

MOCK TEST PAPER – 1

FINAL: GROUP – II

ANSWERS TO PAPER – 7: DIRECT TAX LAWS

1. (a) Computation of depreciation allowance under section 32 for the A.Y. 2014-15

Particulars	Plant & Machinery	
	15%	60%
	(₹ in crores)	
WDV as on 01.04.2013	40.00	-
Add: Plant and Machinery acquired during the year		
- Second hand machinery 30.00		
- New plant and machinery 110.00		
- Air conditioner installed in office <u>0.40</u>		
	140.40	
Computers acquired during the year	-	<u>1.00</u>
	180.40	1.00
Less: Asset sold during the year	<u>6.00</u>	<u>Nil</u>
Written down value before charging depreciation	174.40	1.00
Less: Depreciation for the P.Y.2013-14 (See Note 1 below)	<u>38.01</u>	<u>0.30</u>
WDV as on 1.4.2014	<u>136.39</u>	<u>0.70</u>
Note 1 : Computation of depreciation for the P.Y.2013-14		
Normal depreciation [Under section 32(1)(ii)]		
Depreciation@30% on computers put to use for less than 180 days (50% of 60% × ₹ 1.00 crore)	-	0.30
Depreciation on plant and machinery (15% block) (₹ 58 crore × 7.5%) + [(₹ 174.40 crore - Rs.58 crore) × 15%]	21.81	
Additional depreciation [Under section 32(1)(iia)]		
- New plant and machinery installed		
- on 16.9.2013 (₹ 52 crore × 20%) 10.40		
- on 06.1.2014 (₹ 58 crore × 10%) <u>5.80</u>	<u>16.20</u>	<u>Nil</u>
Total depreciation	<u>38.01</u>	<u>0.30</u>

Computation of deduction under section 32AC for the A.Y.2014-15

Particulars	(₹ in crore)
15% of ₹ 110 crore, being aggregate investment in new plant and machinery acquired and installed during the P.Y.2013-14	16.50

Note – For the A.Y.2014-15, the company would be entitled for investment allowance under section 32AC since the investment in new plant and machinery acquired and installed during the P.Y.2013-14 is ₹ 110 crores (i.e., more than ₹ 100 crores). The deduction for investment allowance under section 32AC would be in addition to the depreciation allowable under section 32 for that year. However, the investment allowance would not be reduced to arrive at the written down value of plant and machinery.

It may be noted that investment in second hand plant and machinery and air-conditioners and computers installed in office would neither be eligible for investment allowance under section 32AC nor for additional depreciation under section 32(1)(ia).

(b) Computation of net wealth of Blueprint Ltd on the valuation date 31.03.2014

	Particulars	₹	₹
1.	Land situated at a distance of 7 kms from the local limits of the Municipality (See note)		Nil
2.	Land situated at a distance of 3 kms from the local limits of the Municipality (See note)		48,00,000
3.	Land in urban area (for construction of mall) – an asset u/s 2(ea)		26,00,000
4.	Motor car (including imported car) – an asset u/s 2(ea)		15,00,000
5.	Jewellery (held as stock in trade) – not an asset u/s 2(ea)		Nil
6.	Bank balance - not an asset under section 2(ea)		Nil
7.	Cash in hand as per cash book - not an asset as per section 2(ea)		Nil
8.	Guest house in rural area - Guest house is always an asset u/s 2(ea), irrespective of its location.		18,00,000
9.	(a) Three residential flats given to employees, whose salary does not exceed ₹ 10,00,000 p.a. – Not an asset under section 2(ea)		Nil

	(b) Three residential flats given to employees, whose salary exceed ₹ 10,00,000 p.a. – an asset under section 2(ea)		30,00,000
10.	Residential house given to Managing Director is an asset u/s 2(ea), since salary exceeds ₹ 10,00,000 p.a.		15,00,000
11.	Residence given to whole time director is not an asset u/s 2(ea), since salary does not exceed ₹ 10,00,000 p.a.		Nil
Gross Wealth			1,52,00,000
<i>Less: Debts</i>			
1.	Loan for purchasing jewellery – Not deductible since jewellery held as stock in trade is not an asset for the purpose of wealth tax	Nil	
2.	Loan for residential house provided to the whole time director – not deductible as the house is not an asset u/s 2(ea).	Nil	Nil
Net Wealth			1,52,00,000
<i>Wealth-tax liability= 1% of ₹ 1,22,00,000 (i.e., ₹ 1,52,00,000 - ₹ 30,00,000)</i>			1,22,000

