# PAPER – 7 : DIRECT TAXES

## QUESTIONS

1. **Basic Concepts**

   "The Finance (No.2) Act, 2009 has expanded the scope of definition of "charitable purpose"- Elucidate.

2. **Residential Status and Scope of total income**

   Explain the tax consequence of the following transactions –

   (a) Mr.X, a non-resident, purchases goods in India for the purpose of export and earns profit on such transaction.

   (b) Salary received by Mr.Y, a non-resident, from the Government of India for the services rendered by him in Canada.

3. **Incomes which do not form part of total income**

   "The New Pension System Trust (NPS Trust) set up in February, 2008 to manage the assets and funds under the New Pension System in the interest of the beneficiaries enjoys a pass-through status" – Discuss the correctness or otherwise of this statement.

4. **Charitable or religious trusts and institutions**

   Discuss the tax treatment of voluntary contributions received by electoral trusts. Is there any deduction under the Income tax Act, 1961 in respect of donations made to electoral trusts? Explain.

5. **Salaries**

   Specify two fringe benefits which have been brought under the scope of perquisites taxable in the hands of employees by amending section 17(2) consequent to the abolition of fringe benefit tax.

6. **Income from house property**

   In the following cases, state the head of income under which the receipt is to be assessed and comment -

   (a) Anirudh let out his property to Abhinav. Abhinav sublets it. How is subletting receipt to be assessed in the hands of Abhinav.

   (b) Anish has built a house on a leasehold land. He has let-out the above property and has considered the rent from such property under the head "Income from other sources" and deducted expenses on repairs, security charges, insurance and collection charges in all amounting to 50% of receipts.

7. **Profits and gains of business or profession**

   (a) The Finance (No.2) Act, 2009 has introduced investment-linked tax incentives for specified businesses. In this context, explain the concept of investment-linked tax incentives and name the specified businesses eligible for such benefits.

(b) XYZ Ltd. commenced operations of the business of laying and operating a cross-country natural gas pipeline network for distribution on 1st April, 2009. The company incurred capital expenditure of Rs.32 lakh during the period January to March, 2009 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2009. Further, during the financial year 2009-10, it incurred capital expenditure of Rs.95 lakh (out of which Rs.60 lakh was for acquisition of land) exclusively for the above business. Compute the deduction under section 35AD for the A.Y.2010-11, assuming that XYZ Ltd. has fulfilled all the conditions specified in section 35AD.

8. **Profits and gains of business or profession**

Mr. A, a civil contractor and builder, paid a compensation of Rs.5 lakh to the tenants for vacating the premises. This was in pursuance of an agreement for development of the property. Mr. A claimed the expenditure as revenue expenditure. Discuss the correctness of the claim of Mr.A. Would the tax treatment of such compensation be different if Mr.A was not a civil contractor?

9. **Capital Gains**

"Section 50C can be invoked only in the case of registration of property pursuant to transfer. In a case where only an agreement for sale is entered into and no registration has taken place, the provisions of section 50C cannot be made applicable."

Discuss the correctness or otherwise of this statement.

10. **Income from other sources**

Mr. Rajesh received interest of Rs.3 lakh on enhanced compensation on 17.8.2009. Out of this interest, Rs.75,000 relates to the previous year 2006-07, Rs.1,00,000 relates to previous year 2007-08 and Rs.1,25,000 relates to previous year 2008-09. Discuss the tax implication, if any, of such interest income for A.Y.2010-11.

11. **Income from other sources/Capital Gains**

Mr. Ganesh received the following gifts during the P.Y.2009-10 from his friend Mr. Sundar, -

(1) Cash gift of Rs.51,000 on his birthday, 19th June, 2009.

(2) 50 shares of Beta Ltd., the fair market value of which was Rs.60,000, on his birthday, 19th June, 2009.

(3) 100 shares of Alpha Ltd., the fair market value of which was Rs.70,000 on the date of transfer. This gift was received on the occasion of Diwali. Mr. Sundar had originally purchased the shares on 10-8-2009 at a cost of Rs.50,000.

Further, on 20th November, 2009, Mr. Ganesh purchased land from his sister's mother-in-law for Rs.5,00,000. The stamp value of land was Rs.7,00,000.

On 15th February, 2010, he sold the 100 shares of Alpha Ltd. for Rs.1 lakh.

Compute the income of Mr. Ganesh chargeable under the head "Income from other

sources" and "Capital Gains" for A.Y.2010-11.

12. **Deductions from Gross Total Income**

(a) The Finance (No.2) Act, 2009 has expanded the scope of deduction under section 80E – Elucidate.

(b) What are the conditions to be satisfied by an undertaking developing and building housing projects for claiming benefit of deduction under section 80-IB(10)?

13. **Relief under section 89**

Mr. Ravi, working in a public sector company, opted for voluntary retirement scheme and received Rs.8 lakh as VRS compensation. He claimed Rs.5 lakh as exemption under section 10(10C). Further, in respect of the balance amount of Rs.3 lakh, he claimed relief under section 89(1). Mr.Ravi seeks your opinion on the correctness of the above tax treatment.

14. **Assessment of Firms/LLPs**

(a) Explain the tax treatment of Limited Liability Partnership under the Income-tax Act, 1961.

(b) M/s.ABC, a partnership firm, has 3 partners, namely, A, B & C. The firm has paid salary of Rs.3 lakh to each of its partners during the P.Y.2009-10 and the same is authorized by the partnership deed. The net profit of the firm as shown in the profit and loss account computed in the manner laid down in Chapter IV-D is Rs.4 lakh, after providing for salary to the partners. Compute the disallowance as per section 40(b)(v).

