<u>**Direct tax answer key**</u>

1a)

Section 54G deals with deduction in respect of any capital gain that may arise from the transfer of an industrial undertaking situated in an urban area in the course of or in consequence of shifting to a non-urban area.

If the assessee purchases new machinery or plant or acquires a building or land or constructs a new building or shifts the original asset and transfers the establishment to the new area, within 1 year before or 3 years after the date on which the transfer takes place, then, instead of the capital gain being charged to tax, it shall be dealt with as under:

1. If the capital gain is greater than the cost of the new asset, the difference between the capital gain and the cost of the new asset shall be chargeable as income 'under section 45'.

2. If the total gain is equal to or less than the cost of the new asset, section 45 is not to be applied.

The capital assets referred to in section 54G are machinery or plant or land or building or any rights in building or land. Capital gain arising on transfer of furniture does not qualify for exemption under section 54G. No exemption is therefore available under section 54G in respect of investment of ₹ 2 lacs in acquiring furniture.

The first step therefore is to determine the capital gain arising out of the transfer and thereafter apply the provisions of section 54G.

	Particulars	₹
(a)	**Land** – Sale proceeds (Non-depreciable asset)	8,00,000
	Less: Indexed cost of acquisition	4,00,000

	Long term capital gain	4,00,000
	Less: Cost of new assets purchased within three year after the date of transfer (under section 54G)	3,00,000
	Taxable Long term capital gain	**1,00,000**
(b)	**Building** – sale proceeds (depreciable assets)	18,00,000
	Less: W.D.V. is deemed as cost of acquisition under section 50	4,00,000
	Short term capital gain	**14,00,000**
(c)	**Plant & machinery-** sale proceeds (depreciable asset)	16,00,000
	Less: WDV is deemed cost under section 50	5,00,000
	Short term capital gain	**11,00,000**
(d)	**Furniture -** sale proceeds (depreciable asset)	3,00,000
	Less: WDV is deemed cost under section 50	2,00,000
	Short term capital gain **(A)**	**1,00,000**
Summary		
Short term capital gain : Building		14,00,000
Short term capital gain : Plant & machinery		11,00,000
		25,00,000
Less: Section 54G [New assets purchased] **(See Note below)**		25,00,000
Net short term capital gain **(B)**		**Nil**
Total short term capital gain (A)+(B) = ₹ 1 lac		

Note – Total exemption available under section 54G is ₹ 28 lacs (₹ 4 lacs + ₹ 7 lacs + ₹ 17 lacs). The exemption should first be exhausted against short term capital gain as the incidence of tax in case of short-term capital gain is more than in case of long term capital gain. Therefore, ₹ 25 lacs is exhausted against short term capital gain and the balance of ₹ 3 lacs against long term capital gain.

The taxable capital gains would be:

Long term capital gains	₹ 1,00,000 (taxable @ 20% under section 112)
Short term capital gains (furniture)	₹ 1,00,000 (taxable @30%)
	₹ 2,00,000

1b)

Computation of business income and agricultural income of Ms. Vivitha for the A.Y.2018-19

Sr. No.	Source of income	Gross (₹)	Business income		Agricultural income
			%	₹	₹
(i)	Sale of centrifuged latex from rubber plants grown in India.	3,00,000	35%	1,05,000	**1,95,000**
(ii)	Sale of coffee grown and cured in India.	1,00,000	25%	25,000	**75,000**
(iii)	Sale of coffee grown, cured, roasted and grounded outside India. **(See Note 1 below)**	2,50,000	100%	2,50,000	**-**
(iv)	Sale of tea grown and manufactured in India	4,00,000	40%	1,60,000	**2,40,000**
(v)	Saplings and seedlings grown in nursery in India **(See Note 2 below)**	80,000		Nil	**80,000**
	Total			**5,40,000**	**5,90,000**

Notes:

1. Where income is derived from sale of coffee grown, cured, roasted and grounded by the seller in India, 40% of such income is taken as business income and the balance as agricultural income. However, in this question, these operations are done in Colombo, Sri lanka. Hence, there is no question of such apportionment and the whole income is taxable as business income. Receipt of sale proceeds in India does not make this agricultural income. In the case of an assessee, being a resident and ordinarily resident, the income arising outside India is also chargeable to tax.

2. *Explanation 3* to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery would be deemed to be agricultural income whether or not the basic operations were carried out on land.

