

PAPER – 7 : DIRECT TAX LAWS
QUESTIONS

1. Basic Concepts

Define the following terms as per the Income-tax Act, 1961 –

- (a) Manufacture; and
- (b) Charitable Purpose

2. Residential Status and Scope of total income

Arjun who works as a Finance Controller of ABC Ltd., Mumbai, had undertaken foreign tour (work related) several times during the P.Y.2009-10. The total number of days he stayed outside India during the said previous year is 300. He claims that he is a non-resident for the A.Y.2010-11. Is his claim valid if his stay in India during each of the ten previous years is 100? Discuss.

3. Incomes which do not form part of total income

An educational institution having annual receipts of Rs.1.20 crore during the P.Y.2009-10, has to make an application to the prescribed authority before 31.3.2010 for claiming tax exemption under section 10(23C) for A.Y. 2010-11 - Discuss the correctness or otherwise of this statement.

4. Charitable or religious trusts and institutions

A charitable trust received anonymous donation of Rs.10 lakh during the P.Y.2009-10. It seeks your opinion on the taxability of such anonymous donation. The total donations received by the trust during the P.Y.2009-10 is Rs.25 lakh.

5. Salaries

Mr.X is a Member of Legislative Assembly. He underwent an open heart surgery abroad in respect of which he received Rs.5 lakh from the State Government towards reimbursement of his medical expenses. The Assessing Officer contended that such amount is taxable as a perquisite under section 17. Discuss the correctness of the contention of the Assessing Officer.

6. Income from house property

Ram derives income from house property by letting out the ground floor of his house. He uses the first floor for self-occupation. He also derived income of Rs.35,000 on account of display of advertisement hoardings of various concerns on the roof of the building. He claims that the amount of Rs.35,000 is chargeable under the head "Income from house property" and he would be eligible for deduction of 30% under section 24. Discuss the correctness of his claim.

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

Elucidate the following statement -

"The Finance (No.2) Act, 2009 has expanded the scope of deduction under the following sections -

- (a) Section 80CCD;
- (b) Section 80E; and
- (c) Section 80-IB(11A)."

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

“Where income chargeable to tax has escaped assessment, the Assessing Officer can assess and reassess, under section 147, only such income in respect of which he has recorded reasons for reopening the assessment” – Discuss the correctness or otherwise of this statement.

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

A search was conducted on the premises of Mr.X on 28th October, 2009 and assets worth Rs.30 lakh were found, which Mr.X claimed were acquired by utilizing his income for the previous year 2008-09. Such income was however not disclosed by Mr.X in his return of income for A.Y.2009-10, filed by him on 29th September, 2009. Mr.X claims that he is not liable for penalty under section 271. Discuss the validity of Mr.X’s claim.

21. Double Taxation Relief

The Income-tax Act, 1961 provides for taxation of certain income earned by Mr. Suresh. The Double Taxation Avoidance Agreement, which applies to Mr. Suresh excludes the income earned by Mr. Suresh from the purview of tax. Discuss whether Mr. Suresh is liable to pay tax on such income.

22. Miscellaneous Provisions

“Any summons under the Income-tax Act has to be delivered only in such manner as provided in the Code of Civil Procedure, 1908 for the purpose of service of summons.” Is this statement correct? Discuss.

23. **Wealth-tax**

What are the circumstances in which the Assessing Officer can refer valuation of an asset to the Valuation Officer?

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. (a) Section 2(29BA) provides that 'manufacture', with all its grammatical variations, shall mean a change in a non-living physical object or article or thing,—
- (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or
 - (b) bringing into existence of a new object or article or thing with a different chemical composition or integral structure.
- (b) Section 2(15) defines "charitable purpose" to include relief of the poor, education, medical relief, *preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest* 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.

2. In the given case, Arjun is employed in India and he undertakes foreign tours for the company's work outside India. He stays outside India for 300 days during the previous year. As per section 6, an individual is treated as resident if he has stayed for 182 days in India during the previous year or if he has stayed for 60 days in the current previous year and 365 days in total during the four preceding previous years. In this case, Arjun satisfies the second condition and therefore, he is a resident for A.Y.2010-11.