15. **Assessment of Companies – Computation of Minimum Alternate Tax**

Hyper Ltd. earned a net profit of Rs.7.25 lakh after debit/credit of the following items to its profit and loss account for the year ended on 31.3.2010:

| **(a)** | **Items debited to Profit and Loss Account** | **Rs.** |
|---|---|---|
| | Provision for income-tax | 1,20,000 |
| | Interest on income-tax | 11,000 |
| | Dividend distribution tax | 20,000 |
| | Provision for deferred tax | 12,000 |
| | Provision for doubtful debts | 18,000 |
| | Securities Transaction Tax | 15,000 |
| | Transfer to Special Reserve | 20,000 |
| | Provision for gratuity based on actuarial valuation | 30,000 |
| | Provision for losses of subsidiary company | 22,000 |
| | Proposed dividend | 25,000 |
| | Preference dividend | 18,000 |

| | |
|---|---|
| Expenditure to earn agricultural income | 6,000 |
| Expenditure to earn LTCG exempt under section 10(38) | 4,000 |
| Depreciation (including depreciation of Rs.10,000 on revaluation) | 50,000 |

**(b) Items credited to Profit and Loss Account**

| | |
|---|---|
| Amount credited to P& L A/c from General Reserve | 10,000 |
| Amount credited to P& L A/c from Revaluation Reserve | 15,000 |
| Agricultural income | 30,000 |
| LTCG exempt under section 10(38) | 16,000 |

The company provides the following additional information:

Brought forward Business Loss/Unabsorbed Depreciation:

| Assessment Year | Amount as per books | |
|---|---|---|
| | **Loss** | **Depreciation** |
| 2007-08 | Nil | 50,000 |
| 2008-09 | 60,000 | 40,000 |
| 2009-10 | 20,000 | 30,000 |

You are required to examine the applicability of section 115JB of the Income-tax Act, and compute book profit and the tax credit to be carried forward, assuming that the total income computed as per the provisions of the Income-tax Act is Rs.4,00,000.

16. **Income-tax Authorities**

"An Additional Director and Additional Commissioner are not empowered to issue a warrant of authorization under section 132(1) to the other income-tax authorities for conducting search and seizure operations" – Is this statement correct? Discuss.

17. **Assessment Procedure**

Explain the significant features of Alternate Dispute Resolution Mechanism.

18. **Collection and Recovery of tax**

Explain whether the following contracts fall within the meaning of "work" under section 194C –

(i) Manufacturing a product for A as per A's requirement using raw material purchased from B.

(ii) Manufacturing a product for A as per A's requirement using raw material purchased from A himself.

If yes, what would be the value on which tax should be deducted at source under section 194C?

19. **Appeals & Revision**

An order of assessment passed under section 143(3) read with section 147 was served on Mr. X on 1.8.2009. Mr. X filed an application under section 264 for revision before the Commissioner on 17.8.2009. The Commissioner, however, refused to accept the application on the ground that it was a premature application. Discuss the correctness of the contention of the Commissioner.

20. **Penalties and Prosecution**

"The scope of levy of penalty under Explanation 5A to section 271(1) has been expanded retrospectively with effect from 1st June, 2007" – Elucidate.

21. **Double Taxation Relief**

The Central Government is empowered, under section 90(1), to enter into agreement with any country outside India or a specified non-sovereign territory. What are the purposes for which the Central Government can enter into such agreement?

22. **Miscellaneous Provisions**

What are the modes by which any notice or requisition under the Income-tax Act may be served on the assessee?

23. **Wealth-tax**

What is the basic exemption limit above which wealth-tax is leviable?

24. **Wealth-tax**

Ms. Poorna has a house property at Mumbai, which she has rented out to Ms. Jayashree. The cost of acquisition of the property (acquired in the year 2000) is Rs.40 lakh. Determine the value of her property as on the valuation date 31.3.2010, from the following particulars –

(i) The annual value of the property as per municipal records is Rs.6 lakh.

(ii) The monthly rent which the property fetches is Rs.45,000.

(iii) Municipal taxes @ 10% of the municipal value of the property are paid partly by Ms. Jayashree (40%) and partly by Ms. Poorna (60%).

(iv) The cost of repairs of the house property is entirely borne by Ms. Jayashree.

(v) Ms. Jayashree has given an interest-free deposit of Rs.2 lakh to Ms. Poorna.

(vi) The unexpired period of lease on the valuation date is 20 years.

25. **Wealth-tax**

Bentac Constructions Ltd. furnishes the following particulars of its wealth for the valuation date as on 31.3.2010:

| | | Rs.in lacs |
|---|---|---|
| (i) | Land in urban area (held as stock in trade since 1998) | 67 |
| (ii) | Motor cars (including one imported car worth Rs.32 lacs used for hiring) | 43 |
| (iii) | 125 acres of land acquired at Ghaziabad township on 15.5.2009 for construction of commercial complex | 150 |
| (iv) | Residential flats of 950 sq feet each provided to 2 employees (salary of one employee exceeds Rs.5 lacs per annum) | 22 |
| (v) | Farm house of 8 acres at a remote village | 7 |
| (vi) | Cash in hand as per cash book | 5 |
| | **Liabilities:** | |
| (i) | Loan for purchase of land at urban area | 45 |
| (ii) | Loan for purchase of land at Ghaziabad | 100 |
| (iii) | Wealth-tax liability for A.Y. 2009-10 | 10 |
| (iv) | Loan for construction of residential flats | 14 |

Compute the net wealth of the company for the A.Y.2010-11.

## SUGGESTED ANSWERS/HINTS

**1.** Section 2(15) defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. However, the "advancement of any other object of general public utility" shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

Section 2(15) has now been amended to specifically include within its ambit, the preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest. Prior to the amendment, these would have been included under "advancement of any other object of general public utility" and hence, would have been subject to the restriction mentioned above. However, now, they would not be subject to the restrictions which are applicable to the "advancement of any other object of general public utility".

**2.** **(a)** Under section 9, any income derived, *inter alia,* from a business connection in India or from a source of income in India shall be deemed to accrue or arise in India *Explanation 1(b)* to section 9(1) makes it clear that in case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for export.

Consequently, there is no tax consequence on the transaction of purchase of goods for export by Mr.X.

**(b)** Salary accrues at the place where the services are rendered. However, as per section 9(1)(iii), salary payable by the Government to an Indian citizen for services rendered abroad shall be deemed to accrue or arise in India. In this case, the Government of India pays salary to Mr.Y, a non-resident, for services rendered by him in Canada. If Mr.Y is an Indian citizen, his salary would be taxable in India and if he is not an Indian citizen, then it will not be chargeable to tax in India.

**3.** This statement is correct.

The New Pension System (NPS), operational since 1st January, 2004, is compulsory for all new recruits to the Central Government service from 1st January, 2004. Thereafter, it has been opened up for employees of State Government and private sector.

NPS Trust has been set-up on 27th February, 2008 as per the provisions of the Indian Trust Act, 1882 to manage the assets and funds under the NPS in the interest of the beneficiaries. The Finance (No.2) Act, 2009 has exempted the NPS Trust from the applicability of –

(i) income-tax on any income received by any person for, or on behalf of, the NPS Trust [Section 10(44)]

(ii) dividend distribution tax in respect of dividend paid to any person for, or on behalf of, the NPS Trust [Section 115-O]; and

(iii) securities transaction tax on all purchases and sales of equity and derivatives by the NPS Trust.