1c)

Computation of Income of Pingu Trading Pvt. Ltd. chargeable to tax for the A.Y.2018-19

Particulars	₹
Net profit as per profit and loss account	33,90,000

Add:	Difference in the value of stocks detected on survey under section 133A on 31.03.2018 chargeable as income **(See Note 1)**	3,75,000
		37,65,000
Less:	Income-tax refund credited in the profit and loss account, out of which interest is to be considered separately under the head "Income from other sources"	20,000
		37,45,000
Add:	**Expenses either not allowable or to be considered separately but charged in the profit & loss account**	
	Repair expenses on rented premises where assessee is under no obligation to incur such expenses are not allowable as per section 30(a)(i). However, if such expenses are required for carrying on the business efficiently, the same are allowable under section 37. In this case, assuming that such expenses are required for carrying on business efficiently, the same are allowable under section 37.	
	Advertisement in the souvenir of political party not allowable as per section 37(2B) **(See Note 3)**	2,500
	Payment made to the wife of a director examined as per section 40A(2) and the excess payment made to be disallowed **(See Note 5)**	75,000
	Payment made to electoral trust by cheque **(See Note 6)**	1,00,000
	Penalty levied by the Goods and Services tax department for delayed filing of returns not allowable as being paid for infraction of law **(See Note 7)**	5,300
	Depreciation as per books	71,500
	30% of interest paid on loan without deduction of tax at source not allowable as per section 40(a)(ia)	24,000
		40,23,300
Less:	Depreciation allowable as per Income-tax Act, 1961	65,000
		39,58,300
Less:	**Income from specified business (warehousing charges) credited to profit and loss account, to be considered separately** (See Note 8)	15,00,000

Income from business (other than specified business)		**24,58,300**
Computation of income/loss from specified business (See Note 8)		
Income from specified business	₹ 15,00,000	
Less: Deduction under section 35AD @ 100% of ₹25 lakhs	₹ 25,00,000	
Loss from specified business to be carried forward as per section 73A	**(10,00,000)**	
Income from Other Sources		
Interest on income-tax refund		4,570
Gross Total Income		**24,62,870**
Less: **Deduction under section 80GGB**		
Contribution to political party **(See Note 3)**	₹ 2,500	
Contribution to an Electoral trust **(See Note 7)**	₹ 1,00,000	1,02,500
Total Income		**23,60,370**

Notes:

(1) The business premises were surveyed and differences in the figures of opening and closing stocks and sales were found which have not been disputed and accepted by the assessee. Therefore, the trading account for the year is to be re-cast to arrive at the correct amount of the gross profit/ net profit for the purpose of return of income to be filed for the previous year ended on 31.3.2018.

REVISED TRADING ACCOUNT

Particular	₹	Particular	₹
Opening Stock	8,75,000	Sales (₹ 1,55,50,000 +₹ 75,000)	**1,56,25,000**
Purchases	1,25,75,000	Closing Stock	**12,50,000**
Freight and Cartage	1,26,000		
Gross Profit	32,99,000		
	1,68,75,000		1,68,75,000

The difference of gross profit of ₹ 32,99,000 - ₹ 29,24,000 = ₹ 3,75,000 is to be added as income of the business for the year.

(2) Bonus for the previous year 2016-17 paid after the due date for filing return for that year would have been disallowed under section 43B for the P.Y.2016-17. However, when the same has been paid in December 2017, it should be allowed as deduction in the P.Y.2017-18(A.Y.2018-19). Since it is already included in the figure of bonus to staff debited to profit and loss account of this year, no further adjustment is required.

(3) The amount of ₹ 2,500 paid for advertisement in the souvenir issued by a political party attracts disallowance under section 37(2B). However, such expenditure falls within the meaning assigned to "contribute" under section 293A of the Companies Act, 1956, and is hence, eligible for deduction under section 80GGB. Any contribution to the political party or electoral trust made by way of cash is not allowed as deduction under section 80GGB. Since in the present case, the payment to the political party is made by way of an account payee cheque, it is allowed as deduction under section 80GGB.

(4) The penalty of ₹ 15,000 paid for non-fulfilment of delivery conditions of a contract for reasons beyond control is not for the breach of law but was paid for breach of contractual obligations and therefore, is an allowable expense.

(5) It has been assumed that ₹ 25,000 is the reasonable payment for the wife of Director, working as a junior lawyer, since junior advocates of High Courts normally charge only ₹ 25,000 for the same opinion and therefore, the balance ₹ 75,000 has been disallowed.

(6) Payment to an electoral trust qualifies for deduction under section 80GGB since the payment is made by way of a cheque. However, since the amount has been debited to profit and loss account, the same has to be added back for computing business income.

(7) The interest of ₹ 12,750 paid on the delayed deposit of goods and services tax is for breach of contract and hence, is allowable as deduction. However, penalty of ₹ 5,300 for delay in filing of returns is not allowable since it is for breach of law.

