent to which the business consists of the purchase and sale of such shares.

However, this deeming provision does not apply, *inter alia,* to a company, the principal business of which is the business of trading in shares.

(1) Since part of the business of Petal Ltd. consists of sale and purchase of shares of other companies, the company would be deemed to be carrying on speculation business to the extent of purchase and sale of such shares.

Thus, the loss from speculative business i.e., loss from share trading cannot be set-off against the profit of manufacturing business of Petal Ltd.

(2) If the principal business of Petal Ltd. is to sell and purchase shares of other companies, Petal Limited would not be deemed to be carrying on speculation business.

In such a case, the loss arising from the sale and purchase of shares of other company can be set-off against any other business income. Petal Ltd. can, accordingly, set-off such losses against its profits from manufacturing business.

(ii) This issue came up before the Karnataka High Court in *CIT v. D. Ananda Basappa (2009) 309 ITR 329.* The Court observed that the assessee had shown that the flats were situated side by side and the builder had also certified that he had effected modification of the flats to make them one unit by opening the door between the apartments. Therefore, it was immaterial that the flats were occupied by two different tenants prior to sale or that it was purchased through different sale deeds. The Court observed that these were not the grounds to hold that the assessee did not have the intention to purchase the two flats as one unit. The Court held that the assessee was entitled to exemption under section 54 in respect of purchase of both the flats to form one residential house.

Applying the ratio of the above decision to the case on hand, Mr. Rahim is entitled to exemption under section 54 in respect of purchase of two flats to form one residential house. Therefore, the contention of the Assessing Officer is **not correct**.

(iii) (a) The requirement of filing an application for registration under section 12A within one year of creation of the trust has been removed. The application can be filed at any time now. Accordingly, the provisions of sections 11 and 12 would apply from the assessment year relevant to the financial year in which the application is made i.e. the exemption would be available only with effect from the assessment year relevant to the previous year in which the application was filed.

However, where registration has been granted to the trust under section 12AA and on the said date, assessment proceedings relating to earlier assessment years are pending, then, the benefit of sections 11 and 12 shall be available in respect of income derived from property held under trust in those years, provided the objects and activities of the trust remain unchanged.

(b) As per section 12AA(2), every order granting or refusing registration should be passed before the expiry of 6 months from the end of the month in which the application was received under section 12A. The Supreme Court, in *CIT v. Society for Promotion of Education (2016) 382 ITR 6,* held that the trust would be deemed as registered if the application under section 12AA is not disposed of within the stipulated period of six months. Therefore, in this case, the trust would be deemed as registered with effect from

1st March, 2018. The benefit of exemption under section 11 and 12 would be available from A.Y. 2018-19, being the assessment year relevant to the financial year in which the application is made.

(b) Shine Inc., a foreign company and Sahara Ltd., an Indian company are associated enterprises since Shine Inc. is the holding company of Sahara Ltd. Shine Inc. sells ROs to Sahara Ltd. for resale in India. Shine Inc. also sells identical ROs to Rich Ltd., which is not an associated enterprise. The price charged by Shine Inc. for a similar product transferred in comparable uncontrolled transaction is, therefore, identifiable. Therefore, Comparable Uncontrolled Price (CUP) method for determining arm's length price can be applied.

While applying CUP method, the price in comparable uncontrolled transaction needs to be adjusted to account for difference, if any, between the international transaction (i.e. transaction between Shine Inc. and Sahara Ltd.) and uncontrolled transaction (i.e. transaction between Shine Inc. and Rich Ltd.) and the price so adjusted shall be the arm's length price for the international transaction.