Further, the NPS Trust shall receive all income without any deduction of tax at source.

Thus, the NPS Trust, which was set up to manage the assets and funds under the New Pension System in the interest of the beneficiaries, would enjoy a "pass-through status".

**4. Tax treatment of voluntary contributions received by electoral trusts**

(i) In the year 2003, by an amendment carried out by the Election and Other Related Laws (Amendment) Act, 2003, sections 80GGB & 80GGC were introduced allowing 100% deduction in respect of the contribution made to registered political parties.

(ii) The Finance (No.2) Act, 2009 has widened the scope of deductions under these sections by allowing deduction to also the contribution/donation made to the electoral trusts as may be approved by the CBDT in accordance with the scheme to be made by the Central Government.

(iii) The deduction shall be 100% of the amount donated.

(iv) Further, voluntary contribution received by such electoral trust shall be treated as its income under section 2(24), but shall be exempt under new section 13B, if the trust distributes to a registered political party during the year, 95% of the aggregate donations received by it during the year along with the surplus if any, brought

forward from any earlier previous year.

(v) Another condition for availing the benefit under this section is that the electoral trust should function in accordance with the rules made by the Central Government.

**5.** The Finance (No.2) Act, 2009 has inserted section 115WM to provide that the provisions of Chapter XII-H relating to Fringe Benefit Tax shall not apply in relation to A.Y.2010-11 and thereafter.

Consequently, the following fringe benefits have been brought under the scope of perquisites taxable in the hands of the employees by amending section 17(2) –

(1) the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer or former employer, free of cost or at concessional rate to the assessee.

(2) the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds Rs.1 lakh.

**6. (a)** Sub-letting receipt is to be assessed as "Income from Other Sources" or as "Profits and gains of business or profession" in hands of Mr. Abhinav, depending upon the facts and circumstances of each case. It is not assessable as income from house property, since one of the conditions for assessing an income under this head is that the assessee should be the owner of the property. In this case, since Abhinav is not the owner of the house property, sub-letting receipt cannot be assessed under the head "Income from house property".

**(b)** In this case, the receipt is assessable as "Income from house property" since ownership of land is not a pre-requisite for assessment of income under this head. 30% of Net Annual Value is allowable as a deduction under section 24.

**7. (a)** Although there are a plethora of tax incentives available under the Income-tax Act, they do not fulfill the intended purpose of creating infrastructure since these incentives are linked to profits and consequently have the effect of diverting profits from the taxable sector to the tax-free sector. Therefore, with the specific objective of creating rural infrastructure and environment friendly alternate means for transportation of bulk goods, investment-linked tax incentives have been introduced for specified businesses, namely, –

- setting-up and operating 'cold chain' facilities for specified products;
- setting-up and operating warehousing facilities for storing agricultural produce;
- laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income. However, expenditure incurred on acquisition of any land, goodwill or financial instrument would not be eligible for deduction.

Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business. A condition has been inserted that such amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

**(b)** The amount of deduction allowable under section 35AD for A.Y.2010-11 would be –

| **Particulars** | **Rs.** |
|---|---|
| Capital expenditure incurred during the P.Y.2009-10 (excluding the expenditure incurred on acquisition of land) = Rs.95 lakh – Rs.60 lakh | 35 lakh |
| Capital expenditure incurred prior to 1.4.2009 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2009 | 32 lakh |
| **Total deduction under section 35AD for A.Y.2010-11** | **67 lakh** |

**8.** The Bombay High Court has, in *CIT v. Shriram Builcons Ltd. (2008) 306 ITR 328*, held that any compensation paid to tenants for vacating the premises in the course of business of the assessee, who was a civil contractor and builder, pursuant to an agreement for development of property, was revenue expenditure. However, if the assessee was not a civil contractor, the compensation so paid would be allowed as cost of improvement when he transfers his property.

**9.** This statement is not correct.

So far, the scope of section 50C did not include within its ambit, transactions which were not registered with stamp duty valuation authority, and executed through an agreement to sell or power of attorney. Therefore, in order to prevent tax evasion on this account, section 50C has been amended by the Finance (No.2) Act, 2009, to provide that where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both, is less than the value adopted or assessed **or assessable** by an authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed **or assessable** shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain. **The term "assessable" has been added to cover transfers executed through an agreement to sell or power of attorney.**

Explanation 2 has been inserted after section 50C(2) to define the term 'assessable' to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

**10.** (i) As per section 145(1), income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(ii) Further, the Hon'ble Supreme Court has, in *Rama Bai v. CIT (1990) 181 ITR 400*, held that arrears of interest computed on delayed or on enhanced compensation shall be taxable on accrual basis. The tax payers faced genuine difficulty on account of this ruling, since the interest would have accrued over a number of years, and consequently the income of all the years would undergo a change.

(iii) Therefore, to remove this difficulty, clause (b) has been inserted in section 145A to provide that the interest received by an assessee on compensation or on enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.

(iv) Clause (viii) has been inserted in section 56(2) to provide that income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as "Income from other sources" in the year in which it is received.

(v) Clause (iv) has been inserted in section 57 to allow a deduction of 50% of such income. It is further clarified that no deduction would be allowable under any other clause of section 57 in respect of such income.

Therefore, in this case, the entire interest of Rs.3,00,000 would be taxable in the year of receipt, namely, P.Y.2009-10, under the head "Income from Other Sources".

| **Particulars** | **Rs.** |
|---|---|
| Interest on enhanced compensation taxable u/s 56(2)(viii) | 3,00,000 |
| *Less:* Deduction under section 57(iv) @50% | 1,50,000 |
| **Interest chargeable under the head "Income from other sources"** | **1,50,000** |

**11. Computation of "Income from other sources" of Mr.Ganesh for the A.Y.2010-11**

| | **Particulars** | **Rs.** |
|---|---|---|
| (1) | Cash gift received before 1.10.2009 is taxable under section 56(2)(vi) since it exceeds Rs.50,000 | 51,000 |
| (2) | Value of shares of Beta Ltd. gifted by Mr.Sundar on 19th June, 2009 is not taxable since only gift of property after 1st October, 2009 is chargeable to tax under section 56(2)(vii). | - |
| (3) | Fair market value of shares of Alpha Ltd. is taxable since the gift was made after 1st October, 2009 and the aggregate fair market value exceeds Rs.50,000. | 70,000 |
| (4) | Purchase of land for inadequate consideration on 20.11.2009 would attract the provisions of section 56(2)(vii), since the difference between the stamp value and consideration exceeds Rs.50,000. Sister's mother-in-law does not fall within the definition of "relative" under section 56(2). | |

| | | |
|---|---|---|
| Stamp Value | 7,00,000 | |
| *Less:* Consideration | 5,00,000 | 2,00,000 |
| **Income from Other Sources** | | **3,21,000** |

**Computation of "Capital Gains" of Mr. Ganesh for the A.Y.2010-11**

| | |
|---|---|
| Sale Consideration | 1,00,000 |
| *Less:* Cost of acquisition [deemed to be the fair market value charged to tax under section 56(2)(vii)] | 70,000 |
| **Short-term capital gains** | **30,000** |

**12. (a)** (i) Section 80E provides for a deduction to an assessee, being an individual, on account of any amount paid by him in the previous year by way of interest on loan taken from any financial institution or any approved charitable institution for the purpose of pursuing his higher education or higher education of his relative.

