FINAL EXAMINATION
GROUP - III
(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

JUNE - 2018

Paper-16 : DIRECT TAX LAWS AND INTERNATIONAL TAXATION

Time Allowed : 3 Hours **Full Marks : 100**

The figures in the margin on the right side indicated full marks.
Wherever required, the candidate may make suitable assumption(s) and state them clearly in the answers.
Working notes should form part of the relevant answers.
All questions relate to Assessment Year 2018 – 19, unless otherwise stated.
Answer Question No. 1 which is compulsory and any five from Question No. 2 to Question No. 8.

Section – A

1. Choose the most appropriate alternative and give justification in brief/brief working for your answer: 2x10=20

(i) When Mr. Hari engaged in manufacturing activity with turnover of ₹ 125 lakhs has realized sale proceeds through banking channel of ₹ 90 lakhs and balance by cash, his income under section 44AD would be
(A) ₹ 10 lakhs
(B) ₹ 7.50 lakhs
(C) ₹ 8.20 lakhs
(D) Not eligible for presumptive income under section 44AD

(ii) When a company engaged in the business of bio-technology incurs (i) expenditure on scientific research towards land and building ₹ 20 lakhs; (ii) other capital expenditures ₹ 10 lakhs and (iii) revenue expenditure of ₹ 8 lakhs. The quantum of deduction under section 35 (2AB) shall be
(A) Nil
(B) ₹ 16 lakhs (200% of revenue expenditure)
(C) ₹ 27 lakhs (150% of total expenditure other than cost of land and building)
(D) ₹ 38 lakhs (100% of capital expenditure including cost of land and building)

(iii) Mr. Malik received a notice under section 148 for the assessment year 2013-14 in March, 2018. He wants to make application to the Settlement Commission. The additional amount of income-tax payable on the income disclosed in the application to the Settlement Commission must exceed _____ .
(A) ₹ 5 lakhs
(B) ₹ 10 lakhs
(C) ₹ 25 lakhs
(D) ₹ 50 lakhs

(iv) ABC & Co. Ltd. earned ₹ 15 lakhs by way of transfer of carbon credit. The tax liability in respect of carbon credit is
(A) Nil
(B) ₹ 1,54,500 (@ 10.3%)
(C) ₹ 4,63,500 (@ 30.9%)
(D) ₹ 2,31,750 (@ 15.45%)

(v) When Mr. Atul doing business has gross total income of ₹ 9 lakhs, the maximum amount he can claim deduction in respect of the pension scheme of the Central Government under section 80CCD would be
(A) ₹ 50,000 (monetary limit)
(B) ₹ 90,000 (10% of gross total income)
(C) ₹ 1,00,000 (monetary limit)
(D) ₹ 1,80,000 (20% of gross total income)

(vi) When interest paid by an Indian company to a foreign company being an associated enterprise, such interest must not exceed _____% of the Indian company's earnings before interest, taxes, depreciation and amortization (EBITDA).
(A) 10
(B) 20
(C) 30
(D) 40

(vii)Secondary adjustment has to be made when the primary adjustment exceeds .
(A) ₹ 50 lakhs
(B) ₹ 100 lakhs
(C) ₹ 300 lakhs
(D) ₹ 500 lakhs

(viii)When Mr. Singhania having total income exceeding ₹ 10 lakhs files the return of income for the assessment year 2018-19 in January, 2019, the fee payable under section 234F for the delayed filing of return would be
(A) ₹ 1,000
(B) ₹ 5,000
(C) ₹ 10,000
(D) ₹ 20,000

(ix) When Mr. Gautam doing business paid hall rent of ₹ 80,000 for 3 days for doing Diwali sale, the amount of tax deductible at source under section 194-IB would be
(A) ₹ 8,000 @ 10%
(B) ₹ 16,000 @ 20%
(C) Nil
(D) ₹ 4,000 @ 5%

(x) When an Indian company pays ₹ 5 lakhs to a foreign company for online advertisement of its products, it has to deduct
(A) tax at source @ 2%
(B) tax at source @ 10%
(C) equalization levy @ 6%
(D) equalization levy @ 8%

Answer:

1. (i) (C) ₹8.20 lakhs

Brief answer: When the sale proceeds are realized through banking channel, 6% of the amount shall be deemed to be the income and for the balance amount realized otherwise than through banking channel 8% shall be deemed to be the presumptive income under section 44AD. Hence ₹ 5,40,000 + ₹2,80,000 = ₹ 8,20,000 is the presumptive income under section 44AD.

(ii) (C) ₹ 27 lakhs (150% of total expenditure other than cost of land and building)
Brief answer: The quantum of deduction in respect of the company engaged in the business of bio technology is limited to 150% of the total expenditure excluding the cost of land and building.

(iii) (B) ₹10 lakhs.
Brief answer: Where the application is filed in a case not being a case in which assessment under sections 153A, 153B or 153G are initiated, the additional amount of income-tax payable on the income disclosed in the application must exceed ₹10 lakhs.

(iv) (B) ₹1,54,500 (@ 10.3%)
Brief answer: As per section 115BBE carbon credit is taxable at the concessional rate of 10.3% on the gross amount of such income.

(v) (D) ₹1,80,000 (20% of gross total income)
Brief Answer: As per section 80CCD in the case of a person other than an employee contribution to Central Government Pension Scheme is deductible up to a maximum of 20% of the gross total income of the assessee.

(vi) (C) 30
Brief answer: As per section 94B any expenditure by way of interest paid by Indian company to a foreign associated enterprise in excess of 30% of the EBITDA is liable for disallowance. It is to be carried forward to subsequent year and could be allowed in that year to the extent of the maximum allowable interest expenditure of that year.