Note:

The definition of urban land under section 2(ea) includes the following -

(a)	Land situated in any area which is comprised within the jurisdiction of a municipality or a cantonment board and which has a population of not less than 10,000.		
(b)	Land situated in any area, within the distance, measured aerially, in relation to the range of population according to the last preceding census as shown hereunder –		
		Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
	(1)	≤ 2 kilometers	> 10,000 ≤ 1,00,000
	(2)	≤ 6 kilometers	> 1,00,000 ≤ 10,00,000
	(3)	≤ 8 kilometers	> 10,00,000

Accordingly, based on the above definition, the categorization of the lands shall be determined as follows:

- (i) Land which is situated in an area having a population of 4,00,000 is not an urban land, since the said area, located at a distance of 7 kms from the local limits of a Municipality, has a population not exceeding 10,00,000.
- (ii) Land which is situated in an area having a population of 1,05,000 is an urban land, since the said area, located at a distance of 3 kms from the local limits of a Municipality, has a population exceeding 1,00,000.

2. Computation of total income of Sargam Ltd. for the A.Y. 2014-15

Particulars	Rs.	Rs.
Profits and gains of business or profession		
Net profit as per profit and loss account		7,00,00,000
<i>Add:</i> Excess depreciation provided on EPABX & Mobile phones not allowable as deduction [Note (i)]	18,00,000	
Payment for higher studies of director's son abroad not allowable as deduction [Note (iii)]	38,00,000	
Payment towards purchase of software from a non-resident made without deducting tax at source, not allowable as deduction [Note (iv)]	32,00,000	
Expenditure on earning dividend from foreign company not deductible [Note (v)]	28,000	
Secret commission paid not allowable [Note (vii)]	<u>10,00,000</u>	<u>98,28,000</u>
		7,98,28,000
<i>Less:</i> Dividend received from foreign company to be considered under the head "Income from other sources" [Note (v)]	12,00,000	
Payment to National Laboratory eligible for weighted deduction@ 200% under section 35(2AA) [Note (vi)]	48,00,000	
Bad debts allowable as deduction [Note (ix)]	<u>2,00,000</u>	<u>62,00,000</u>
		7,36,28,000
Income from Other Sources		
Dividend from foreign company [Note (v)]		<u>12,00,000</u>
Total Income		<u>7,48,28,000</u>

Computation of tax liability of Sargam Ltd. for the A.Y.2014-15

Particulars	Rs.
Tax @15% on dividend from specified foreign company ₹ 12,00,000 [Note (v)]	1,80,000
Tax @30% on the balance total income of ₹ 7,36,28,000	<u>2,20,88,400</u>
	2,22,68,400
Add: Surcharge@5% (since total income exceeds ₹ 1,00,00,000)	<u>11,13,420</u>
	2,33,81,820
Add: Education cess@2%	4,67,636
Secondary and higher education cess@1%	<u>2,33,818</u>
Total tax liability	<u>2,40,83,274</u>

Notes:

- (i) EPABX and mobile phones are not computers and therefore, are not entitled to higher depreciation@60%. It was so held by the Kerala High Court in *Federal Bank Ltd. v. ACIT (2011) 332 ITR 319*. Therefore, EPABX and mobile phones would be entitled to depreciation of ₹ 6,00,000, calculated by applying the rate of 15%, being the general rate applicable to plant and machinery, on the cost of ₹ 40,00,000 ($\text{₹ } 24,00,000 \times 100/60$). The excess depreciation of ₹ 18,00,000 (being ₹ 24,00,000 – ₹ 6,00,000), debited to profit and loss account, should be added back.

- (ii) The issue is whether payment of ₹ 55 lakhs to Naryana Ltd. towards feasibility study conducted for examining proposals for technological advancement relating to the existing business, where the project was abandoned without creating a new asset, is allowable as revenue expenditure.

On this issue, the Delhi High Court, in *CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594*, observed that in such cases, whether or not a new business/asset comes into existence would become the relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature. In this case, since the feasibility study was conducted by Sargam Ltd. for the existing business and the study was abandoned without creating a new asset, the expenses were of revenue nature.