(8) Deduction @ 100% of the capital expenditure is available under section 35AD in respect of specified business of setting up and operating a warehouse facility for storage of agricultural produce which commences operation on or after 1.04.2012. It is presumed that ₹ 25 lacs does not include expenditure on acquisition of any land.

The loss from specified business under section 35AD (warehousing) should be segregated from the income from other businesses, since, as per section 73A(1), any loss computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.

In view of the provisions of section 73A(1), the loss of ₹ 10 lacs from the specified business cannot be set-off against income from other businesses. Such loss has to be carried forward to be set-off against profit from specified business in the next assessment year. The return should be filed on or before the due date under section 139(1) for carry forward of such losses.

2)

Computation of total income and tax liability of M/s. LMN for the A.Y. 2018-19

Particulars	Rs.	Rs.
Net profit as per profit & loss account		1,50,000
Add: Interest to partners on capital accounts for the period from 1.4.2017 to 30.9.2017 disallowed (total interest Rs. 1,00,000 but deduction limited to 6 months only hence 50% thereof is deductible and the balance is added) **[Note (i)]**	50,000	
Interest to partners on current accounts from 1.4.2017 to 31.3.2018 – not authorized by the deed, hence disallowed **[Note (ii)]**.	50,000	
100% of Rs. 25,000 paid towards purchase of refrigerators otherwise than by way of account payee cheque, bank draft or through ECS (being stock in trade, hence disallowed) **[Note (iv)]**.	25,000	
Difference on account of valuation of closing stock-in-trade at market value (Rs. 65,000 less Rs. 60,000) **[Note (ix)]**	5,000	
Salary paid to working partners considered separately.	2,50,000	3,80,000
		5,30,000
Less: Additional depreciation on new machinery (Rs. 5,00,000 x 20%) = Rs. 1,00,000. Only 50% is allowable as deduction. **[Note (vii)]**		50,000
		4,80,000
Less: Interest received from bank on fixed deposits considered separately (since not taxable as business income) **[Note (viii)]**		25,000
		4,55,000
Less: Salary to working partners -		
(i) As per limit in section 40(b)		
On first Rs. 3,00,000 @ 90%	2,70,000	
On the balance of Rs. 1,55,000 @ 60%	93,000	
	3,63,000	
(ii) Salary actually paid	2,50,000	
Deduction allowed being (i) or (ii) whichever is less		2,50,000
		2,05,000
Less: Business loss relating to assessment year 2017-18 set off		50,000
Income from business		**1,55,000**
Income from other sources		
Interest received from bank on fixed deposits		25,000
Total Income		**1,80,000**
Tax on total income		
Tax on Rs. 1,80,000 @30%		54,000
Add: Education cess & SHEC @3%		1,620
Tax Liability		**55,620**

Explanation for the treatment of various items

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

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

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

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

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

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

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

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

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

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

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

3a)

Computation of total income of the investment fund for A.Y.2018-19

Particulars	A	B	C
	₹		
Business Income	Nil	2,00,000	Nil
Total Income	**Nil**	**2,00,000**	**Nil**

Computation of total income of a unit holder of the following Investment funds for A.Y. 2018-19

Particulars	A	B	C
	₹		
Capital Gains	80,000	70,000	-
Income from other sources	20,000	20,000	30,000
Total Income	**1,00,000**	**90,000**	**30,000**

Notes:

(i) The total income of Investment Fund B would be chargeable to tax@30% if the fund is a company or firm and at the maximum marginal rate, in any other case.

(ii) In case of Investment Fund C, the business loss of ₹ 2 lakh is set-off against income from other sources of ₹ 8 lakh. Loss of ₹ 6 lakh under the head capital gains cannot be set-off. The same has to be carried forward by the Investment Fund for set-off in the subsequent years.

(iii) For A.Y.2019-20, the brought forward capital loss of ₹ 6 lakh can be set-off against capital gains of ₹ 9 lakh. Business income of ₹ 2 lakh would be taxable in the hands of the Investment Fund. Capital gains of ₹ 3 lakh (₹ 9 lakh – ₹ 6 lakh) and Income from other sources of ₹ 8 lakh would be taxable in the hands of the unit-holders. The total income of each unit holder for A.Y.2019-20 would be ₹ 55,000, comprising of –

Capital gains = ₹ 15,000 [i.e., ₹ 3 lakh/20]

Income from other sources = ₹ 40,000 [i.e., ₹ 8 lakh / 20]

3b)