(vii) (B) ₹100 lakhs
Brief answer: When the primary adjustment i.e. adjustment towards arm's length price exceeds ₹ 1 crore, the secondary adjustment must be made in the books of account to remove imbalance between cash account and actual profit of the assessee.

(viii) (C) ₹ 10,000
Brief answer: As per section 234F when the total income of the assessee exceeds ₹5 lakhs and the return is filed after 31st December of the relevant assessment year, the assessee shall pay a fee of ₹10,000

(ix) (D) ₹ 4,000 @ 5%
Brief answer: As per section 194-IB when rent paid per month or part of a month exceeds ₹ 50,000 and the payer is individual or HUF assessee, tax is deductible at source at 5% of the amount.

(x) (C) Equalization levy @ 6%
Brief answer: As per the Finance Act, 2017 when an Indian company pays to a foreign company towards online advertisement a sum exceeding ₹ 1 lakh, it has to pay equalization levy at 6% of the amount paid.

Section – B

2. (a) PQR Co. Ltd. engaged in manufacturing activity reports a Net Profit of ₹ 15 lakhs for the year ended 31.03.2018. The below said items are debited/credited to statement of profit and loss.

(i) CSR expenditure incurred during the year ₹ 5 lakhs.

(ii) Non-compete fee paid to DEF Ltd for not marketing their products in North-Eastern States ₹ 10 lakhs. The non-complete agreement bars DEF Ltd for a period of 5 years ending 31.03.2022. No tax was deducted at source on the said payment.

(iii) A building was constructed on the leasehold land for ₹ 30 lakhs and it was completed on 30.11.2017. The lease agreement is for 3 years and after the lease period, the building must be handed over to the lessor.

(iv) The company during the year paid donation of ₹ 1 lakh to Dalmia Research Centre Ltd. which is engaged in approved scientific research.

(v) The company introduced VRS scheme during the financial year 2014-15 and paid ₹ 60 lakhs as VRS compensation. The company transferred the entire unamortized amount of ₹ 24 lakhs to statement of profit and loss.

(vi) Paid ₹ 2 lakhs to Registrar of Companies as fee for issue of bonus shares.

(vii) It incurred ₹ 25 lakhs towards feasibility study for new product manufacture which eventually was aborted.

(viii) Cost of EPABX and mobile phones acquired on 01.06.2017 for use by executives ₹ 10 lakhs. Depreciation @ 60% was charged in the books.

(ix) Compounding fee paid for violation of municipal laws in construction of buildings ₹ 1,20,000.

(x) Depreciation debited ₹ 24,60,000.

(xi) Royalty from patent developed by the company credited to Statement of profit and loss ₹ 22 lakhs.

(xii) Dividend received from foreign company in which the assessee company holds 26% shares ₹ 8 lakhs.

Additional Information:

Eligible depreciation ₹ 32,30,000 under section 32 without considering item (iii) and (viii) given above.

You are required to compute the total income and income tax liability of PQR Ltd for the assessment year 2018-19.

Note: Your answer must be supported by reasons for treatment of each item. Ignore MAT provisions.

(b) A partnership firm with three equal partners authorized payment of monthly salary of ₹ 1 lakh each to all the partners w.e.f. 01.04.2017. Earlier, the partnership deed authorized payment of monthly salary of ₹ 50,000 each to all the partners. The business of the firm has more than doubled during the financial year 2017-18 and the partners anticipating such increase in business/profit have changed accordingly the condition for working partner salary.

The profit of the firm was ₹ 50 lakhs for the year ended 31.03.2018 and the corresponding profit was ₹ 20 lakhs for the year ended 31.03.2017. The partners of the firm want to know whether increase in payment of salary to working partners would be subjected to disallowance under section 40A(2)(a). 4

Answer:

2. (a)

PQR Co Ltd
Computation of Total Income for the Asst. Year 2018-19

	Rs.
Net Profit as per statement of profit and loss	15,00,000
Add:	
CSR expenditure debited, not deductible in view of Explanation 2 to section 37	5,00,000

Non-compete fee on which tax was not deducted at source as per section 194J and hence @ 30% to be disallowed as per section 40(a)(ia)		3,00,000
Building on leasehold land debited to Statement of profit and loss is eligible for depreciation only. Hence disallowed		30,00,000
VRS Compensation to be amortised in 5 annual instalments as per section 35DDA. The unamortized amount is Rs.24 lakhs of which Rs.12 lakhs is deductible in assessment year 2018-19 and balance Rs.12 lakhs in assessment year 2019-20. As the full amount has been debited to Statement and profit and loss, the excess Rs.12 lakh is added back.		12,00,000
Expenditure towards feasibility study for examining new line of activity has no connection to the present business and hence it is a capital expenditure to be disallowed.		25,00,000
Depreciation on the cost of EPABX and mobile phones debited to Statement of profit and loss @ 60% disallowed		6,00,000
Compounding fee paid for violation of local laws in construction is a expenditure for violation of law hence not deductible *(Millenia Developers v. DCIT (2010) 322 ITR 401(Ker)*.		1,20,000
Depreciation debited in the books		24,60,000
		1,21,80,000
Less: Depreciation on leasehold building on Rs.30 lakhs @5% (since the building was put to use for less than 180 days)	1,50,000	
Donation to scientific research company eligible for deduction @ 100% only. As the amount is already debited no adjustment is required. [Section 35(1)(iia)]	Nil	
Amount paid to ROC as fee for issue of bonus shares is deductible expenditure as the payment does not create any asset or increase in capital base	Nil	
Depreciation on EPABX and mobile phones @ 15% on Rs.10 lakhs	1,50,000	
Royalty from patent credited to P&L – considered separately	22,00,000	
Dividend from foreign companies – considered separately	8,00,000	
Depreciation eligible under section 32	32,30,000	
		65,30,000
Income from Business or Profession		56,50,000