(ii) Prior to the amendment by the Finance (No.2) Act, 2009, the deduction was available only for pursuing full time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics.

(iii) The scope of this section has now been expanded to cover all fields of studies (including vocational studies) pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorized by the Central Government or State Government or local authority to do so. Therefore, interest on loan taken for pursuing any course after Class XII or its equivalent, will qualify for deduction under section 80E.

(iv) Further, the definition of "relative", in relation to an individual, has been amended to include, in addition to spouse and children of the individual, the student for whom the individual is the legal guardian.

**(b)** Section 80-IB(10) provides for 100% deduction of the profits derived by an undertaking from developing and building housing projects. This benefit is available subject to fulfillment of certain conditions, namely -

(a) The project is approved by a local authority before 31st March, 2008.

(b) The project is constructed on a plot of land having a minimum area of one acre.

(c) The built-up area of each residential unit should not exceed 1,000 sq.ft. in the cities of Delhi and Mumbai (including areas falling within 25 kms. of municipal limits of these cities) and 1,500 sq.ft. in other places.

(d) The built-up area of the shops and other commercial establishments included

in the housing project should not exceed 5 per cent of the total built-up area of the housing project or 2,000 sq.ft., whichever is less.

(e) The project has to be completed within 4 years from the end of the financial year in which the project is approved by the local authority.

(f) The undertaking which develops and builds the housing project shall not be allowed to allot more than one residential unit in the housing project to the same person, not being an individual. Where the person is an individual, no other residential unit in such housing project should be allotted to any of the following persons:-

(1) the individual himself or spouse or minor children of such individual;

(2) the Hindu undivided family in which such individual is the karta;

(3) any person representing such individual, the spouse or minor children of such individual or the Hindu undivided family in which such individual is the karta.

**13.** An employee opting for voluntary retirement scheme receives a lump-sum amount in respect of his balance period of service. This amount is in the nature of advance salary. Under section 10(10C), an exemption of Rs.5 lakh is provided in respect of such amount to mitigate the hardship on account of the employee going into the higher tax bracket consequent to receipt of the amount in lump-sum upon voluntary retirement.

However, some tax payers have resorted to claiming both the exemption under section 10(10C) (upto Rs.5 lakh) and relief under section 89 (in respect of the amount received in excess of Rs.5 lakh). This tax treatment has been supported by many court judgements also, for example, the Madras High Court ruling in *CIT v. G.V. Venugopal (2005) 273 ITR 0307* and *CIT v. M. Abdul Kareem (2009) 311 ITR 162* and the Bombay High Court ruling in *CIT v. Koodathil Kallyatan Ambujakshan (2009) 309 ITR 113* and *CIT v. Nagesh Devidas Kulkarni (2007) 291 ITR 0407.* However, this does not reflect the correct intention of the statute.

Therefore, in order to convey the true legislative intention, section 89 has been amended to provide that no relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or a scheme of voluntary separation (in the case of a public sector company), if exemption under section 10(10C) in respect of such compensation received on voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee in respect of the same assessment year or any other assessment year.

Correspondingly, section 10(10C) has been amended to provide that where any relief has been allowed to any assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under section 10(10C) shall be allowed to him in relation to that assessment year or any other assessment year.

Therefore, in view of the above amendment, Mr. Ravi's tax treatment is incorrect. He has to either opt for exemption of upto Rs.5 lakh under section 10(10C) or relief under section 89(1), but not both.

**14. (a) Tax treatment for Limited Liability Partnership (LLP)**

(i) Consequent to the Limited Liability Partnership Act, 2008 coming into effect in 2009 and notification of the Limited Liability Partnership Rules w.e.f. 1st April, 2009, the Finance (No.2) Act, 2009 has incorporated the taxation scheme of LLPs in the Income-tax Act on the same lines as applicable for general partnerships, i.e. tax liability would be attracted in the hands of the LLP and tax exemption would be available to the partners. Therefore, the same tax treatment would be applicable for both general partnerships and LLPs.

(ii) Consequently, the following definitions in section 2(23) have been amended -

(1) The definition of 'partner' to include within its meaning, a partner of a limited liability partnership;

(2) The definition of 'firm' to include within its meaning, a limited liability partnership; and

(3) The definition of 'partnership' to include within its meaning, a limited liability partnership.

The definition of these terms under the Income-tax Act would, in effect, also include the terms as they have been defined in the Limited Liability Partnership Act, 2008. Section 2(q) of the LLP Act, 2008 defines a 'partner' as any person who becomes a partner in the LLP in accordance with the LLP agreement. An LLP agreement has been defined under section 2(o) to mean any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

(iii) The LLP Act provides for nomination of "designated partners" who have been given greater responsibility. Therefore, clause (cd) has been inserted in section 140, which lays down the "Authorised signatories to the return of income", to provide that the designated partner shall sign the return of income of an LLP. However, where, for any unavoidable reason such designated partner is not able to sign and verify the return or where there is no designated partner as such, any partner can sign the return.

(iv) New section 167C provides for the liability of partners of LLP in liquidation. In case of liquidation of an LLP, where tax due from the LLP cannot be recovered, every person who was a partner of the LLP at any time during the relevant previous year will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP. This provision would also apply where tax is due from any other person in

respect of any income of any previous year during which such other person was a LLP.

(v) Since the tax treatment accorded to a LLP and a general partnership is the same, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. However, if there is a change in rights and obligations of partners or there is a transfer of asset or liability after conversion, then the provisions of section 45 would get attracted.