Computation of total income of M/s. HIG for the A.Y. 2018-19

Particulars	₹	₹
Net profit as per profit & loss account		1,50,000
Add: Interest to partners on capital accounts for the period from 1.4.2017 to 30.9.2017 disallowed (total interest ₹ 1,00,000 but deduction limited to 6 months only hence 50% thereof is deductible and the balance is added) **[Note (i)]**	50,000	
Interest to partners on current accounts from 1.4.2017 to 31.3.2018–not authorized by the deed, hence disallowed **[Note (ii)]**.	50,000	
100% of ₹ 25,000 paid towards purchase of television sets otherwise than by way of account payee cheque (being stock in trade, hence disallowed) **[Note (iv)]**.	25,000	
Difference on account of valuation of closing stock-in-trade at market value (₹ 65,000 less ₹ 60,000) **[Note (ix)]**	5,000	
Salary paid to working partners considered separately.	2,50,000	3,80,000
		5,30,000
Less: Additional depreciation on new machinery (₹ 5,00,000 x 20%) = ₹ 1,00,000. Only 50% is allowable as deduction. **[Note (vii)]**		50,000
		4,80,000
Less: Interest received from bank on fixed deposits considered separately		25,000
		4,55,000
Less: Salary to working partners -		
(i) As per limit in section 40(b)		
On first ₹ 3,00,000 @ 90%	2,70,000	
On the balance of ₹ 1,55,000 @ 60%	93,000	
	3,63,000	
(ii) Salary actually paid	2,50,000	
Deduction allowed being (i) or (ii) whichever is less		2,50,000
		2,05,000
Less: Business loss relating to assessment year 2017-18 set off		50,000
Income from business		**1,55,000**

Income from other sources		
Interest received from bank on fixed deposits		25,000
Total Income		**1,80,000**

Explanation for the treatment of various items

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

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

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

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

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

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

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

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

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

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

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

3c)

Computation of total income of Mathi Charitable Trust for the A.Y.2018-19

Particulars	₹	₹
Gross receipts from Full Cure Hospital		4,00,00,000
Gross receipts from India Arts College		1,80,00,000
		5,80,00,000
Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] **[See Note 1]**		2,25,000
		5,82,25,000
Less: 15% of income eligible for being set apart without any condition[8]		87,33,750
		4,94,91,250
Less: Amount applied for charitable purposes **[See Note 2]**		
- **On revenue account** – Administrative expenses:		
For Hospital	2,20,00,000	
For College	1,00,00,000	
- **On capital account** – Land & Building [Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA]	1,20,00,000	
- Donation to Gandhiji Free Trust registered u/s 12AA – allowable since the same is out of current year income of the trust, even though the objects of the trust are different. Only corpus donations are not permissible to other trusts registered u/s 12AA	25,00,000	4,65,00,000
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		**29,91,250**
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) **[See Note 1]**		7,75,000
Total Income of the trust (including anonymous donation taxable@30%)		**37,66,250**

Computation of tax liability of the trust for the A.Y. 2018-19

Particulars	₹	₹
Tax on total income of ₹ 29,91,250 [Excluding anonymous donations]		
Upto ₹ 2,50,000	Nil	
₹ 2,50,000 – ₹ 5,00,000 [₹2,50,000 x 5%]	12,500	
₹ 5,00,000 – ₹ 10,00,000 [₹5,00,000 x 20%]	1,00,000	
> ₹ 10,00,000 [₹19,91,250 x 30%]	5,97,375	
	7,09,875	
Tax on anonymous donations taxable@30% [₹ 7,75,000 x 30%]	2,32,500	9,42,375
Add: Education cess & SHEC@3%		28,271
Total tax liability		**9,70,646**
Total tax liability (rounded off)		**9,70,650**

Note – In the above solution, the provisions of section 13(7) have been interpreted in a manner that it excludes only anonymous donations subject to tax@30% under section 115BBC(1)(i). All taxable income of the trust [excluding anonymous donations taxable@30% u/s 115BBC(1)(i)] falls under section 115BBC(1)(ii), and are subject to tax at normal rates and eligible for benefit of unconditional accumulation u/s 11(1). Anonymous donation of ₹ 2,25,000 taxable at normal rates also falls under section 115BBC(1)(ii) and hence, like other taxable income of the trust falling within the scope of this clause, the same would also be eligible for the benefit of unconditional accumulation under section 11(1). The above solution has been worked out on the basis of this interpretation of section 13(7), which in fact, appears to be the real intent of this section. Accordingly, in the above solution, the benefit of unconditional accumulation upto 15% under section 11(1) has been given in respect of anonymous donation of ₹ 2,25,000 subject to tax at normal rates.

However, an alternative view is also possible on the basis of the plain reading of section 13(7), as per which anonymous donation referred to in section 115BBC has to be excluded from the purview of exemption under sections 11 and 12. As per this view, even the anonymous donations of ₹ 2,25,000 subject to tax at normal rates would not be eligible for unconditional accumulation of upto 15%.