Royalty from patent developed by the company		22,00,000
Dividend from foreign companies		8,00,000
Total Income		**86,50,000**
Computation of Tax liability		
On Rs.56,50,000 @ 30%		16,95,000
Royalty from patent Rs.22 lakhs @ 10%		2,20,000
Dividend from foreign companies Rs.8 lakhs @ 15%		1,20,000
		20,35,000
Add: Cess @ 3%		61,050
Total tax liability		20,96,050

(b) The facts of the case given above are similar to that of CIT v: Great City Manufacturing Co (2013) 351ITR 156 (All).
Section 40(b) provides for disallowance of remuneration to working partners subject to the limits prescribed therein.
Section 40A(2)(a) provides for disallowance of expenditure when it is excessive in the opinion of the Assessing Officer considering the fair market value of the goods or services.
Remuneration allowable subject to section 40(b) or disallowable as the case may be is subject to the limits specified therein.
The Assessing Officer must ensure that the remuneration to working partner is authorized by the deed of partnership and the allowance is subject to the limits prescribed in section 40(b)(v).
If the above conditions are satisfied, the Assessing Officer cannot disallow a salary under section 40A(2)(a) when it is allowable under section 40(b).

3. (a) S Limited, an Indian Company supplied billets to its holding company, G Limited, Germany during the previous year 2016-17. S Limited also supplied the same product to another German-based company, Z Limited, an unrelated entity. The transactions with G Limited are priced at Euro 500 per MT (FOB), whereas the transactions with Z Limited are priced at Euro 900 per MT (CIF). Insurance and Freight amounts to Euro 300 per MT. Compute the arm's length price for the transaction with G Limited.

During the year, 10,000 MT were supplied to G Limited. What will be the effect of the change in the ALP on the profits of S Limited? Assuming that its export profits are covered by exemption u/s 10AA (seventh year), will there be any increase in the quantum of exemption u/s 10AA? Assume an exchange rate of 1 Euro = 90 INR. 8

(b) Enumerate the consequences that would ensue if the Assessing Officer makes adjustment to arm's length price in international transactions of the assessee resulting in increase in total income of the assessee. What are the remedies available to an assessee to dispute such adjustment made? 4

(c) When is a transaction treated as an international transaction for the transfer pricing provisions as per section 92CB? 4

Answer:

3. (a) In this case, S Limited, the Indian company, supplied billets to its foreign holding company, G Limited. Since the foreign company, G Limited, is the holding company of S Limited, S Limited and G Limited are the associated enterprises within the meaning of section 92A.

As S Limited supplies similar product to an unrelated entity, Z Limited, Germany, the transactions between S Limited and Z Limited can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price of the transactions between S Limited and G Limited Comparable Uncontrolled Price (CUP) method of determination of arm's length price (ALP) would be applicable in this case.

Transactions with G Limited are on FOB basis, whereas transactions with Z Limited are on CIF basis. This difference has to be adjusted before comparing the prices.

Particulars	Amount (in Euro)
Price per MT of billets to Z Limited	900
Less: Cost of insurance and freight per M.T.	300
Adjusted Price per M.T.	600

The price charged to G Ltd., is Euro 500 and the variation is more than 16% of the adjusted price.

Since the adjusted price for Z Limited, Germany and the price fixed for G Limited are not the same, the arm's length price is Euro 600 per MT. Since the sale price to related party (i.e., G Limited) and unrelated party (i.e., Z Limited) is not the same and the variation is more than 16%, the transaction with related party G Limited has not been carried out at arm's length price.

There has been under invoicing to the tune of Euro 100 per MT.

Increase in profits of S Ltd for 10,000 MT is Euro 10,000 × 100 - 10,00,000

In terms of INR, it is 10,00,000 × 90 = ₹ 9 crore.

S Ltd. will not be entitled to any exemption u/s 10AA in respect of the above increase in profits and hence its total income will go up by the above figure.

(b) Consequences of adjustments made to ALP

In case the Assessing Officer makes adjustment to arm's length price in an international transaction which results in increase in taxable income of the assessee, the following consequences shall follow:-

(1) No deduction under section 10AA or Chapter VI-A shall be allowed from the income so increased.
(2) No corresponding adjustment would be made to the total income of the other associated enterprise (in respect of payment made by the assessee from which tax has been deducted or is deductible at source) on account of increase in the total income of the assessee on the basis of the arm's length price so recomputed.

Remedies available to the assessee

The remedies available to the assessee to dispute such an adjustment are:-

(1) In case the assessee is an eligible assessee under section 144C, he can file his objections to the variation made in the income within 30 days [of the receipt of draft order by him] to the Dispute Resolution Panel and Assessing Officer. Appeal against the order of the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel can be made to the Income-tax Appellate Tribunal.
(2) In any other case, he can file an appeal under section 246A to the Commissioner (Appeals) against the order of the Assessing Officer within 30 days of the date of service of notice of demand.
(3) The assessee can opt to file an application for revision of order of the Assessing Officer under section 264 within one year from the date on which the order sought to be revised is communicated, provided the time limit for appeal to the

Commissioner (Appeals) or the Income-tax Appellate Tribunal has expired or the assessee has waived the right of such an appeal. The eligibility conditions stipulated in section 264 should be fulfilled.