(vi) The LLP shall be entitled to deduction of remuneration paid to working partners, if the same is authorized by the partnership deed, subject to the limits specified in section 40(b)(v), i.e., -

| | | |
|---|---|---|
| (a) | On the first Rs.3,00,000 of book profit or in case of a loss | Rs.1,50,000 or 90% of book profit, whichever is higher |
| (b) | On balance book profit | 60% of book profit |

(vii) The LLP shall be entitled to deduction of interest paid to partners if such payment is authorized by the partnership deed and the rate of interest does not exceed 12% simple interest per annum.

(viii) The LLP shall comply with section 184, which requires that -

(1) the partnership is evidenced by an instrument;

(2) the individual shares of the partnership are specified in that instrument;

(3) a certified copy of the LLP agreement shall accompany the return of income of the LLP of the previous year relevant to the assessment year in which assessment as a firm is first sought.

(ix) If the LLP does not comply with section 184, it shall not be entitled to deduction of payments of interest or remuneration made by it to any partner in computing the income under the head "Profits and gains of business or profession".

**(b)** The LLP shall be entitled to deduction of remuneration paid to working partners, if the same is authorized by the partnership deed, subject to the limits specified in section 40(b)(v), i.e., -

| | | |
|---|---|---|
| (a) | On the first Rs.3,00,000 of book profit or in case of a loss | Rs.1,50,000 or 90% of book profit, whichever is higher |
| (b) | On balance book profit | 60% of book profit |

| Particulars | Rs. |
|---|---|
| Net profit as per profit and loss account | 4,00,000 |
| *Add:* Salary paid to partners A, B & C (3,00,000 × 3) | 9,00,000 |
| **Book profit** | **13,00,000** |
| Deduction in respect of partners' remuneration is subject to limits specified in section 40(b)(v) - | |
| On first Rs.3 lakh of book profit [3,00,000 × 90%] | 2,70,000 |
| On balance Rs.10 lakh of book profit [10,00,000 × 60%] | 6,00,000 |
| | **8,70,000** |

The excess amount of Rs.30,000 (i.e., Rs.9,00,000 – Rs.8,70,000) would be disallowed as per section 40(b)(v).

**15. Computation of book profit under section 115JB**

| Particulars | | Rs. | Rs. |
|---|---|---|---|
| Net Profit as per Profit & Loss Account | | | 7,25,000 |
| ***Add:*** **Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB** | | | |
| **Income-tax paid or payable or provision therefor** | | | |
| Provision for income-tax | 1,20,000 | | |
| Interest on income-tax | 11,000 | | |
| Dividend distribution tax | 20,000 | 1,51,000 | |
| **Provision for deferred tax** | | 12,000 | |
| **Provision for doubtful debts** | | 18,000 | |
| **Transfer to Special Reserve** | | 20,000 | |
| **Provision for losses of subsidiary company** | | 22,000 | |
| **Dividend paid or proposed** | | | |
| Proposed dividend | 25,000 | | |
| Preference dividend | 18,000 | 43,000 | |
| **Expenditure to earn agricultural income [exempt u/s 10(1)]** | | 6,000 | |
| **Depreciation** | | 50,000 | 3,22,000 |
| | | | 10,47,000 |

| | | |
|---|---|---|
| ***Less:*** **Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB** | | |
| Amount credited to P& L A/c from General Reserve | 10,000 | |
| Depreciation (excluding depreciation on account of revaluation of fixed assets) (i.e. Rs.50,000 – Rs.10,000) | 40,000 | |
| Amount credited to P& L A/c from Revaluation Reserve (to the extent of depreciation on revaluation) | 10,000 | |
| Brought forward business loss or unabsorbed deprecation as per books of account, whichever is less taken on cumulative basis | 80,000 | |
| Agricultural Income [since it is exempt under section 10(1)] | 30,000 | 1,70,000 |
| **Book Profit** | | **8,77,000** |
| | | |
| 15% of book profit | | 1,31,550 |
| *Add:* Education cess @ 2% | 2,631 | |
| Secondary and higher education cess @ 1% | 1,316 | 3,947 |
| Tax liability under section 115JB | | 1,35,497 |
| **Tax liability under section 115JB (rounded off)** | | **1,35,500** |
| | | |
| **Total income computed as per the provisions of the Income-tax Act** | **4,00,000** | |
| Tax payable @ 30% | | 1,20,000 |
| *Add:* Education cess @ 2% | 2,400 | |
| Secondary and higher education cess @ 1% | 1,200 | 3,600 |
| **Tax Payable as per the Income-tax Act** | | **1,23,600** |

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 15% thereof plus education cess @2% and secondary and higher education cess @ 1%. Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit of Rs.8,77,000 is deemed to be the total income and income-tax is payable @ 15% thereof plus education cess @2% and secondary and higher education cess @1%. The tax liability, therefore, works out to Rs.1,35,500 (rounded off).

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income-tax Act, will be allowed as tax credit in the subsequent years. The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the

other provisions of the Act. This tax credit is allowed to be carried forward for ten assessment years succeeding the assessment year in which the credit became allowable. Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act, other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

| Particulars | Rs. |
|---|---|
| Tax on book profit under section 115JB | 1,35,500 |
| *Less:* Tax on total income computed as per the other provisions of the Act | 1,23,600 |
| **Tax credit to be carried forward** | **11,900** |

**Notes:**

1. Securities transaction tax does not form part of income-tax and hence, should not be added back to net profit for computing book profit.
2. Provision for gratuity based on actuarial valuation is a provision for meeting an ascertained liability. Therefore, it should not be added back for computing book profit.
3. The Finance (No.2) Act, 2009 has now provided that the net profit should also be increased by the amount set aside as provision for diminution in the value of any asset, if the same has been debited to profit and loss account, for computing the book profit. Therefore, provision for doubtful debts has to be added back to net profit for computing book profit.
4. Long-term capital gains on sale of equity shares through a recognized stock exchange on which securities transaction tax (STT) is paid is exempt under section 10(38). One of the adjustments to the book profit is that exempt income under section 10, which is credited to profit and loss account, would be deducted in arriving at the book profit. However, deduction of such long-term capital gains is not allowed for computing book profit. Consequently, expenditure to earn such income should not be added back to arrive at the book profit. Section 10(38) also provides that such long term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

**16.** This statement is not correct.

Under section 132(1), the income-tax authorities listed therein are empowered to authorise other income-tax authorities to conduct search and seizure operations.

The authorities empowered to issue authorization are:

(1) Director General or Chief Commissioner;

(2) Director or Commissioner; and

(3) such Joint Director or Joint Commissioner as are empowered by the CBDT to do so.