Since the expenditure of ₹ 55 lakhs has already been debited to profit and loss account, no further adjustment is required.

- (iii) In this case, since there is no evidence of existence of any “apprentice training scheme”, the expenditure of ₹ 38 lakhs incurred in respect of higher studies abroad for the director’s son is not allowable as deduction as there is no nexus

between the education expenditure incurred abroad for the director's son and the business of Sargam Ltd. It was so held by the Bombay High Court in *Echjay Forgings Ltd. v. ACIT (2010) 328 ITR 286*.

- (iv) The Finance Act, 2012 has inserted *Explanation 4* to section 9(1)(vi) retrospectively with effect from 1st June, 1976, to clarify that consideration for use or right to use of computer software is royalty and consequently, tax has to be deducted at source under section 195 in respect of such payments. Since Sargam Ltd. has not deducted tax at source on payment of ₹ 32 lakhs, it would be disallowed under section 40(a)(i). Therefore, the payment of ₹ 32 lakhs already debited to the profit and loss account, has been added back.
- (v) Under section 115BBD, dividend received by an Indian company from a foreign company in which it holds 26% or more in nominal value of the equity share capital of the company, would be subject to a concessional tax rate of 15% as against the tax rate of 30% applicable to other income of a domestic company. This rate of 15% would be applied on gross dividend, in the sense, that no expenditure would be allowable in respect of such dividend.

Therefore, dividend of ₹ 12 lakhs received by Sargam Ltd. from a foreign company, in which it holds 28% in nominal value of equity share capital of the company, would be subject to tax@15% under section 115BBD. Such dividend would be taxable under the head "Income from other sources". No deduction is allowable in respect of ₹ 0.28 lakhs expended on earning this income.

Since such dividend has been credited to the profit and loss account, the same has to be reduced for computing income under the head "Profits and gains of business or profession. Likewise, ₹ 0.28 lakhs, representing expenditure for earning dividend income, which has been debited to profit and loss account, should be added back for computing business income.

- (vi) Under section 35(2AA), weighted deduction@200% is allowable in respect of amount paid to a National Laboratory with a specific direction that such sum shall be used for the purpose of an approved scientific research programme. Therefore, in this case, deduction of ₹ 96 lakhs (i.e., 200% of ₹ 48 lakhs) is allowable to Sargam Ltd under section 35(2AA). Since only the actual payment of ₹ 48 lakhs has been debited to profit and loss account, the balance of ₹ 48 lakhs has to be deducted.
- (vii) As per *Explanation* to section 37(1), any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law, shall not be deemed to have been incurred for the purpose of business and no deduction or allowance shall be made in respect of such expenditure. Therefore, payment of secret commission, if it is established as a payment for any purpose which is an offence or which is prohibited by law, cannot be allowed as deduction. It was so

held in *Tarini Tarpauline Productions v. CIT* (2002) 254 ITR 495 (Ori.). Even in cases where it cannot be so established, it would be disallowed under section 40(a)(ia) for non-deduction of tax at source under section 194H.

- (viii) The expenditure incurred for acquiring a new bus and donating it to the school is for the welfare of the children of staff/workmen of the company. Such expenditure is a part of employees' welfare expenses incurred for the purpose of securing healthy services for staff members. Therefore, such expenses were incurred wholly and exclusively for the purpose of the business. Since the bus had been donated to the school, no benefit of enduring nature was derived by Sargam Ltd. as the right of ownership was transferred to school. Hence, it is not a capital expenditure. Since such expenditure is incurred wholly and exclusively for the purpose of business and is not capital in nature, Sargam Ltd. is entitled to claim deduction in full under section 37(1). It was so held by the Rajasthan High Court in *CIT v. Rajasthan Spinning and Weaving Mills Ltd.* (2006) 281 ITR 408.
- (ix) In a case where the debt ultimately recovered is less than the difference between the amount of debt and bad debt allowed as deduction, such deficiency will be deductible in the previous year in which the ultimate recovery is made. Therefore, in this case, since the ultimate recovery of ₹ 5 lakhs is less than ₹ 7 lakhs (being the difference between the debt of ₹ 15 lakhs and the amount of ₹ 8 lakhs allowed as bad debts in the previous year 2012-13), the deficiency of ₹ 2 lakh will be deductible in the P.Y.2013-14, being the year in which the ultimate recovery of ₹ 5 lakhs is made. It may be noted that in a case where the net result is a deficiency, the amount recovered will not be taxable in the year of recovery. Since ₹ 5 lakhs is not credited to profit and loss account, no further adjustment is necessary.