The alternative answer based on this view is worked out hereunder:

Computation of total income of Mathi Charitable Trust for the A.Y.2018-19

Particulars	₹ In lakhs	₹ In lakhs
Gross receipts from Full Cure Hospital		400
Gross receipts from India Arts College		180
		580

Less: 15% of income eligible for being set apart without any condition[9]		87.00
		493.00
Less: Amount applied for charitable purposes **[See Note 2]**		
- **On revenue account** – Administrative expenses:		
For Hospital	220	
For College	100	
- **On capital account** – Land & Building	120	
[Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA]		
- Donation to Gandhiji Free Trust registered u/s 12AA – allowable since the same is out of current year income of the trust, even though the objects of the trust are different. Only corpus donations are not permissible to other trusts registered u/s 12AA	25	465.00
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		28.00
Add: Anonymous donations chargeable at normal rates [higher of ₹ 2.25 lakhs, being 5% of total donations of Rs.45 lakhs, and ₹ 1 lakh]		2.25
Income chargeable at normal rates		30.25
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) **[See Note 1]**		7.75
Total Income of the trust (including anonymous donation taxable@30%)		**38.00**

Computation of tax liability of the trust for the A.Y. 2018-19

Particulars	₹	₹
Tax on total income of ₹ 30,25,000 [Excluding anonymous donations]		
Upto ₹ 2,50,000	Nil	
₹ 2,50,000 – ₹ 5,00,000 [₹ 2,50,000 x 5%]	12,500	

[9] As per the Supreme Court ruling in *CIT v. Programme for Community Organisation (2001) 116 Taxman 608,* 15% of gross receipts would be eligible for accumulation under section 11(1)(a). However, as per plain reading of section 11(1)(a), 15% of income would be eligible for accumulation.

₹ 5,00,000 – ₹ 10,00,000 [₹ 5,00,000 x 20%]	1,00,000	
> ₹ 10,00,000 [₹ 20,25,000 x 30%]	6,07,500	
	7,20,000	
Tax on anonymous donations taxable@30% [₹ 7,75,000 x 30%]	2,32,500	
		9,52,500
Add: Education cess & SHEC@3%		28,575
Total tax liability		9,81,075
Total tax liability (rounded off)		**9,81,080**

Notes [Common for both views]:

(1)	**Anonymous donations taxable @30%**	₹	₹
	Donations received (lakhs)		10.00
	• 5% of donations received, i.e. 5% of 45 lakhs	2.25	
	• Monetary limit	1.00	
	Higher of the above		2.25
	Anonymous donations taxable@30%		7.75
(2)	Where the cost of assets is claimed as application, no deduction for depreciation on such assets would be allowed in determining income for the purposes of application. Therefore, since cost of assets of the trust has been claimed as application of income, no depreciation would be allowed on these assets while determining income for the purposes of application.		
(3)	Corpus donations, whether received by way of cheque or cash, are not includible in the total income of the trust, as it is registered u/s 12AA.		
(4)	Since the trust follows cash system of accounting, fees not realized from patients and students would not form part of gross receipts. Therefore, there is no need of applying the provisions of *Explanation 1* to section 11(1) to exclude such income.		
(5)	The benefit of section 10(23C)(iiiad) is not available in respect of income received by the college, as its gross receipts exceed ₹ 100 lakhs. Further, it has been assumed that benefit of exemption under section 10(23C)(vi) is also not available in respect of income received by the college.		
(6)	Since corpus donations and anonymous donations are indicated separately and the question does not mention that the same are included in gross receipts, the solution has been worked out on the assumption that corpus donations and anonymous donations are not included in the figure of gross receipts of ₹ 400 lakhs.		

4a)

Clause (i) of *Explanation* to section 92B amplifies the scope of the term "international transaction". According to the said *Explanation*, international transaction includes, *inter alia*, provision of scientific research services. Lambda Sicom is a specified foreign company in relation to XYZ Ltd. Therefore, the condition of XYZ Ltd. holding shares carrying not less than 26% of the voting power in Lambda Sicom is satisfied, assuming that all shares carry equal voting rights. Hence, Lambda Inc. and XYZ Ltd. are deemed to be associated enterprises under section 92A(2). Since the provision of scientific research services by Lambda Sicom to XYZ Ltd. is an "international transaction" between associated enterprises, transfer pricing provisions are attracted in this case.