For sale of ROs by Rich Ltd., Shine Inc. is responsible for warranty for 6 months. The price charged by Shine Inc. to Rich Ltd. includes the charge for warranty for 6 months. Hence, the arm's length price for ROs being sold by Shine Inc. to Sahara Ltd. would be:

Particulars	No.	Rs.
Sale price charged by Shine Inc. to Rich Ltd.		18,000
Less: Cost of warranty included in the price charged to Rich Ltd. (Rs. 2,500 x 6 /12)		1,250
Arm's length price		**16,750**
Actual price paid by Sahara Ltd. to Shine Inc.		22,000
Difference per unit		**5,250**
No. of units supplied by Shine Inc. to Sahara Ltd.	30,000	
Addition required to be made in the computation of total income of Sahara Ltd. (Rs. 5,250 × 30,000)		15,75,00,000

No deduction under Chapter VI-A would be allowable in respect of the enhanced income of Rs. 15.75 crores.

Note: *It is assumed that Sahara Ltd. has not entered into an advance pricing agreement or opted to be subject to Safe Harbour Rules.*

4. (a) (i) **Interest under section 234A:** Since the return of income has been furnished by Prime (P) Ltd. on 22nd October, 2018 i.e., 22 days after the due date for filing return of income (30.9.2018), interest under section 234A will be payable for 1 month @ 1% on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	Rs.
Tax on total income (Rs. 15,00,000 x 30.9%) (Since turnover of P.Y. 2015-16 > Rs. 50 crore)	4,63,500
Less: Advance tax paid	2,80,000
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	22,000
Tax payable on self assessment	**25,900**
Interest = Rs. 25,900 x 1% = Rs. 259	

Interest under section 234B : Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

Computation of assessed tax	Rs.
Tax on total income (Rs. 15,00,000 x 30.9%)	4,63,500
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	22,000
Assessed tax	**3,05,900**
90% of assessed tax = Rs. 3,05,900 x 90% = Rs. 2,75,310	

Since the advance tax paid by Prime (P) Ltd. (Rs. 2,80,000) is more than 90% of the assessed tax (Rs. 2,75,310), it is not liable to pay interest under section 234B.

Interest under section 234C

Particulars	Rs.
Tax on total income (Rs. 15,00,000 x 30.9%)	4,63,500
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	22,000
Tax due on returned income/Total advance tax payable	**3,05,900**

Calculation of interest payable under section 234C:

Date	Advance tax paid till date (Rs.)	Advance tax payable till date %	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C (c)		Shortfall	Interest
			%	Amt (Rs.)	(Rs.)	(Rs.)
15.6.2017	38,000	15%	12%	36,708	-	Nil **(See Note below)**
15.9.2017	1,11,000	45%	36%	1,10,124	-	Nil **(See Note below)**
15.12.2017	2,03,000	75%	75%	2,29,425	26,425	26,400 x 1% x 3 months = 792
15.3.2018	2,80,000	100%	100%	3,05,900	25,900	25,900 x 1% = 259
Interest payable under section 234C (Nil + Nil + Rs. 792 + Rs. 259)						Rs. **1,051**

Note: *Since the advance tax paid by Prime (P) Ltd. on 13th June, 2017 is more than 12% of the tax due on returned income (i.e., Rs. 3,05,900) and the advance tax paid on 15th September, 2017 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.*

Fee under section 234F

Rs. 5,000 is payable under section 234F by way of fee, since the return was filed after the due date but before 31.12.2018.

(ii) I. Since the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, the maturity proceeds of Rs. 4.50 lakhs are not exempt under section 10(10D) in the hands of Mr. Shivam. Therefore, tax is required to be deducted@1% under section 194DA on the maturity proceeds of Rs. 4.50 lakhs payable to Mr. Shivam.

II PQR Bank has to deduct tax at source@10% under section 194A, since the aggregate interest on fixed deposit with the three branches of the bank is Rs. 20,250 [1,00,000 × 3 × 9% × 9/12], which exceeds the threshold limit of Rs. 10,000. Since PQR Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of Rs. 20,250 exceeds the threshold limit of Rs. 10,000, tax has to be deducted@10% under section 194A.

III. Section 194J requires deduction of tax at source @10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds Rs. 30,000 in a financial year. As per *Explanation (a)* to section 194J, professional services includes services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes of section 194J.