3. (a) Computation of "Income from other sources" of Ms. Geeta for the A.Y.2014-15

	Particulars	₹
(1)	Cash gift received on 01.08.2013 is taxable under section 56(2)(vii)	54,000
(2)	Value of shares of Veena Ltd. gifted by Mr. Suhesh on 1 st August, 2013 is taxable, as "shares" are included within the definition of "property"	80,000
(3)	Purchase of 120 shares from Mr. Suhesh on 10 th August 2013 for inadequate consideration would attract the provisions of 56(2)(vii), if the difference between aggregate fair market value of shares and actual consideration exceeds ₹ 50,000. Since, the difference between Fair Market value and consideration is ₹ 60,000 (i.e. Rs.80,000 – ₹ 20,000) i.e. it exceeds ₹ 50,000, the difference is chargeable to tax in her hands.	60,000

(4)	Purchase of land for inadequate consideration on 12.10.2013 would attract the provisions of section 56(2)(vii), if the difference between stamp duty value and actual consideration exceeds ₹ 50,000. Since the difference between Stamp Duty Value and Consideration is ₹ 1,50,000 (i.e., Rs.5,00,000 - ₹ 3,50,000), it is chargeable to tax. Sister's Mother-in-law is not a relative within the meaning of section 56(2)(vii).	1,50,000
Income from Other Sources		3,44,000

Computation of "Capital Gains" of Ms. Geeta for the A.Y.2014-15

Particulars	₹
Sale Consideration (23.03.2014)	1,20,000
Less: Cost of acquisition [deemed to be the fair market value charged to tax under section 56(2)(vii)]	80,000
Short-term capital gains	40,000

(b) (i) **Computation of tax liability of Graeme Smith for the A.Y.2014-15**

Particulars	₹	₹
Income taxable under section 115BBA		
Income from participation in matches in India	10,00,000	
Advertisement of product on TV	1,50,000	
Contribution of articles in newspaper	50,000	
Total	12,00,000	
Tax@ 20% under section 115BBA on ₹ 12,00,000		2,40,000
Tax@ 30% under section 115BB on income of ₹ 35,000 from horse races		10,500
		2,50,500
Add: Education cess@2% and Secondary and higher education cess@1%		7,515
Total tax liability of Graeme Smith for the A.Y.2014-15		2,58,015

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

Income referred to in section 115BBA (i.e., ₹ 12,00,000, in this case) is subject to tax deduction at source@ 20% under section 194E.

Income referred to in section 115BB (i.e., ₹ 35,000, in this case) is subject to tax deduction at source@30% under section 194BB.

Since Graeme Smith is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by education cess@2% and secondary and higher education cess@1%.

- (iii) Section 115BBA provides that if the total income of the non-resident sportsman 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. However, in this case, Mr. Graeme Smith has income from horse races as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for A.Y. 2014-15.
- (iv) The Calcutta High Court has, in *Indcom v. CIT (TDS) (2011) 335 ITR 485*, held that match referees do not fall within the meaning of “sportsmen” to attract the provisions of section 115BBA. Therefore, although the payments made to non-resident match referees are “income” which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA. They are subject to the normal rates of tax.

Particulars	₹
Tax@30% under section 115BB on winnings of ₹ 35,000 from horse races	10,500
Tax on ₹ 12,00,000 at the rates in force	
Upto ₹ 2,00,000	Nil
2,00,000 – 5,00,000 @ 10%	30,000
5,00,000 – 10,00,000 @ 20%	1,00,000
10,00,000 – 12,00,000 @ 30%	<u>60,000</u>
	1,90,000
	2,00,500
Add: Education cess@2% and secondary and higher education cess@1%	6,015
	<u>2,06,515</u>

- (c) (i) Computation of total income and tax liability of Alliya LLP as per the normal provisions of the Act for A.Y. 2014-15