Sections 2(28C) and 2(28D) define Joint Commissioner and Joint Director, respectively, to include Additional Commissioner and Additional Director. Accordingly, Additional Directors and Additional Commissioners have been issuing warrant of authorisation since 1st June, 1994. However, there have been Court rulings holding that Joint Directors or Joint Commissioners referred to in section 132 does not include Additional Director or Additional Commissioner and, consequently, the warrants of authorisation issued by the latter are illegal.

Therefore, a clarificatory amendment has now been made in section 132 to provide explicitly that Additional Director and Additional Commissioner always had the power to issue warrant of authorisation under the said provisions, whether or not specifically empowered by the CBDT to do so. Further, it has also been clarified that Joint Commissioner and Joint Director always had the power to issue warrant of authorization, whether or not specifically empowered by the CBDT to do so.

Thus, in effect, the warrants of authorization issued by Additional Director/Additional Commissioner/Joint Director/Joint Commissioner up to 30th September, 2009 are valid, whether or not they have been specifically empowered by the CBDT to issue such warrants. However, with effect from 1st October, 2009, an Additional Director/Additional Commissioner/Joint Director/Joint Commissioner can issue warrant of authorization only if he has been specifically empowered to do so by the CBDT.

**17.** An alternate dispute resolution mechanism which will aid speedy resolution of disputes on a fast track basis has now been provided for under the Income-tax Act. The significant features of the alternate dispute resolution mechanism are briefed hereunder –

(1) The Assessing Officer shall, forward a draft order of assessment to the eligible assessee if he proposes to make, on or after 1st October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

"Eligible assessee" means,-

(i) any person in whose case such variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(ii) any foreign company.

(2) The eligible assessee shall, within thirty days of the receipt by him of the draft order,-

(a) file his acceptance of the variations to the Assessing Officer; or

(b) file his objections, if any, to such variation with,—

(i) The Dispute Resolution Panel; and

(ii) The Assessing Officer.

"Dispute Resolution Panel" means a collegium comprising of three commissioners of Income-tax constituted by the CBDT for this purpose.

(3) The Assessing Officer has to complete the assessment on the basis of the draft order, if —

(a) the assessee intimates the acceptance of the variation to the Assessing Officer; or

(b) no objections are received within the period of 30 days specified in (2) above.

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections expires.

(5) The Dispute Resolution Panel shall, in a case where any objections are received, issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue such directions, after considering the following, namely:—

(a) Draft order;

(b) Objections filed by the assessee;

(c) Evidence furnished by the assessee;

(d) Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) Records relating to the draft order;

(f) Evidence collected by, or caused to be collected by, it; and

(g) Result of any enquiry made by, or caused to be made by it.

(7) The Dispute Resolution Panel may, before issuing any such directions -

(a) make such further enquiry, as it thinks fit; or

(b) cause any further enquiry to be made by any income tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order. However, it cannot set aside any proposed variation or issue any direction as mentioned in (5) above, for further enquiry and passing of the assessment order.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) If any direction is prejudicial to the interest of the assessee or the interest of the revenue, then, the same can be issued only after an opportunity of being heard is given to the assessee or the Assessing Officer, as the case may be.

(12) Such direction has to be issued within nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of such direction, the Assessing Officer has to complete the assessment in accordance with the same, within one month from the end of the month in which the direction is received. There is no requirement of providing any further opportunity of being heard to the assessee,

(14) The CBDT is empowered to make rules for the efficient functioning of the Dispute Resolution Panel and speedy resolution of the objections filed by the eligible assessee.

**18.** The definition of "work" under section 194C has been amended to resolve the issue as to whether outsourcing constitutes work or not. Accordingly, as per the new definition, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a contract for 'sale'. Therefore, if a product is manufactured for A using the raw material purchased from B, it would be a contract from 'sale' and not a works contract.

It may be noted that the term "work" would include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. Therefore, if a product is manufactured for A using the raw material purchased from A himself, it would fall within the definition of work under section 194C.

In such a case, tax shall be deducted on the invoice value excluding the value of material purchased from A if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value.

**19.** Mr.X, who is aggrieved by the order of the Assessing Officer under section 143(3) read with section 147 passed on 1.8.2009, had moved an application for revision of order under section 264 on 17.8.2009. The order passed by the Assessing Officer under section 143(3) read with section 147 is an order appellable before the Commissioner (Appeals). The time limit for filing an appeal is 30 days from the date of order i.e. upto 31.8.2009. This time limit had not expired on 17.8.2009 and Mr.X had also not waived his right of appeal while filing the application for revision on 17.8.2009 before the Commissioner of Income-tax. The application filed before the Commissioner of Income-tax for revision under section 264 by Mr.X will only be considered when the conditions specified under section 264(4) have been complied with. One of the conditions is that the Commissioner shall not revise any order where an appeal against the order lies to the Commissioner (Appeals) or Appellate Tribunal and the time within which such appeal may be made has not expired, unless Mr.X has waived his right of appeal. In the present case, the time limit had not expired on 17.8.2009 and Mr.X had also not waived the right

of appeal while filing the application for revision before the Commissioner of Income-tax on 17.8.2009 under section 264. Therefore, the Commissioner's refusal to entertain such application is correct.

**20.** *Explanation 5A* to section 271(1) is applicable in respect of searches conducted on or after 1st June, 2007. This *Explanation* provides that where an assessee is found to be the owner of any –

– asset and he claims that such assets have been acquired by him by utilizing his income for any previous year; or

– income based on any entry in the books of account or documents or transactions and he claims that such entry represents his income for any previous year,

which has ended before the date of the search and the due date for filing of the return has expired and return has not been filed, such income would be deemed to be concealed income, even if such income is declared in the return of income filed on or after the date of search.

The scope of *Explanation 5A* has been expanded retrospectively w.e.f. 1st June, 2007 to cover cases where the assessee has filed the return of income for any previous year before the date of search and the income found during the course of search relating the such previous year is not disclosed in the return of income. In such cases also, the assessee would be deemed to have concealed the particulars of income and would be liable for penalty under section 271.

The provisions of penalty covered under *Explanation 5A* to section 271(1) in respect of search initiated on or after 1.6.2007 is summarized in the table below –

| | **Relevant previous year** | **Penalty** |
|---|---|---|
| (1) | Previous year which has ended before the date of search, in respect of which the due date has expired, but the return has not been furnished.<br>For example, in respect of P.Y.2009-10, if the date of search is 15.11.2010, then the previous year has ended before that date (i.e., on 31.3.2010) and the due date of filing return (31.7.2010/30.9.2010, as the case may be) has also expired, but the return has not been furnished. In such a case, penalty would be attracted under this section. | 100% to 300% of the tax sought to be evaded. |
| (2) | Previous year which has ended before the date of search, in respect of which return has been furnished, but income found during the search has not been disclosed in the return. In such a case also, penalty would be attracted under this section. | 100% to 300% of the tax sought to be evaded. |

**21.** Section 90(1) provides that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India, -

(a) for the granting of relief in respect of -

(i) income on which income-tax has been paid both in India and in that country or specified territory; or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory to promote mutual economic relations, trade and investment; or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory; or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory or investigation of cases of such evasion or avoidance; or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory.