Accordingly, the CBDT has, vide *Notification No.88 dated 21.8.2008*, in exercise of the powers conferred by clause (a) of the *Explanation* to section 194J notified the services rendered by coaches and trainers in relation to the sports activities as professional services for the purposes of section 194J.

Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Shaurya Mishra.

(b) (i) Equalisation levy of 6% is attracted in respect of the amount of consideration exceeding Rs. 1 lakh for, *inter alia*, online advertisement, received or receivable by a non-resident not having permanent establishment in India, from, *inter alia*, a resident in India who carries on business or profession.

In this case, the payment of Rs. 12 lakhs by Pearl Ltd., a resident in India (since it is an Indian company) to Beauty Inc., Japan, a non-resident not having PE in India, for online advertisement services would be subject to Equalisation Levy@6%. Such income is, however, exempt under the Income-tax Act, 1961 by virtue of section 10(50) thereof.

Pearl Ltd. is required to deduct equalisation levy of Rs. 72,000 i.e., @6% of Rs. 12 lakhs from such payment.

(ii) The statement is <u>not</u> correct.

As per section 245N, advance ruling not only includes a determination by the AAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant, but also includes, *inter alia,* determination by the AAR -

(i) in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident

(ii) in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant

and such determination shall include the determination of any question of law or of fact specified in the application.

5. (a) (i) The proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer, within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the Assessing Officer, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, release the asset after recovering the existing liability under the Income-tax Act, 1961, etc. out of such asset. 'Existing liability', however, does not include

advance tax payable. Such asset or portion thereof has to be released within 120 days from the date on which the last of the authorizations for search under section 132 was executed.

In the present case, the Department can withhold the explained money, since the assessee's application for release of the asset, explaining the sources thereof, was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, even though the application was made to the Assessing Officer within the 30 day period.

(ii) There are several flaws in the penalty levied by the Assessing Officer. Firstly, the penalty leviable under section 271D cannot exceed the sum equal to the loan taken. Hence, the maximum penalty leviable would be Rs. 80,000. Secondly, any penalty imposable under section 271D shall be imposed by the Joint Commissioner. Hence, unless the Assessing Officer happens to be a Joint Commissioner the levy of penalty will be invalid. Thirdly, the Assessing Officer cannot, on the one hand, treat the loan as undisclosed income of the assessee and on the other, treat it as a loan for the purpose of section 269SS read with section 271D. Such a treatment will be self-contradictory. The moment the amount of Rs. 80,000 is treated as undisclosed income, it ceases to bear the character of loan and therefore, the foundation for the levy of penalty under section 271D disappears. *[Diwan Enterprises v. CIT and Others (2000) 246 ITR 571]*.

(iii) **(I)** As per section 154(1A), the Assessing Officer can pass an order under 154(1) to rectify a mistake apparent from the record, provided the rectification is in relation to a matter, other than the matter which has been considered and decided in the appeal before Commissioner (Appeals). Thus, the doctrine of partial merger holds good for section 154.

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

(II) As per section 264(4), the Commissioner shall not revise any order under section 264, where such order has been made the subject of an appeal to the Commissioner (Appeals). Thus, the concept of total merger would apply in the case of section 264.

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

(III) As per section 263, the Commissioner has the power to revise an order prejudicial to revenue, even if the order is the subject matter of appeal before Commissioner (Appeals). However, the power of the Commissioner under section 263 shall extend to only such matters as had not been considered and decided in such appeal. Here again, the doctrine of partial merger would apply.

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

(b) Taxation of income derived by a resident of a Contracting State in respect of professional services is dealt with in Article 14 of the UN Model Convention.

As per this article, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

Scope of professional services: The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

6. (a) (i) (I) As per section 282(1), the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -

(1) by post or such courier services as approved by the CBDT; or

(2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or

(3) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or

(4) by any other means of transmission of documents as may be provided by rules made by the CBDT in this behalf.