Particulars	₹ (in lakh)
Business income (before deduction under section 10AA) (₹ 70 lacs + ₹ 20 lacs)	90.00
Less: Deduction under section 10AA	
Profit of unit in SEZ × $\frac{\text{Export turnover of unit in SEZ}}{\text{Total turnover of unit in SEZ}}$	

= ₹ 70 lacs × ₹ 80 lacs / ₹ 140 lacs	<u>40.00</u>
Total Income	<u>50.00</u>
Tax on total income@30%	15.00
Add: Education cess @2% & SHEC @1%	<u>0.45</u>
Tax liability (as per normal provisions)	<u>15.45</u>

Computation of Adjusted total income and Alternate Minimum tax of Alliya LLP as per the provisions of section 115JC for A.Y. 2014-15

Particulars	₹ (in lakh)
Total income as per the normal provisions	50.00
Add: Deduction under section 10AA	<u>40.00</u>
Adjusted total income	<u>90.00</u>
Tax@18.5% of Adjusted total income	16.65
Add: Education cess @2% & SHEC @1%	<u>.50</u>
Alternate Minimum Tax as per section 115JC	<u>17.15</u>

Since the tax payable as per the normal provisions of the Act is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income of Alliya LLP and the tax payable for A.Y. 2014-15 shall be ₹ 17.15 lakh.

- (ii) The provisions of alternate minimum tax would also be applicable to an overseas LLP. Hence, the tax liability would remain the same.

Note - While computing the deduction under section 10AA, it has been assumed that A.Y. 2014-15 falls within first five year period commencing from the year of provision of services by the Unit in SEZ of Alliya LLP and therefore, deduction @ 100% of the profit derived from export of such services has been provided.

- 4 (a) Section 50C(1) enjoins that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by the "stamp valuation authority" for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

In *CIT v. Thiruvengadam Investments Private Limited* (2010) 320 ITR 345 (Mad.), the issue under consideration was whether the provisions of section 50C are applicable where the property is held as a stock-in-trade.

The High Court pointed out that it was not in dispute that the assessee was engaged in real estate business. As the property in the hands of the assessee was treated as a stock-in-trade and not as a capital asset, there is no question of invoking the provisions of section 50C.

Section 50C pertains to determining the full value of consideration of a capital asset. However, the Assessing Officer can invoke the provisions of new section 43CA, which provides that where the consideration for transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable (i.e., the stamp duty value) shall be deemed to be the full value of the consideration for the purposes of computing income under the head 'Profits and gains of business or profession'.

Therefore, the Assessing Officer can invoke the provisions of new section 43CA to adopt the value of ₹ 1 crore for computing the profit arising on sale of land.

- (b) The Madras High Court has recognized the relevance of social costs to business in deciding the case of *CIT v. Madras Refineries Ltd. (2004) 138 Taxman 261*. The High Court observed that the concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for the society at large and the people of the locality in which the business is located in particular. Further, to be known as a good corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill. In this case, the High Court upheld the order of the Tribunal allowing deduction for the amount spent on bringing drinking water to the locality and in aiding a local school.

Thus, in view of the above case, the claim of Fine Ltd. is tenable in law.

- (c) If any expenditure is incurred by an assessee in any financial year in respect of which he is not able to offer explanation about the source of such expenditure or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such unexplained expenditure may be deemed as income of the assessee for such financial year as per section 69C.

Therefore, in this case, since the Assessing Officer is not satisfied with the explanation offered by Mr. Rajan, the expenditure of ₹ 30 lakh incurred by him in hosting a grand cruise party may be deemed as his income as per section 69C.

Further, such unexplained expenditure which is deemed as the income of Mr. Rajan shall not be allowed as deduction under any head of income.

Where the total income of Mr. Rajan includes such unexplained expenditure of ₹ 30 lakh, which is deemed as his income under section 69C, such deemed income

would be taxed at the maximum marginal rate of 30% as per section 115BBE (plus surcharge @ 10% and cesses @3%).

Further, no basic exemption or allowance or expenditure shall be allowed to him under any provision of the Income-tax Act, 1961 in computing such deemed income.

Penalty under 271(1)(c) is also leviable for concealment of income.

- (d) Section 78(2) provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then, the successor is not entitled to carry forward and set-off the loss of the predecessor against his income. This implies that generally, set-off of business losses should be claimed by the same person who suffered the loss and the only exception to this provision is when the business passes on to another person by inheritance.