**22.** Section 282 has been substituted w.e.f. 1.10.2009 to provide that 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 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.

**23.** As per section 3, wealth-tax liability is attracted in the hands of every individual, HUF and company at the rate of 1% of the net wealth in excess of Rs.15 lakh. This limit was fixed way back in 1992. Accordingly, in order to provide for inflation-adjustment, the limit has now been enhanced by the Finance (No.2) Act, 2009 to Rs.30 lakh for the valuation of net wealth as on 31.3.2010 and thereafter.

**24. Valuation of house property at Mumbai of Ms. Poorna on valuation date 31.3.2010**

| **Particulars** | **Rs.** |
|---|---|
| Actual Rent (Rs.45,000 x 12) | 5,40,000 |
| *Add:* (i) Municipal taxes borne by the tenant (4% of Rs.6 lakh) | 24,000 |
| (ii) Repairs borne by the tenant - 1/9$^{th}$ of actual rent received | 60,000 |
| (iii) 15% of amount of deposit of Rs.2 lakh | 30,000 |
| **Annual Rent** | **6,54,000** |

The annual rent so worked out has to be compared with the municipal value and the

higher of the two has to be adopted as Gross Maintainable Rent. The municipal value is Rs.6,00,000 whereas the annual rent works out to Rs.6,54,000. Therefore, the annual rent is higher and shall be adopted for calculating the Net Maintainable Rent.

| **Computation of Net Maintainable Rent (NMR)** | | **Rs.** |
|---|---|---|
| Gross Maintainable Rent, being the annual rent | | 6,54,000 |
| *Less:* Corporation Tax (10% of Rs.6 lakh) | 60,000 | |
| 15% of Gross Maintainable Rent | 98,100 | 1,58,100 |
| **Net Maintainable Rent (NMR)** | | **4,95,900** |

| **Capitalised value of NMR** | | |
|---|---|---|
| Capitalised value (Rs.4,95,900 × 8) | 39,67,200 | |
| Cost of acquisition | 40,00,000 | |
| Capitalised value is the higher of the above | | 40,00,000 |

Therefore, the value of house property on valuation date 31.3.2010 is Rs.40 lakh.

**25. Computation of net wealth of Bentac Constructions Ltd. for A.Y.2010-11**

| | **Particulars** | **Rs. in lacs** |
|---|---|---|
| **Assets [as per the definition of assets under section 2(ea)]** | | |
| (i) | Land in urban area (held as stock in trade since 1998) – taxable since it is held as stock-in-trade for more than 10 years | 67 |
| (ii) | Motor cars (excluding imported car not being an asset since it is used for hiring) [43 lac – 32 lac] | 11 |
| (iii) | Land at Ghaziabad township – Since the assessee is engaged in construction business, land and building would form part of his stock-in-trade. Hence, not taxable. | Nil |
| (iv) | (a) Residential flat provided to an employee drawing salary less than Rs.5 lacs per annum – not an asset | Nil |
| | (b) Residential flat provided to an employee drawing salary exceeding Rs.5 lacs per annum is an asset [22 × 1/2] | 11 |
| (v) | Farm house at a remote village is not an asset as it is not situated within 25 km of a municipality | Nil |
| (vi) | Cash in hand as per cash book is not an asset since it represents cash recorded in the books | Nil |
| | | **89** |

| | | | |
|---|---|---|---|
| ***Less:*** **Liabilities** | | | |
| (i) | Loan for purchase of land in urban area – deductible since it is incurred in relation to land in urban area, which is an asset chargeable to wealth-tax. | 45 | |
| (ii) | Loan for purchase of land at Ghaziabad – not deductible since the land, being stock-in-trade, is not an asset under section 2(ea). | Nil | |
| (iii) | Wealth-tax liability for A.Y.2009-10 – wealth tax liability is not deductible | Nil | |
| (iv) | Loan for construction of residential flats - the portion relating to taxable asset (1/2) is deductible i.e. $\frac{1}{2} \times 14$lacs | 7 | 52 |
| **Net Wealth** | | | **37** |

## IMPORTANT CIRCULARS/NOTIFICATIONS ISSUED BETWEEN 1.5.2009 AND 31.10.2009

### I CIRCULARS

### 1. Circular No. 4/2009, dated 29.6.2009

Section 195 mandates deduction of income tax from payments made or credit given to non-residents at the rates in force. The Reserve Bank of India has also mandated that except in the case of certain personal remittances which have been specifically exempted, no remittance shall be made to a non-resident unless a no objection certificate has been obtained from the Income Tax Department. This was modified to allow such remittances without insisting on a no objection certificate from the Income Tax Department, if the person making the remittance furnishes an undertaking (addressed to the Assessing Officer) accompanied by a certificate from an Accountant in a specified format. The certificate and undertaking are to be submitted (in duplicate) to the Reserve Bank of India / authorised dealers who in turn are required to forward a copy to the Assessing Officer concerned. The purpose of the undertaking and the certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at a later stage from non-residents.

There has been a substantial increase in foreign remittances, making the manual handling and tracking of certificates difficult. To monitor and track transactions in a timely manner, section 195 was amended vide Finance Act, 2008 to allow CBDT to prescribe rules for electronic filing of the undertaking. The format of the undertaking (Form 15CA) which is to be filed electronically and the format of the certificate of the Accountant (Form 15CB) have been notified vide Rule 37BB of the Income-tax Rules, 1962.

The revised procedure for furnishing information regarding remittances being made to non-residents w.e.f. 1st July, 2009 is as follows:-

(i) The person making the payment (remitter) will obtain a certificate from an accountant (other than employee) as defined in the Explanation to section 288 in Form 15CB.

(ii) The remitter will then access the website to electronically upload the remittance details to the Department in Form 15CA (undertaking). The information to be furnished in Form 15CA is to be filled using the information contained in Form 15CB (certificate).

(iii) The remitter will then take a print out of this filled up Form 15CA (which will bear an acknowledgement number generated by the system) and sign it. Form 15CA (undertaking) can be signed by the person authorised to sign the return of income of the remitter or a person so authorised by him in writing.