(c) As per section 92B, an international transaction is one which satisfies the following criteria -
   (i) A transaction between two or more associated enterprises, either or both of whom are non-residents;
   (ii) It is in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, lending/borrowing money or any other transaction having a bearing on the profits, income, losses or assets of such enterprises;
   (iii) It includes a transaction in the nature of a mutual agreement, or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred (or to be incurred) in connection with a benefit, service or facility provided (or to be provided) to any one or more of such enterprises.

4. (a) Mahavishnu Tea Pvt. Ltd., is engaged in the business of tea as well as development of infrastructural facility (covered by section 35 AD).

The company has brought forward business loss of 3 lakhs from tea business and ₹ 4 crores from the business of infrastructural facility, relating to the AY 2017-18.

During the year ended 31.03.2018, the company has shown a net profit of ₹ 82 lakhs from business of tea in its books, before current depreciation of ₹ 12 lakhs.

From the infrastructural facility business, it has earned profit of ₹ 2.2 crores.

The company has credited a sum of ₹ 30 lakhs in the share application money on 28-2-2018, for which it is unable to explain the source satisfactorily.

Compute the total income of the company for the assessment year 2018-19. 8

(b) Lakshmi Fertilizers Ltd. set up an industrial unit for manufacturing fertilizers in notified backward area in the State of Bihar, on 11.05.2016.

The following details of investment in plant and machinery are made available to you:

Date of investment/ installation	Type of assets purchased	Amount (₹ in crores)
21-7-2017	Plant and machinery (including second hand machinery ₹ 2 crores)	32
1-12-2017	Plant and machinery	10

All the assets were put to use immediately. Excepting the machinery for ₹ 2 crores, all other assets are new.
Compute the depreciation allowable under section 32 of the Income-tax Act, 1961 and the WDV of the relevant block of assets.
Is the assessee entitled for any other benefit in respect of aforesaid investments? If so, what is the benefit available?
Would your answer be different where such manufacturing unit is set up by a partnership firm?
Append suitable notes, wherever required. 8

Answer:

4. (a)

Set off and carry forward

Particulars	**(₹ in lakhs)**	
Income from tea business		
Net profit as per books	82	
Less: Current depreciation	12	
Profit from tea business	70	
Chargeable profits at 40%	28	
Less: Brought forward business loss	3	
Chargeable income from tea business		25
Income from specified business covered by section 35AD		
Net profit as per books	220	
Less: Brought forward loss from specified business	220	
Chargeable income from specified business		Nil
Income from other sources		
Unexplained cash credit		30
[Share application money not explainable]		
Gross total income/total income		55

Notes:

1. Brought forward loss from specified business covered by section 35AD can be set off only against income from specified business in the current year.
2. Balance loss of ₹1.8 crores (4 - 2.2) from specified business can be carried forward to subsequent year.
3. Unexplained cash credit of ₹ 30 lakhs cannot be reduced by brought forward loss from specified business, as per section 115BBE(2).

(b) **Computation of depreciation under section 32 for Lakshmi Fertilizers Ltd. for A.Y. 2018-19**

Particulars		₹ (in crores)
Plant and machinery acquired on 21.07.2017		32.00
Plant and machinery acquired on 01.12.2017		10.00
Gross block as on 31.03.2017		42.00
Less: Depreciation @ 15% on ₹ 32 crore	4.80	
Depreciation @ 7.5% (50% of 15%) on ₹ 10 crore	0.75	
Additional Depreciation @ 35%on ₹ 30crore	10.50	
Additional Depreciation@17.5% (50% of 35%) on 10 Crore	1.75	17.80
Closing WDV as on 31.03.2018		24.20

Computation of deduction u/s 32AC & 32AD for Lakshmi Fertilizers Ltd. for A.Y. 2018-19

	₹ In Crores
Deduction under section 32AC(1A) @ 15% on ₹40 crore (since investment in new plant and machinery acquired and installed in the previous year 2015-16 by the assessee., a manufacturing Company exceeds ₹ 25 crore)	6
Deduction under section 32AD @ 15% on Rs 40 crore	6
Total benefit available to the assessee-company	12

Where the assessee is a partnership firm

Yes, the answer would be different, where the manufacturing unit is set up by a firm.

The deduction under section 32AC is available only to corporate assesses, and therefore, the deduction under section 32AC would not be available if the manufacturing unit is set up by a firm.

However, it would be eligible for deduction of ₹ 6.30 crore under section 32AD.

Notes:
(i) Where an eligible asset is put to use for less than 180days, normal and additional depreciation available will be 50% of the specified rate.
(ii) Additional depreciation as well as deduction u/s 32AC is available only in respect of new plant and machinery. Second hand machinery is not eligible.

5. (a) Fried pepper Inc (FPI), a foreign company, is supplying frozen chicken to several Indian concerns, including LMN & Co. FPI has made an application to the AAR for determination of the rate of tax to be applied on its total income arising from the said operations in India.

LMN & Co, has made an application to the ITO, TDS Ward for determination of the rate of tax to be deducted at source from payments to be made to FPI.

The AAR wants to reject the application of FPI on the ground that the matter is already pending before the income-tax authority. Is this stand tenable in law? 6

(b) Anupam Gulati, a resident in India, is a famous badminton player, who plays in several tournaments. For the year ended 31-03-2018, he has derived income from playing in tournaments outside India and also share income from a firm, from nations with which no DTAA exists.