The facts of the case given in the question are similar to the case *Pramod Mittal v. CIT (2013) 356 ITR 456*, where the Delhi High Court observed that the income earned by the sole proprietor would include his share of loss as an individual but not the loss suffered by the erstwhile partnership firm in which he was a partner. The exception given in section 78(2), permitting carry forward of losses by the successor in case of inheritance, is not applicable in the present case since the partnership firm was dissolved and ceased to continue. Taking over of business by a partner cannot be considered as a case of inheritance due to death as per the law of succession.

In this case, Mr. Krishna took over the business of partnership firm on dissolution not by inheritance, hence, provisions of section 78(2) shall not apply and therefore, the loss of ₹ 7 lakhs suffered by the erstwhile partnership is not allowed to be set off against the income earned in his individual capacity.

5. (a) As per section 94A, in case an assessee enters into any transaction where one of the parties thereto is located in the Notified Jurisdictional Area (NJA) then the parties to the transaction shall be treated as associated enterprises and the transaction shall be deemed to be an international transaction. The transfer pricing provisions would, therefore, be attracted in such a case. However, the benefit of permissible variation between the transfer price and the arm's length price, as notified by the Central Government, shall not be available in such a case.

Since Deluxe Inc. is located in a NJA, the transaction of export of strawberries by the Indian company, Royal Ltd., would be deemed to be an international transaction and Deluxe Inc. and Royal Ltd. would be deemed to be associated enterprises. Therefore, the provisions of transfer pricing would be attracted in this case.

The prices of ₹ 48 lakhs and ₹ 52 lakhs charged for sale of similar goods to Coral Inc. and Mirage Inc., respectively, being independent entities located in a non-NJA

country, can be taken into consideration for determining the arm's length price (ALP) under Comparable Uncontrolled Price (CUP) Method.

Since more than one price is determined by the CUP Method, the ALP would be the arithmetical mean of such prices.

Therefore, ALP = ₹ 50,00,000 i.e., $[(₹ 48,00,000 + ₹ 52,00,000)/2]$

Transfer Price = ₹ 47,00,000

Since the ALP is more than the transfer price, the ALP of ₹ 50 lakhs would be considered for computing the income from the international transaction between Royal Ltd. and Deluxe Inc.

- (b) An assessee shall be allowed deduction under section 91 provided all the following conditions are fulfilled:-
- The assessee is a resident in India during the relevant previous year.
 - The income accrues or arises to him outside India during that previous year.
 - Such income is not deemed to accrue or arise in India during the previous year.
 - The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.
 - There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

In view of the aforesaid provisions, deduction under section 91 will be calculated as follows:

Particulars	₹	₹
Indian Income		345,000
Foreign Income		<u>89,000</u>
Gross Total Income		4,34,000
<u>Less: Deduction under section 80C</u>		
PPF Contribution	30,000	
<u>Deduction under section 80D</u>		
Medical insurance premium of father being a senior citizen	<u>20,000</u>	<u>50,000</u>
Total Income		<u>3,84,000</u>
Tax on total income @10% on ₹ 1,84,000 (₹ 3,84,000-2,00,000)		18,400

Less: Rebate under section 87A		<u>2,000</u>
		16,400
Add: Education cess @ 2%		328
Secondary and higher education cess @ 1%		<u>164</u>
		<u>16,892</u>
Average rate of tax in India [i.e. ₹ 16,892/₹ 3,84,000 x 100]		4.40%
Average rate of tax in foreign country [i.e. ₹ 8,900/ ₹ 89,000 x 100]		10.00%
Doubly taxed income		89,000
Rebate under section 91 on ₹ 89,000 @4.40% (lower of average Indian tax rate and foreign tax rate)		3,916
Tax payable in India [₹ 16,892 – ₹ 3,916]		12,976

(c) Computation of total income of the trust for the A.Y. 2014-15

Particulars	₹	₹
Income from properties held by trust	23,00,000	
Income from business incidental to the main objects of the trust	20,00,000	
Voluntary Contribution other than corpus donation (Note 1)	6,00,000	49,00,000
Less: 15% of income accumulated or set apart under section 11(1)(a)		7,35,000
		41,65,000
Less: Amount applied for charitable purposes		
Activities and programmes for the benefit of autistic persons	23,00,000	
Repayment of loan taken for construction of training centre (Note 2)	13,00,000	36,00,000
Taxable Income		5,65,000