(ii) Purchase of tangible property falls within the scope of "international transaction". Tangible property includes commodity. Cylo AG and Omega Ltd. are associated enterprises under section 92A, since Cylo AG is a holding company of Omega Ltd.. Therefore, purchase of commodities by Omega Ltd., an Indian company, from Cylo AG, a German company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

(iii) Unit E is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, namely, a highway project in this case) under section 80-IA. However, Unit F is not engaged in any "eligible business". Since Unit F has transferred steel to Unit E at a price lower than the fair market value, it is an inter-unit transfer of goods between eligible business and other business, where the consideration for transfer does not correspond with the market value of goods. Therefore, this transaction would fall within the meaning of "specified domestic transaction" to attract transfer pricing provisions, since the aggregate value of such transactions during the year exceeds a sum of ₹ 20 crore.

(iv) In this case, salary payment has been made to a related person referred to in section 40A(2)(b) i.e., relative (i.e., daughter) of Ms. Geetha, who is a director of Theta Ltd. However, with effect from A.Y.2018-19, section 92BA has been amended to exclude such transactions from the scope of "specified domestic transaction". Consequently, transfer pricing provisions would not be attracted in this case.

(v) The scope of the term "intangible property" has been amplified to include, *inter alia*, technical knowhow, which is a technology related intangible asset. Transfer of intangible property falls within the scope of the term "international transaction". Since Alcatel Lucent, a French company, guarantees not less than 10% of the borrowings of Y Ltd., an Indian company, Alcatel Lucent and Y Ltd. are deemed to be associated enterprises under section 92A(2). Therefore, since transfer of technical knowhow by Y Ltd., an Indian company, to Alcatel Lucent, a French company, is an international transaction between associated enterprises, the provisions of transfer pricing are attracted in this case.

4b)

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

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

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

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

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

Interest under section 234C

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

Calculation of interest payable under section 234C:

Date	Advance tax paid till date	Advance tax payable till date	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C (c)		Short-fall	Interest
	(₹)	%	%	Amount (₹)	(₹)	(₹)
15.06.2017	38,000	15%	12%	36,708	-	Nil **(See Note below)**
15.09.2017	1,11,000	45%	36%	1,10,124	-	Nil **(See Note below)**
15.12.2017	2,03,000	75%	75%	2,29,425	26,425	26,425 x 1% x 3 months = 793
15.03.2018	2,80,000	100%	100%	3,05,900	25,900	25,900 x 1% = 259
Interest payable under section 234C (Nil + Nil + ₹ 793 + ₹ 259)						**₹ 1,052**

Note: *Since the advance tax paid by Sigma Consulting (P) Ltd. on 14th June, 2017 is more than 12% of the tax due on returned income (i.e., ₹ 3,05,900) and the advance tax paid on 13th September, 2017 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.*

Fee under section 234F

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

4c)

The first proviso to section 201 provides that the payer (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such resident payee –

(1) has furnished his return of income under section 139;

(2) has taken into account such sum for computing income in such return of income; **and**

(3) has paid the tax due on the income declared by him in such return of income,

and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the resident payee.

However, where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee-in-default under section 201(1) as mentioned above, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Therefore, M/s Cool Sip Limited shall not be required to pay the difference tax in case the above mentioned conditions are fulfilled. However, the company shall be liable to make payment of interest from the date on which such tax was deductible to the date of furnishing of return of income by Topstore Warehousing.

Therefore, the submission of the assessee company, in this case, is correct.

5a)

Chamber of Tax Consultants and Anr v. Union of India W.P.(C) 5595/2017 & CM APL 23467/2017

Facts of the case: In this case, the petitioners filed a writ petition challenging the constitutional validity of the ten Income Computation and Disclosure Standards (ICDSs) notified by the Central Government vide Notification dated 29th September 2016, Circular No. 10/2017 dated 23rd March 2017 containing 25 FAQs relating to the said ICDS and amendment to section 145. The ten ICDS standards are to be followed by all assessees (other than an individual or HUF who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB) following the mercantile system of accounting, for the purposes of computation of income chargeable to tax under the head of 'Profits and gains from business and profession' and 'Income from other sources' from A.Y.2017-18.

The petitioners argued that the consequence of notification of ICDSs is that the concerned assessees have to maintain a parallel set of books of accounts. They also argued that the ICDSs are contrary to provisions of Income-tax Act, 1961 and several judgments of the High Court and Supreme Court.

Issue: Can the notified ICDSs be stated as *ultra vires*, since they are contrary to the Income-tax Act, 1961 and settled judicial precedents?