The summarized results of the income earned during the year are as under:

	₹
Income from tournaments in India	**32,50,000**
Income from tournaments outside India (as converted into INR)	**16,00,000**
Share of loss from a partnership firm abroad (Set off permitted in that nation)	**2,00,000**
Residential house property purchased at Colombo (including registration and stamp duty for ₹ 1,80,000)	**4,00,00,000**

On the foreign income, he has paid tax of ₹ 3,50,000.
You are required to compute the tax payable by the assessee. 6

(c) India Telephones Ltd. paid ₹ 15 lakhs per annum to Bharat Mobiles Ltd. for each of the mobile towers used by it. During the financial year 2017-18, India Telephones Ltd. paid ₹ 435 lakhs to Bharat Mobiles Ltd. It deducted tax at source under section 194C and whereas the Assessing Officer claimed that the assessee must have deducted tax at 10% under section 194-I. Decide the correctness of the action of assessee vis-a-vis the Assessing Officer. 4

Answer:

5. (a) **Advance ruling**
The issue involved is concerned with the admission or rejection of the application filed before the Advance Ruling 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.

Clause (i) of the first proviso of section 245R(2) provides that the AAR 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, (except in case of resident falling in sub clause (iii) of clause (b) of section 245N)

In the above case, no application had been filed or contention urged by the applicant (foreign company) before any income-tax authority/Appellate Tribunal/ court, raising the question raised in the application filed with AAR. The question sought is with regard to the rate of tax applicable on the total income of the foreign company.

One of the Indian companies, however, had raised the question before the Assessing Officer, not on the applicant's behalf or with a view to benefit the applicant, but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made to a non-resident. Although the question raised pertains to one of the payments made or to be made to the non-resident applicant, it was not one pending determination before any income-tax authority in the applicant's case.

Therefore, as held by the AAR in Ericsson Telephone Corporation India AB v. CIT (1997) 224 ITR 203, the application filed by the Indian company before the ITO, TDS Ward cannot be treated to have been filed by the non-resident.

Hence, it would not be proper to reject the application of the foreign company relying on clause (i) of the proviso to sub-section (2) of section 245R of the Income-tax Act, 1961.

ALTERNATIVE VIEW

The issue involved is concerned with the admission or rejection of the application filed before the Advance Ruling 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.

Clause (i) of the first proviso of section 245R (2) provides that the AAR 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, (except in case of resident falling in sub-clause (iii) of clause (b) of section 245N)

W.e.f. 1-6-2000, the proviso to s. 245R(2) reads thus:

"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 "in the applicant's case" have been omitted.

The AAR, in Nuclear Power Corporation of India Ltd., In Re, [2012] 343 ITR 220, held that an advance ruling is not only applicant specific, but is also transaction specific. The advance ruling sought for from the AAR is in respect of a specific transaction entered into by the applicant. It is for this reason that section 245S specifies that a ruling is binding on the applicant, the transaction and the Principal Commissioner of Income-tax and those subordinate to him, and not only on the applicant.

What is barred by the 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 totally lost sight of.

On the basis of this view taken by the AAR in the aforesaid 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 filed before the AAR on the ground that in respect of the same transaction, an issue is pending before the Assessing Officer.

(b)

Profits and gains of business or profession:	₹
Income from tournaments in India	32,50,000
Income from tournaments outside India	16,00,000
Share of loss from a partnership firm abroad: Not to be considered being exempt income	Nil
Gross total income	48,50,000
Residential house property purchased at Colombo (registration and stamp duty for ₹ 1,80,000 is eligible for deduction u/s 80C:) Subject to ceiling of ₹ 1,50,000	1,50,000
Total income (T)	47,00,000
Tax on above Including Cesss (A)	12,59,175
Indian rate of tax (A)/(T) =	26.79%
Tax rate of foreign nation: Foreign income (16L - 2L) (F) ₹ 14,00,000 Tax paid abroad (B) ₹ 3,50,000 Foreign rate of tax (B)/(F) 25%	
Less: Rebate u/s 91 (See Note below)	3,50,000
Balance tax payable	9,09,175

Note: Rebate U/s 91 will be at the Indian rate of tax or foreign rate of tax, whichever is lower.
Same has to be applied on income which is doubly taxed, which is ₹ 14,00,000.
Hence rebate is 25% of ₹ 14,0,000 i.e. ₹ 3,50,000.

(c) The facts of the case given above are similar to that of Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del).
The towers rented out was a passive infrastructure facility which enabled the parties to use technical and specialized equipment maintained by the assessee.
The mobile towers are neutral platform without which the mobile operators could not operate.
The renting of mobile tower cannot be called as renting of land.
The arrangement was the use of machinery plant or equipment i.e. the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises.
The renting of machinery hence is liable for tax deduction under section 194-I(a) at the rate applicable for the payment made for use of plant and machinery.

6. (a) Search under section 132 was conducted in the premises of Mr. Balaji on 15.12.2017. Incriminating materials such as unaccounted sale deed dated 08.10.2009 for ₹ 60 lakhs and company deposits dated 05.07.2006 for ₹ 30 lakhs were found in addition to unaccounted transactions of his business by name Balaji Traders which commenced from 01.04.2013. The assessment under section 143(3) for the assessment year 2016-17 is pending and reassessment proceeding for the assessment year 2015-16 was also pending on the date of search.

(i) State the assessment years for which notice can be issued for making post search assessments.

(ii) What will happen to regular assessment under section 143(3) and reassessment under section 147 because of search?