The exception that when an individual leaves abroad for the purposes of employment outside India, he shall be regarded as a non-resident unless he stays for 182 days in India during the current previous year does not apply to Arjun since he has not left India for taking up any employment outside India. Therefore, Arjun cannot claim that he is a non-resident for A.Y.2010-11.

3. This statement is not correct.

This position has changed consequent to an amendment in section 10(23C) by the Finance (No.2) Act, 2009. Prior to such amendment, an educational institution having annual receipts of more than rupees one crore, had to make an application for seeking exemption at any time during the financial year for which the exemption is sought. Therefore, an eligible educational institution is required to estimate its annual receipts for deciding whether or not to file an application for exemption. This resulted in genuine hardship, for alleviating which, the time limit for filing such application has been extended from 31st March to 30th September of the succeeding financial year.

Therefore, in the given case, the educational institution (having annual receipts of

Rs.1.20 crore during the P.Y.2009-10) can make an application for grant of exemption in the prescribed form to the prescribed authority on or before 30th September, 2010.

4. Anonymous donations received by wholly charitable trusts and institutions are subject to tax at a flat rate of 30% under section 115BBC. In order to provide relief to these trusts and institutions and to reduce their compliance burden, an exemption limit has been introduced, and only the anonymous donations in excess of this limit would be subject to tax@30% under section 115BBC.

The exemption limit is the higher of the following –

- (1) 5% of the total donations received by the assessee; or
- (2) Rs.1 lakh.

The total tax payable by such institutions would be –

- (1) tax@30% on anonymous donations exceeding the exemption limit as calculated above; and
- (2) tax on the balance income i.e. total income as reduced by the aggregate of anonymous donations received.

Therefore, in this case, the charitable trust would be eligible for an exemption of Rs.1,25,000 [the higher of Rs.1,00,000 and Rs.1,25,000 (i.e., 5% of Rs.25 lakh)]. The balance anonymous donation of Rs.8,75,000 (i.e. Rs.10,00,000 minus Rs.1,25,000) would be taxable at 30%. The tax liability under section 115BBC on anonymous donations would be Rs.2,62,500 (being 30% of Rs.8,75,000).

5. The facts of this case are similar to the facts in *CIT v. Shiv Charan Mathur (2008) 306 ITR 0126 (Raj.)*. The High Court observed that MPs and MLAs are not employed by anybody. They are elected by the public, their election constituencies and it is consequent upon such election that they acquire constitutional position and are in charge of constitutional functions and obligations. The remuneration received by them, after swearing in, cannot be said to be salary within the meaning of section 15, since the basic ingredient of employer-employee relationship is missing in such cases.

Therefore, the remuneration received by MPs and MLAs are taxable under the head “Income from Other Sources” and not under the head “Salaries”. When the provisions of section 15 are not attracted to the remuneration received by MPs and MLAs, the provisions of section 17 also would not apply as section 17 only extends the definition of salary by providing that certain items mentioned therein would be included in salary as “perquisites”. Thus, reimbursement of medical expenditure (incurred for open heart surgery abroad) to an MLA cannot be taxed as a perquisite under section 17.

Applying the above ruling to the case on hand, the contention of the Assessing Officer is not correct.

6. Hoardings on the roof of a building cannot be treated as part of the building. Hence, the amount realized will not be assessable to tax as income from house property. In *Mukerji Estate (P) Ltd. v. CIT (2000) 244 ITR 1*, the Calcutta High Court held that the amount realized by allowing hoardings on the top of the building is chargeable to tax under the head "Income from other sources".

Therefore, the claim of Ram, in this case is incorrect. He cannot treat the amount of Rs.35,000 as income from house property and claim deduction of 30% under section 24. The amount of Rs.35,000 is assessable under the head "Income from Other Sources".

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	<u>32 lakh</u>
Total deduction under section 35AD for A.Y.2010-11	<u>67 lakh</u>

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 19 th June, 2009 is not taxable since only gift of property after 1 st 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 1 st 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
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) Section 80CCD provides for deduction of employee's and employer's contribution to New Pension System notified by the Central Government. However, if the amount contributed exceeds 10% of salary, then the deduction would be restricted to 10% of salary. This restriction is applicable both in the case of employee's contribution and employer's contribution to such scheme.