High Court's Observations: On this issue, the Delhi High Court made the following observations -

- Section 145(2) empowers the Central Government to notify ICDSs to be followed by any class of assessees or any class of income. However, section 145(2) has to be read down to restrict power of Central Government to notify ICDSs that do not seek to override binding judicial precedents or provisions of Income-tax Act, 1961. The power to enact a validation law is an essential legislative power that can be exercised, in the context of the Act, only by the Parliament and not by the Executive. In case of a conflict between ICDS and provisions of Income-tax Act, 1961 and settled judicial precedents, the latter would prevail.
- ICDS I which does away with the concept of 'prudence' is contrary to the Act and binding judicial precedents and is, therefore, unsustainable in law.
- ICDS II pertaining to valuation of inventories eliminates distinction between a continuing partnership business after dissolution from one which is discontinued upon dissolution. This is contrary to the Supreme Court's judgment in *Shakti Trading Co. (2001) 250 ITR 871 (SC).* It fails to acknowledge that the valuation of inventory at market value upon settlement of accounts of the outgoing partner is distinct from valuation of the inventory in the books of the business which is continuing. ICDS II is thus, *ultra vires* the Act.

- The treatment to retention money under Paragraph 10(a) in ICDS-III will have to be determined on a case to case basis by applying settled principles of accrual of income. ICDS-III seeks to bring to tax the retention money, the receipt of which is uncertain/conditional, at the earliest possible stage, irrespective of the facts. Hence, to that extent para 10 (a) of ICDS III is *ultra vires*.

- Para 12 of ICDS III read with para 5 of ICDS IX, dealing with borrowing costs, makes it clear that no incidental income can be reduced from borrowing cost. This is contrary to the decision of the Supreme Court in *CIT v. Bokaro Steel Limited (1999) 236 ITR 315.*
- Para 5 of ICDS-IV requires an assessee to recognize income from export incentive in the year of making of the claim if there is 'reasonable certainty' of its ultimate collection. This is contrary to the decision of the Supreme Court in *Excel Industries (2015) 358 ITR 295*, and is, therefore, *ultra vires*.
- As far as para 6 of ICDS IV is concerned, the proportionate completion method as well as the contract completion method have been recognized as a valid method of accounting under the mercantile system of accounting by the Supreme Court in *CIT v. Bilhari Investment Pvt. Ltd. (2008) 299 ITR 1 (SC)*. Therefore, to the extent that para 6 of ICDS IV permits only one of the methods, i.e., proportionate completion method, it is contrary to the above decisions and thus, *ultra vires*.
- Para 8 (1) of ICDS-IV is not *ultra vires* the Income-tax Act, 1961 or judicial precedents. It is valid.
- ICDS VI which states that marked to market loss/gain in case of foreign currency derivatives held for trading or speculation purposes are not to be allowed, is not in consonance with the ratio laid down by the Supreme Court in *Sutlej Cotton Mills Limited v. CIT (1979) 116 ITR 1 (SC)*, insofar as it relates to marked to market loss arising out of forward exchange contracts held for trading or speculation purposes. It is, therefore, *ultra vires* the Act.
- ICDS VII which provides that recognition of government grants cannot be postponed beyond the date of actual receipt, is in conflict with the accrual system of accounting. To that extent it is *ultra vires* the Act.
- ICDS VIII pertains to valuation of securities. For those entities not governed by the RBI to whom Part A of ICDS VIII is applicable, the accounting prescribed by the AS has to be followed which is different from the ICDS. The Preamble to the ICDS stated that the standards were not meant for the purpose of maintenance of books of accounts. However, such entities will now be required to maintain separate records for income tax purposes for every year since the closing value of the securities would be valued separately for income tax purposes and for accounting purposes. To this extent Part A of ICDS VIII is *ultra vires* the Act.
- To the extent the specific ICDS are *ultra vires*, the impugned notification 29th September 2016 and Circular No. 10/2017 are also *ultra vires*.

- To the extent the specific ICDS are *ultra vires*, the impugned notification 29th September 2016 and Circular No. 10/2017 are also *ultra vires*.

High Court's Decision: To the extent the specific ICDS are contrary to relevant provisions of the Income-tax Act, 1961 and binding judicial precedents, they are *ultra vires* the Act.

Note - *The above Delhi High Court ruling has been reported to help students appreciate that the power to enact a validation law is an essential legislative power that can be exercised, in the context of the Act, only by the Parliament and not by the Executive. Accordingly, to the extent the notified ICDSs are found to be in contravention of the Act or settled judicial precedents, they would be ultra vires. It is noteworthy that the Finance Act, 2018 has, however, retrospectively inserted/amended certain provisions in the Income-tax Act, 1961 with effect from A.Y. 2017-18 to bring certainty in the wake of this judicial pronouncement. Consequent to these new/amended provisions incorporated in the Income-tax Act, 1961 itself, the notified ICDSs are required to be complied with by the taxpayers.*

5b)

Honda Siel Cars India Ltd. v. CIT [2017] 395 ITR 713 (SC)

Facts of the case: The assessee, Honda Siel Cars India Ltd., is a joint venture company between Honda Motors, a Japanese company and Siel Ltd., an Indian company. The assessee and Honda Motors entered into a technical collaboration agreement (TCA) on May 21, 1996 under which a technical fee of 30.5 million USD was payable by the assessee in five equal instalments on a yearly basis. Under the agreement, TCA Honda Motors had to provide manufacturing facilities, know-how, technical information, information regarding intellectual property rights to the assessee which the assessee was entitled to exploit only as a licensee, without any proprietary rights. The assessee treated the technical fees as revenue while the Revenue authorities contended that it is capital in nature.