(iii) Can the unaccounted company deposits be subjected to tax in case Mr. Balaji is a non-resident? 6

(b) Monohar & Hari LLP is engaged in multiple business activities. The following

information is furnished for the year ended 31.03.2018:

(i) Net profit as per Profit and Loss Account ₹ 52 lakhs.
(ii) Working partner salary debited to profit and loss account ₹ 40,20,000 as authorized by the LLP agreement.
(iii) Interest on capital paid to partners @ 15% ₹ 15,75,000. This is authorized by the LLP agreement.
(iv) Depreciation debited to profit and loss account ₹ 8,10,000.
(v) Eligible depreciation under section 32 ₹ 10,35,000.
(vi) The Net Profit includes profit from under taking located in SEZ (4th year) ₹ 20 lakhs. The total turnover is ₹ 200 lakhs and the export turnover is ₹ 150 lakhs.
(vii) The unit has earned income from generation of power and the eligible deduction under section 80-IA amounts to ₹ 8 lakhs.

You are required to compute the total income of the firm and also the alternative minimum tax (AMT) and decide the final tax liability of the firm for the assessment year 2018-19. 10

Answer:

6. (a)

(i)	Where a search is conducted after 01.04.2017 the Assessing Officer can issue notice for search assessment for not later than 10 assessment years preceding the assessment year relevant to the previous year in which the search was conducted if the undisclosed income escaping assessment amounts to or is lightly to amount to ₹ 50 lakhs or more.
	Therefore, as the unaccounted document for ₹ 60 lakh dated 08.10.2009 was found, notice under section 153A can be issued from the assessment year 2008-09 onwards.
	The unaccounted company deposits dated 05.07.2006 cannot be subjected to tax under section 153A as the time limitation will operate.
(ii)	The regular assessment under section 143(3) and reassessment under section 147 will abate as the incriminating materials found consequent to search relates to both the assessment years referred therein.
(iii)	In case Mr. Balaji is a non-resident the time limit for issue of notice under section 147 would be 16 years from the end of the relevant assessment year and hence the unaccounted company deposit can also be subjected to tax by issuing notice under section 147 instead of section 153A for the assessment year 2007-08.

(b)

Manohar & Hari LLP
Computation of the Total Income for the Asst. Year 2018-19

As per Normal Provisions		₹
Net Profit as per Profit and Loss Account		52,00,000
Add:		
Working partner salary debited to Profit and loss account		40,20,000
Interest on capital in excess of 12% disallowed		3,15,000
Depreciation debited to P&L account		8,10,000
		1,03,45,000
Less:		
Eligible depreciation under section 32		10,35,000
Book Profit		93,10,000
Less: Deduction U/s.40(b)		
On first ₹ 3 lakhs @ 90%	2,70,000	
On the balance ₹ 90% @ 60%	54,06,000	56,76,000
Restricted to the amount authorized by LLP Agreement		40,20,000
Gross Total Income		52,90,000
Deduction U/s. 10AA in respect of unit in SEZ		

₹ 20,00,000 × 150 /200	15,00,000	
Deduction U/s. 80-IA	8,00,000	23,00,000
Total Income		29,90,000
Tax there on @ 30%	(A)	8,97,000
Computation of adjusted total income U/s.115 JC		
Total income as per normal provisions		29,90,000
Add: Deduction under section 80-IA		8,00,000
Deduction U/s. 10AA		15,00,000
Adjusted total income		52,90,000
Tax thereon @ 18.5%	(B)	
		9,78,650
Computation of final tax liability		
Higher of (A) or (B) shall be the tax payable		9,78,650
Add: Education cess @ 3%		29,360
Total Tax Payable		10,08,010

7. (a) Kite & Co. (firm) had sold all its assets and liabilities on 31.03.2018 to ABC Co. (P) Ltd. for a lump sum consideration of ₹ 500 lakhs.

The Balance Sheet of Kite & Co. as on 31.03.2018 is as below:

Liabilities	₹ in lakhs	Assets	₹ in lakhs	
Capital	**1,500**	**Fixed Assets:**		
Unsecured loans	**100**	**Plant & Machinery at WDV**	**300**	
Bank borrowing	**700**	**Land (At revalued figure)**	**1,200**	**1,500**
Sundry Creditors	**200**	**Current Assets:**		
		Sundry Debtors	**500**	
		Cash & Bank balance	**50**	
		Loans & Advances	**340**	
		Closing stock	**110**	**1,000**
	2,500			**2,500**

Additional Information:

(1) The land was acquired in March, 2006 for ₹ 200 lakhs.
(2) WDV of plant & machinery under section 43(6) was ₹ 250 lakhs.
(3) Cost inflation index for the financial year 2005-06 was 117 and for 2017-18 is 272.
(4) Stock is overvalued by 10%.
(5) Loans and advances include ₹ 150 lakhs due from ABC Co. (P) Ltd.

Compute capital gain arising from slump sale and tax liability on such gain. 7

(b) Mr. Prasoon acquired a vacant land at Cuttack in April, 2000 for ₹ 2 lakhs. He went out of India for employment in USA in June 2004. He contemplated return to India and begin a start-up business in the manufacture of medicines. In October, 2017 he entered into an agreement for sale of land for ₹ 100 lakhs to Mr. Rahul. The sale took place in March, 2018. The fair market value as on 01.04.2001 was ₹ 5 lakhs.