Prior to amendment by the Finance (No.2) Act, 2009, the benefit of deduction under this section was available only to individuals employed by the Central Government or any other employer on or after 1.1.2004. This deduction is now extended also to self-employed individuals. The deduction in the case of a self-employed individual would be restricted to 10% of his gross total income in the previous year.

- (b) Prior to the amendment by the Finance (No.2) Act, 2009, the deduction under section 80E 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.

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.

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.

- (c) An undertaking deriving profit from the business of processing, preservation and packaging of fruits and vegetables or from the integrated business of handling, storage and transportation of foodgrains is eligible for deduction under section 80-IB(11A).

The amount of deduction shall be 100% of the profits and gains derived from such business for 5 assessment years beginning with the initial assessment year i.e. the assessment year relevant to the previous year in which the undertaking begins such business. Thereafter, the deduction allowable is 25% (30% in the case of a company). The total period of deduction should not exceed 10 consecutive assessment years.

The benefit of deduction under section 80-IB(11A) has now been extended to an undertaking deriving profit from the business of processing, preservation and packaging of meat and meat products or poultry or marine or dairy products, if it begins to operate such business on or after 1.4.2009

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

	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 depreciation 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	<u>1,23,600</u>
Tax credit to be carried forward	<u>11,900</u>

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. This statement is not correct.

As per section 147, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income after recording reasons for re-opening the assessment. Further, he may also assess or reassess any other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section.

However, few Courts have ruled that the Assessing Officer has to confine the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He cannot extend the proceedings to issues for which no reasons have been recorded. This interpretation, however, does not reflect the correct legislative intent.

Therefore, in order to clarify the true legislative intent, Explanation 3 has been inserted in section 147 to provide that the Assessing Officer may assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under this section, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

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.

Therefore, by virtue of this amendment to *Explanation 5A* to section 271(1), M.X is liable to pay penalty under section 271(1), which is 100% to 300% of the tax sought to be evaded. The claim of Mr.X that he is not liable for penalty under section 271 is, therefore, not valid.

- 21.** Section 90 provides that where the Central Government has entered into any Double Taxation Avoidance Agreement (DTAA) with another country, then the provisions of that agreement would normally apply to the case of an assessee who is covered by such agreement. However, if the provisions under the Income-tax Act are more beneficial, then to that extent, the provisions of the Income-tax Act would apply as against the provisions of the DTAA. In *CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654*, the Supreme Court held that the DTAA will always prevail over the charging section 5 of the Income-tax Act. Therefore, in the given case, Mr. Suresh is not liable to pay tax on income earned since the DTAA excludes such income from taxation.
- 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.

Therefore, there is no restriction that the summons under the Income-tax Act have to be delivered only in such manner as provided in the Code of Civil Procedure, 1908 for the purpose of service of summons. Hence, the statement is not correct.

- 23.** Section 16A provides that the Assessing Officer may refer valuation of any asset under the following circumstances:
- (i) In a case where the value of the asset as returned is in accordance with the estimate by a registered valuer, if the Assessing Officer is of the opinion that the value so returned is less than the fair market value (FMV).
 - (ii) In any other case, if the Assessing Officer is of the opinion:

- that the fair market value of the asset exceeds by $33\frac{1}{3}\%$ or Rs.50,000 over the value of such asset as declared by the assessee in his return; or
- that having regard to the nature of the asset and the other relevant circumstances, it is necessary to make a reference.

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 - $\frac{1}{9}$ 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
Net Maintainable Rent (NMR)	4,95,900

Capitalised value of NMR

Capitalised value (Rs.4,95,900 x 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 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 with immediate effect:

- 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, through this notification, made an amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), vide S.O. 1281(E) dated the 27th July, 2007, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), with effect from 27th July, 2007 (i.e. the date on which the Scheme came into force).

In the said notification, for para 5, the following para has been substituted, namely:-

Qualifications of an e-Return Intermediary

- (1) An e-Return Intermediary shall have the following qualifications, namely:-
- 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
 - a company incorporated in India, including a bank, having a net worth of rupees one crore or more; or
 - a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or
 - a Chartered Accountants or Company Secretaries or Advocates or Tax Return Preparers, if he has been allotted a permanent account number; or
 - 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 assessee's 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.