Computation of tax liability of the trust for the A.Y. 2014-15

Particulars	₹	₹
Upto ₹ 2,00,000	Nil	
₹ 2,00,000 – ₹ 5,00,000	30,000	

₹ 5,00,000 – ₹ 5,65,000	13,000	43,000
Add: Education cess @ 2%		860
Add: Secondary and higher education cess @ 1%		430
Total tax liability		44,290

Notes:

- (1) Section 11(1)(d) excludes from the total income of the person, any income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.
- (2) In *CIT vs. Janmabhumi Press Trust (2000) 242 ITR 703*, the Karnataka High Court held that where a debt is incurred for the purpose of the trust, the repayment of the debt would amount to an application of the income for the purpose of the trust. Therefore, repayment of loan taken for construction of training centre for disabled persons is to be considered as application for charitable purpose.
- (d) New Chapter XII-DA, comprising of sections 115QA, 115QB and 115QC, has been inserted with effect from 1st June, 2013, to levy additional income-tax on buyback of unlisted shares by domestic companies. As per section 115QA, the distributed income would be subject to additional income-tax@20% (plus surcharge@10% and education cess@2% and secondary and higher education cess@1%) in the hands of the domestic company. Distributed income is the consideration paid by the company for buyback of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares.

Accordingly, Dal Ltd is liable to pay ₹ 1,58,620 as additional income-tax, which is the amount calculated @22.66% (20% plus surcharge@10% plus cess@3%) on ₹ 7 lakh, being its distributed income (i.e., ₹ 28 lakh – ₹ 21 lakh).

The additional income-tax was payable on or before 30th September, 2013. However, the same was paid only on 15th December, 2013.

Interest under section 115QB is attracted@1% for every month or part of the month on the amount of tax not paid or short paid for the period beginning from the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

In this case, the period for which interest@1% per month or part of a month is leviable is calculated as under -

Period	No. of months / part of month
1 st October - 31 st October, 2013 (whole of first month)	1

1 st November – 30 th November, 2013 (whole of second month)	1
1 st December – 15 th December, 2013 (part of third month)	1
Total number of months	3

Interest under section 115QB is payable @1% per month for 3 months on the amount of additional tax payable i.e., ₹ 1,58,620. Therefore, interest payable under section 115QB is ₹ 4,759.

The income arising to the shareholders in respect of such buyback of unlisted shares by Dear Ltd. would be exempt under section 10(34A) in their hands.

6. (a) (i) Under section 245F(1), the Settlement Commission has been conferred all the powers which are vested in an income-tax authority under the Act. Under section 154, an income-tax authority has the power to amend any order passed by it in order to rectify any mistake apparent from the record. Therefore, the Settlement Commission's power to amend an order to rectify any mistake apparent from the record is embedded in section 245F(1).

Further, in order to reflect the correct intention of the legislature, sub-section (6B) of section 245D specifically provides that the Settlement Commission may, at any time within a period of six months from the date of the order, amend any order passed by it under section 245D(4) to rectify any mistake apparent from the record. In this case, the rectification order was passed by the Settlement Commission within six months of passing the original order.

Therefore, Mr. Jain's view is not correct.

- (ii) In this case, the rectification has the effect of modifying the liability of Mr. Jain. Therefore, as per the proviso to section 245D(6B), the Settlement Commission, before passing the amended order, should have –

- (1) given a notice to the applicant and the Commissioner of its intention to make such an amendment; and
- (2) allowed the applicant and the Commissioner an opportunity of being heard.

If these conditions are fulfilled, the order amended by the Settlement Commission would be a valid order, since the amended order is passed by the Settlement Commission within the permitted time limit i.e., within six months from the date of its original order.

However, if the Settlement Commission has not given notice of its intention to make such an amendment or has not allowed the applicant and the Commissioner an opportunity of being heard, then, the amended order passed by it will not be valid.