Mr. Prasoon wants to start a company for manufacture of medicine by using the sale proceeds besides availing loan from financial institutions. He wants to know the conditions of section 54 GB which are to be satisfied for the purpose of availing exemption under section 54 GB and the conditions for availing tax holiday under section 80-IAC for the new business. Advise him with brief points the conditions to be satisfied for optimum tax benefit. 9

Answer:

7. (a) When the entire business is transferred for a lump sum consideration it is slump sale which is governed by section 50B of the Act. The unit is in existence for more than 2 years (as reflected in acquisition of land in March, 2006) and therefore the capital gain on transfer of business is taxable as long term capital gain.

Computation of capital gain from slump sale and tax on such gain

	₹ In lakhs
Slump sale consideration	500.00
Less: Cost of acquisition (net worth) [Working note]	440.00
Long-term Capital Gain	60.00
Income tax @ 20% (under section 112)	12.00
Add: Surcharge	Nil
Add: Education cess @ 3%	0.36
Total tax liability	12.36

Computation of Net worth of the undertaking

	₹	₹
WDV of block of assets		250
Book value of non-depreciable assets		
Land (revaluation not to be considered)	200	
Sundry Debtors	500	
Bank & cash balance	50	
Loans & advances	340	
Closing stock 110 × 100/110	100	1190
		1440
Less: Liabilities		
Unsecured loans	100.00	
Bank borrowing	700.00	
Sundry Creditors	200.00	1000
Net Worth		440

(b)

The assessee in this case has to pay capital gains tax in India, whether or not is resident or non-resident as the vacant land being capital asset is situated in India.
The indexed cost of acquisition of the asset by adopting the FMV as on 01.04.1981 to be ascertained by taking the actual cost of acquisition. The indexed cost would be ₹ 5 lakh × 272/100 = ₹ 13,60,000. The long term capital chargeable to tax would be ₹ 86,40,000.
He can avail exemption under section 54GB in respect of the capital gain if the following conditions are satisfied:
The assessee before the due date for filing the return under section 139(1) must utilize the sale consideration (i.e. ₹100 lakhs) for subscription in equity shares of an eligible company.
The eligible company would mean a company incorporated after 01.04.2018 (in this case) and which is engaged in the business of manufacture of an article or thing.
The assessee must have more than 50% of the share capital or more than 50% of voting rights after subscription.
The company must be a company which qualifies to be MSME under the Micro, Small and Medium Enterprises Act, 2006.
The MSME within one year must utilize the amount so contributed for the purpose of purchase of new plant and machinery.
The term new plant and machinery does not include-
(i) any machinery or plant which before its installation was used within India or outside India by any other person. In other words, it must not be second-hand machinery.
(ii) The new plant and machinery is not meant for installation in office premises.
(iii) It does not include office appliances including computer or computer software.
(iv) Any vehicle
(v) Any machinery or plant the whole of the actual of cost of which is allowed as a

deduction in computing income chargeable under the head profits and gains of business or profession.
(vi) The new asset shall be include computer or computer software in the case of eligible start-up, being a technology driven start-up so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the Official Gazette.
Conditions for availing deduction under section 80-IAC:
Section 80-IAC provides for tax exemption at 100% of the profits and gains from eligible business for a period of 3 consecutive years out of 7 years beginning from the year in which the eligible start-up is incorporated.
The other conditions to be satisfied are:
(i)Eligible business involving innovation, development, deployment or commercialization of new products, process or services driven by technology or intellectual property.
(ii) The eligible start-up must have been incorporated after 01.04.2016 but before 01.04.2019.
(iii) The total turnover of its business must not exceed ₹ 25 crores in any of the previous years on or after 01.04.2016 and ending on 31.03.2021.
(iv) The eligible business or start-up must hold a certificate from the Inter-Ministerial Board of Certification.
(v) An LLP is also eligible to claim the benefit of this deduction but to avail the exemption under section 54GB it has to be a company and not LLP.

8. In the light of decided case laws, answer any four of the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion [Citation of the case law is NOT required)]: 4x4=16

(a) Bharathi Co-operative Housing Society collects fees at the time of transfer of flat, from the outgoing member, as well as the incoming member. As per the bye-laws, the receipts are used for meeting the various expenses of the society. During the year ended 31-03-2018, the society has collected a sum of ₹ 5 lakhs as transfer fees from outgoing members and like amount from the incoming members. The Assessing Officer (AO) has brought to tax the entire receipts of ₹ 10 lakhs. Is his action valid in law?

(b) Kaushiba Logistics Pvt. Ltd., borrowed a sum of ₹ 50 lakhs from a bank for business purposes. For the sanction of the bank loan, two directors gave guarantee to the bank. The assessee paid guarantee commission of ₹ 80,000 to the two directors in this regard and claimed the same as business expenditure. The AO has disallowed the same on the ground that this is an indirect payment of dividend to the two directors. Is this correct?

(c) A, B and C were partners in the firm RR & Co. B died on 31-03-2017. The firm was dissolved and the business was continued in the same name by A. The firm had unabsorbed losses to the tune of ₹ 10 lakhs. Against the individual business income earned by A, the losses of the erstwhile firm were set off. This has been disallowed by the AO. Is this disallowance justified?

(d) Saravanan & Co., a firm, had borrowed moneys for its windmills, on which interest of ₹ 23 lakhs had been paid by the firm. The income from the generation and distribution of electricity by the windmills was subject to 100% deduction u/s 80-IA. The Assessing Officer wants to disallow the interest of ₹ 23 lakhs, invoking section 14A. Is he justified?

(e) Saipriya Charities had applied for registration of the trust u/s 12AA on 01-04-2017. No order was passed in this regard by the Commissioner of Income-tax/Director (Exemptions). Hence the trust took the view that its application was accepted and proceeded to file its return of income. Is this view of the trust correct in law?