(iv) The duly signed Form 15CA (undertaking) and Form 15CB (certificate), will be submitted in duplicate to the Reserve Bank of India / authorized dealer. The Reserve Bank of India / authorized dealer will in turn forward a copy of the certificate and undertaking to the Assessing Officer concerned.

(v) A remitter who has obtained a certificate from the Assessing Officer regarding the rate at or amount on which the tax is to be deducted is not required to obtain a certificate from the Accountant in Form 15CB. However, he is required to furnish information in Form 15CA (undertaking) and submit it along with a copy of the certificate from the Assessing Officer as per the procedure mentioned from Sl.No.(i) to (iv) above.

**2. Circular No. 5/2009, dated 2.7.2009**

The CBDT has issued this circular in supercession to all circulars and instructions issued by it relating to the procedure for representation before the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). This circular prescribes the following procedure to be followed before the BIFR and AAIFR in respect of granting income-tax reliefs/concessions to be given to sick companies for its rehabilitation under the Sick Industrial Companies (SICA) Act, 1985.

(i) The Director General Income Tax (Administration), [DGIT (Admn.)] will be the Nodal agency for co-ordination between the BIFR and the CBDT and between the AAIFR and the CBDT.

(ii) It will be the responsibility of DGIT (Admn.) to represent the CBDT before BIFR and AAIFR in every case in which income-tax reliefs is sought under the Draft Rehabilitation Scheme or in the Sanctioned Scheme circulated by BIFR/AAIFR.

(iii) The DGIT (Admn.) will consider each case of income-tax reliefs/concessions under the Direct Tax Laws on merits of each individual case for the purpose of consent as contemplated in section 19(2) of the SICA, 1985. In cases where the company and the Assessing Officer have quantified the income-tax reliefs, the DGIT (Admn.) will

communicate the consent or denial of consent to BIFR at the time of hearing itself after obtaining the approval of CBDT. Where the information from the company and the Assessing Officer is incomplete, the DGIT (Admn.) will obtain the necessary information from the concerned parties and put up the file for the consideration of CBDT and subsequently intimate the BIFR.

(iv) It is the responsibility of DGIT (Admn.) to obtain the approval of CBDT in every case in which income-tax relief/concessions is sought and to communicate the approval of CBDT to BIFR and the concerned Assessing Officer. The decision thus communicated by the DGIT (Admn.) on behalf of the CBDT is binding on all Assessing Officers.

(v) The Assessing Officer should give the income-tax reliefs to sick companies only after obtaining the approval as mentioned above. In cases where BIFR/AAIFR is taking a different view from that of the CBDT, it will be the responsibility of DGIT (Admn.) to file appeal before the appellate authority (AAIFR) or before the Delhi High Court, as the case may be. It is also hereby clarified that in cases where the sick companies file appeals against the order of BIFR/AAIFR in any of the High Court other than Delhi High Court, it will be the responsibility of concerned Chief Commissioner of Income Tax (Administration) to defend the case in the respective High Court.

### 3. Circular No. 7/2009 dated 22.10.2009

The CBDT has, through this circular, withdrawn the following circulars:

a) Circular No. 23 issued on 23rd July 1969 regarding taxability of income accruing or arising through, or from, business connection in India to a non-resident, under section 9 of the Income-tax Act, 1961.

b) Circulars No. 163 dated 29th May, 1975 and No.786 dated 7th February, 2000 which provided clarification in respect of certain provisions of Circular No 23 dated 23rd July, 1969.

## II NOTIFICATIONS

### 1. Notification No. 67/2009 dated 9.9.2009

The Central Government has, vide notification no.67/2009 dated 9.9.2009, specified the cost inflation index(CII) for the financial year 2009-10. The CII for F.Y. 2009-10 is 632.

| S. No. | Financial Year | Cost Inflation Index |
|---|---|---|
| 1. | 1981-82 | 100 |
| 2. | 1982-83 | 109 |
| 3. | 1983-84 | 116 |
| 4. | 1984-85 | 125 |
| 5. | 1985-86 | 133 |
| 6. | 1986-87 | 140 |

| | | |
|---|---|---|
| 7. | 1987-88 | 150 |
| 8. | 1988-89 | 161 |
| 9. | 1989-90 | 172 |
| 10. | 1990-91 | 182 |
| 11. | 1991-92 | 199 |
| 12. | 1992-93 | 223 |
| 13. | 1993-94 | 244 |
| 14. | 1994-95 | 259 |
| 15. | 1995-96 | 281 |
| 16. | 1996-97 | 305 |
| 17. | 1997-98 | 331 |
| 18. | 1998-99 | 351 |
| 19. | 1999-2000 | 389 |
| 20. | 2000-01 | 406 |
| 21. | 2001-02 | 426 |
| 22. | 2002-03 | 447 |
| 23. | 2003-04 | 463 |
| 24. | 2004-05 | 480 |
| 25. | 2005-06 | 497 |
| 26. | 2006-07 | 519 |
| 27. | 2007-08 | 551 |
| 28. | 2008-09 | 582 |
| 29. | 2009-10 | 632 |

**2. Notification No. 70/2009, dated 22.9.2009**

The CBDT has, in exercise of the powers conferred by section 139(1B), made an amendment in the notification of the Government of India relating to qualifications of an e-Return intermediary. The qualifications of an e-Return Intermediary, as amended, are detailed hereunder -

(1) An e-Return Intermediary shall have the following qualifications, namely:-

(a) it must be a public sector company as defined in section 2(36A) of the Act or any other company in which public are substantially interested within the meaning of section 2(18) of the Act and any subsidiary of those companies; or

(b) a company incorporated in India, including a bank, having a net worth of rupees one crore or more; or

(c) a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or

(d) a Chartered Accountants or Company Secretaries or Advocates or Tax Return Preparers, if he has been allotted a permanent account number; or

(e) a Drawing or Disbursing Officer (DDO) of a Government Department.

(2) The e-intermediary shall have at least class II digital signature certificate from any of the Certifying authorities authorized to issue such certificates by the Controller of Certifying authorities appointed under section 17 of the Information Technology Act, 2002.

(3) The e-intermediary shall have in place security procedure to the satisfaction of e-Return Administrator to ensure that confidentiality of the assessees information is properly secured.

(4) The e-intermediary shall have necessary archival, retrieval and, security policy for the e-Returns which will be filed through him, as decided by e-Return Administrator from time to time.

(5) The e-intermediary or its Principal Officer must not have been convicted for any professional misconduct, fraud, embezzlement or any criminal offence.