- (b) (i) Penalty under section 271C is attracted for failure to deduct tax at source. The penalty would be a sum equal to the amount of tax which such person has failed to deduct. Such penalty can be imposed only by the Joint Commissioner. Therefore, Jack & Associates shall be liable for penalty under section 271C equal to the amount of tax which they have failed to deduct under section 194C from the payments made to the contractors.
- (ii) Section 133(6) empowers the Income-tax authority to require any person to furnish information in relation to such points or matters which will be useful for or relevant to any enquiry or proceeding under the Act. Failure on the part of an assessee to furnish the information in relation to such points or matters as required makes him liable for penalty under section 272A(2) of ₹ 100 for every day during which the failure continues.

Note – In a case where no proceeding is pending, the Income-tax authority can exercise this power only after obtaining the approval of the Director or Commissioner, as the case may be. In this case, it is presumed that the Income-tax authority has obtained the approval of the Director or Commissioner before exercising this power.

- (c) (i) Section 194-I, which governs the deductions of tax at source on payment of rent, exceeding ₹ 1,80,000 per annum is applicable to all taxable entities excepting individuals and HUFs. However, under section 196, exemption is provided in respect of payments made to Government from application of provisions of tax deduction at source.

Hence, Canara Bank is not required to deduct tax at source on payment of ₹ 1,00,000 per month as rent to Central Government.

- (ii) In this case the notified infrastructure debt fund which is eligible for exemption under section 10(47) pays interest to a person who is a resident of a notified jurisdictional area, section 94A will apply. Accordingly, tax would be deductible @30% (plus education cess@2% and secondary and higher education cess@1%) under section 94A, even though section 194LB provides for deduction of tax at a concessional rate of 5%. Therefore, the tax deductible in respect of payment of ₹ 8 lakh to Mr. John who is a resident of a notified jurisdictional area, would be ₹ 2,47,200, being 30.9% of ₹ 8,00,000.

- 7. (a) (i) The notice under section 153A can be issued for six assessment years preceding the assessment year relevant to the previous year in which the search is conducted. In this case, the search is conducted in the previous year 2013-14, the relevant assessment year for which is A.Y.2014-15. Therefore, notice can be issued for the six preceding assessment years i.e. for assessment years 2008-09 to 2013-14.

- (ii) As per section 153A, the assessment or reassessment relating to any assessment year, falling within the above period of six assessment years, pending on the date of initiation of the search under section 132, shall abate. In other words, they will cease to be applicable. Therefore, the assessments under section 143(3) for assessment years 2011-12 and 2012-13 and the reassessment proceeding under section 147 for assessment year 2010-11 shall abate.
 - (iii) Section 153A provides that where the post-search assessment order is annulled in any appeal or any other legal proceeding, the abated assessment and reassessment proceedings shall stand revived. Therefore, the assessments under section 143(3) relating to assessment years 2011-12 and 2012-13 and the reassessment proceeding relating to assessment year 2010-11, which abated on initiation of search, shall stand revived.
- (b)
- (i) This proposition is not correct. Under the *Explanation* to section 251(2) the Commissioner (Appeals) in disposing of an appeal, may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, even if such matter was not raised before him by the appellant. The power of admission of any ground of appeal is conferred on the CIT (Appeals) under section 250(5), if he is satisfied that the omission of that ground of appeal was not willful or unreasonable.
 - (ii) The proposition is not correct. Under section 254(2), the Tribunal may, within four years from the date of the order, with a view to rectify any mistake apparent from the record, amend any order passed by it *suo moto* or if it is brought to its notice either by the Assessing Officer or by the assessee. However, an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee shall not be made unless a notice has been given to the assessee of the intention to do so and a reasonable opportunity of being heard has been given. The Tribunal, however, has no inherent power to review its own order.
 - (iii) This proposition has been negatively stated and is not correct. Under section 255(4), if the members of a Bench of the Tribunal differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority. If the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Tribunal. Such point shall be decided according to the opinion of majority of the members of the Tribunal who heard the case, including those who first heard it.
- (c) *Explanation 3* to section 147 permits the Assessing Officer to assess or reassess the income in respect of any issue (which has escaped assessment) which comes

to his notice subsequently in the course of proceedings under section 147, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

Therefore, in the instant case, the Assessing Officer has the power to disallow expenses under section 14A in addition to disallowing excess depreciation for which notice under section 148 was issued even though the reason for the issue relating to disallowance under section 14A was not recorded under section 148(2).

Hence, there is no deficiency in the order passed by the Assessing Officer.