Answer:

8. **(a) Issue involved**

The issue under consideration is whether the transfer fees received by a co-operative housing society from its incoming and outgoing members is chargeable to tax.

Provisions involved

Any transfer fee received by a co-operative housing society, whether from outgoing or from incoming members, are not liable to tax in the hands of the co-operative society on account of the principle of mutuality, since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business.

Analysis

Under the bye-laws of the society, charging of transfer fees had no element of trading or commerciality. Both the incoming and outgoing members have to contribute to the common fund of the assessee. The amount paid was to be exclusively used for the benefit of the members as a class.

Further, section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.

Conclusion

Therefore, the action of the Assessing Officer, in bringing to tax the transfer fees under the head "Profits and gains of business or profession" in the hands of Bharati Co-operative Housing Society is not correct.

Refer the decision in Sind Co-operative Housing Society v. ITO (2009) 317ITR47.

(b) **Issue involved**

The issue under consideration in this case is whether guarantee commission paid by a company to its employee directors is deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company, and whether it can be contended that the same would have been payable as dividend had it not been paid as commission.

Provisions involved

In the absence of any specific disallowance, an expenditure incurred wholly and exclusively for the purpose of business has to be allowed under section 37. It has also to be seen whether such payment was a device used to outwit the provisions of section 115-0, which requires payment of dividend distribution tax.

Analysis

The directors of the company are employees of the company and are entitled to remuneration for the services rendered as employees. In this case, they also provided personal guarantee to banks, since it was a pre-condition laid down by the bank to provide financial assistance to the company. This act of providing personal guarantee was clearly beyond the scope of their services as employees of the company.

The assessee-company, in its commercial wisdom, passed a resolution resolving that the directors be paid commission for providing their personal guarantees for the financial assistance availed by the assessee-company from the bank. In such a case, the Assessing Officer only has to determine whether the transactions are real and genuine.

As regards section 36(1)(ii), the recipient directors were not entitled to receive the amount as commission in lieu of dividend. Dividend is paid to all the shareholders and the recipient directors were not the only shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the shareholders and not to select shareholders.

Conclusion
Therefore, the action of the Assessing Officer, holding that if the amount was not paid to them as commission, the same would have been payable as dividend, and contending that the company avoided dividend distribution tax under section 115-0 which was otherwise payable, is not valid.

Reference may be made to Controls & Switchgear Contractors Ltd v. Dy. CIT (2014) 365 ITR 312.

(c) **Issue involved**
The issue under consideration in this case is whether the loss suffered by an erstwhile partnership firm, which was dissolved, can be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance.

Provisions involved
Section 78(2) deals with carry forward of losses in case of succession of business. It provides that only the person who has incurred the losses, and no one else, would be entitled to carry forward the same and set it off. An exception provided thereunder is in the case of succession by inheritance.

Analysis
Upon dissolution, the partnership firm, RR & Co. ceased to exist. Also, the partnership firm, RR & Co. and the sole proprietorship concern are two separate and distinct units for the purpose of assessment. 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.

Conclusion
The action of the Assessing Officer in disallowing the claim of set-off of losses suffered by the erstwhile partnership firm RR & Co. against the income earned as an individual proprietor is, therefore, correct.

Reference may be made to the decision in Pramod Mittal v. CIT (2013) 356ITR 45 (Delhi).

(d) **Issue Involved:**
The issue under consideration is whether the provisions of section 14A can be invoked in disallowing the expenditure incurred in respect of the income for which deduction is claimed under Chapter VI-A.

Provisions applicable:
As per section 14A, expenditure incurred in relation to income which does not form part of the total income under the Act, will not be allowed in computing the total income of the assessee.

Analysis:
The words "do not form part of the total income under this Act" used in section 14A are significant and important. Income which qualifies for deductions under section 80C to 80U has to be first included in the total income of the assessee and then allowed as a deduction.

However, income referred to in Chapter III do not form part of the total income and therefore, as per section 14A, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to such income which does not form part of the total income. Deduction under section 80P covered in Chapter VIA is different from the exclusions/exemptions provided under Chapter III.

Conclusion:
The action taken by the Assessing Officer in disallowing the expenditure incurred with respect to income for which deduction under Chapter VI-A is claimed, by invoking the provisions of section 14A is, therefore, not tenable in law.

In this context, the rationale of the decision in CIT v. Kribhco (2012) 349 ITR 0618 may be looked into.

(e) **Issue Involved:**
The issue under consideration in this case is whether, in a case where the Commissioner of Income-tax has not passed any order for granting or refusing to grant registration within the prescribed time limit under section 12AA, the trust can take the view that it is deemed to be registered under section 12AA.

Provisions applicable:
As per section 12AA, every order granting or refusing registration shall be passed before the expiry of 6 months from the end of the month in which the application was received.

Analysis:
Non-consideration of the application for registration within the time fixed by the legal provision would lead to deemed grant of registration, since the assessee cannot be made to suffer merely because the timely decisions are not taken by the Revenue Officers.

Accordingly, in this case, the trust would be deemed to be registered since no order granting or refusing to grant registration has been passed by the CIT on or before 30th September, 2017 and even thereafter upto the due date of filing of return for the A.Y.2018-19.

Conclusion:
The view taken by the assessee trust that the trust would be deemed to be registered under section 12AA, since no order granting or refusing to grant registration has been passed by the Commissioner of Income-tax within the prescribed period of six months is, therefore, correct.

Reference may be made to the decision in CIT v. Society for the Promotion of Education (2016) 382ITR 6 (SC).