The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

(II) The service of notice in the given cases should be on the persons mentioned hereunder:-

Person	Notice to be addressed and served on
A dissolved firm	Any person who was a partner (not being a minor) immediately before dissolution.
A partitioned HUF	Last Manager of the HUF, or, if he is dead, then, all adult members of the erstwhile HUF.

OR

(i) The liability of a director of a private limited company for arrears due from the company is provided in section 179. There is no necessity to issue a notice to a director, because the position of a person on whom liability is fastened is equated to that of an 'assessee' in default. For the purpose of section 220(4), the person held liable under section 179 would be deemed to be an assessee-in-default. This may be contrasted with the arrears of a partnership firm which may be recovered from the erstwhile partners only after issue of a notice under section 156 and a default is committed by them.

Under section 179, every person who was a director of a private limited company at any time during the relevant previous year shall be jointly and severally liable for the payment of taxes

which cannot be recovered from the company, unless he proves that the non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company.

(ii) I. Whether to pay dividend to its shareholder, or buy back its shares or issue bonus shares out of the accumulated reserves is a business choice of a company. Further, at what point of time a company makes such a choice is its strategic policy decision. Such decisions cannot be questioned under GAAR. Hence, GAAR provisions cannot be invoked in this case.

II. Issuance of a credit note for Rs. 90,000 by Ria Ltd. as brokerage payable to Mr. Swarnim, the son of the Managing Director, to increase his total income from Rs. 3,60,000 to Rs. 4,50,000 and to correspondingly reduce the company's total income is a method of reducing the tax liability of the company by recording a fictitious transaction.

The company is liable to tax at a flat rate of 30%/25%, as the case may be, plus surcharge, if any, whereas Mr. Swarnim is liable to pay tax @ 5% above the basic exemption limit of Rs. 2,50,000, since his total income does not exceed Rs. 5,00,000. Reducing tax liability by recording a fictitious transaction would tantamount to tax evasion. Thus, this transaction would be considered as Tax Evasion.

(iii) The time limit for service of notice under section 143(2) is six months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2017-18 was filed by the assessee on 6th June, 2017. Therefore, the notice under section 143(2) has to be served by 30th September, 2018. However, the notice was served on the assessee only on 3rd October, 2018. Hence, the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry that the notice was (a) not served upon him or (b) not served upon him in time or (c) served upon him in an improper manner.

The above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case, if the assessee, Shipra Limited, had raised an objection to the proceeding, on the ground of non-service of the notice under section 143(2) upon it on time, then, the validity of the assessment order can be challenged. In absence of such objection, the assessment order cannot be challenged.

(b) A hybrid mismatch is an arrangement that exploits a difference in the tax treatment of an entity or an instrument under the laws of two or more tax jurisdictions to achieve double non-taxation.

Branch mismatches arise where the ordinary rules for allocating income and expenditure between the branch and head office result in a portion of the net income of the taxpayer escaping the charge to taxation in both the branch and residence jurisdiction. Unlike hybrid mismatches, which result from conflicts in the legal treatment of entities or instruments, branch mismatches are the result of differences in the way the branch and head office account for a payment made by or to the branch.

Hybrid mismatch arrangements arise due to -

(i) Creation of two deductions for a single borrowal

(ii) Generation of deductions without corresponding income inclusions

(iii) Misuse of foreign tax credit

(iv) Participation exemption regimes

Specific country laws that allow taxpayers to opt for the tax treatment of certain domestic and foreign entities may aid hybrid mismatches.

BEPS Action Plan 2 gives recommendations to neutralise the effects of hybrid mismatch arrangements, which include general changes to domestic law followed by a set of dedicated anti-hybrid rules. Treaty changes are also recommended. The 2017 report includes specific recommendations for improvements to domestic law intended to reduce the frequency of branch mismatches as well as targeted branch mismatch rules which adjust the tax consequences in either the residence or branch jurisdiction in order to neutralise the hybrid mismatch without disturbing any of the other tax, commercial or regulatory outcomes.