Issue: Whether the technical fee of 30.5 million USD payable by the assessee is in the nature of revenue expenditure or capital expenditure?

Appellate Authorities' views: The Tribunal held that the assessee had acquired only a limited right to use and not a proprietary right, and hence, the expenditure was revenue in nature. It did not matter that the agreement was entered into at the time of setting up the business. The High Court, however, held that though the rights were in the nature of a right to use, the joint venture's business was set up pursuant to the agreement, and hence, the expenditure was capital in nature.

Supreme Court's Observations: From a review of relevant precedents, the Court observed that if a limited right to use technical know-how is obtained for a limited period for improvising existing business, the expenditure is revenue in nature. However, if technical know-how is obtained for setting up a new business, the position may be different. There is no single principle or test for determining the nature of expenditure; it is a question to be answered based on the circumstances in each case.

In the given facts, the very purpose of the TCA was to set up the Joint Venture. The collaboration included not only transfer of technical information, but, complete assistance, actual, factual and on the spot, for establishment of plant, machinery, etc. so as to set up a manufacturing unit. Upon termination of TCA, the joint venture itself would come to an end. Though the TCA is framed in a manner to look like a licence for a limited period having no enduring nature but a close scrutiny into the said agreement shows otherwise.

Supreme Court's Decision: Affirming the decision of the High Court, the Supreme Court held that, in this case, technical fee is capital in nature since upon termination of TCA, the joint venture itself would come to an end.

Note – *In this case, since the amount paid for obtaining limited right to use technical know-how for a limited period is held to be capital in nature, it would be an intangible asset eligible for depreciation@25%.*

5c)

Union of India v. Tata Tea and Others [2017] 398 ITR 260 (SC)

<u>Facts of the case</u>: The petitioner is a tea company engaged in cultivating and processing tea in its factory for marketing. The cultivation of tea is an agricultural process while the processing of tea in the factory is an industrial process. The petitioners contend that when the company distributes dividend, it is taxed under Section 115-O. The tax on dividend declared by it in this case is nothing but a tax on agricultural income. The legislative competence for taxing agricultural income lies with the State Government and not the Central Government.

<u>Issue</u>: Can dividend distribution tax be levied on dividend income of a tea company under section 115-O?

<u>Supreme Court's Observations</u>: As per entry 82 of List I the Union Parliament has the competence to tax "income other than agricultural income." Section 115-O pertains to additional tax at the stage of distribution of dividend by domestic company which is covered by entry 82 in List I. When dividend is declared to be distributed and paid to a company's shareholders it is not impressed with character of the source of its income. The Court relied on *Mrs. Bacha F Guzdar v. CIT AIR 1955 SC 74* which looked into the nature of the dividend income in the hands of the shareholders. Dividend is derived from the investment made in the company's shares and the foundation rests on the contractual relations between the company and the shareholder.

Dividend is not 'revenue derived from land' and hence cannot be termed as agricultural income in the hands of a shareholder. Hence, despite the petitioner's company being involved in agricultural activities, in the shareholder's hands, the income is only dividend and not agricultural income.

The Calcutta High Court had upheld the vires of section 115-O but put a qualification that additional tax levied under section 115-O shall be only to the extent of 40% which is the taxable income of the tea company. The Supreme Court overturned this cap placed by the Calcutta High Court. Section 115-O is within the competence of the Parliament and hence, no limits can be placed on the same.

5d)

Fibre Boards (P) Ltd v. CIT (2015) 376 ITR 596 (SC)

<u>Facts of the case</u>: The assessee-company had an industrial unit in Thane, which had been declared a notified urban area by notification dated September 22, 1967, issued under section 280Y(d) of the Income-tax Act, 1961 *vide* Notification dated 22.09.1967. The assessee, in order to shift its industrial undertaking from an urban area to a non-urban area, sold its land, building and plant and machinery situated at Thane and out of the capital gains so earned, paid advances of various amounts to different persons for purchase of land, plant and machinery, construction of factory and building in the year 1991-92. The assessee claimed exemption under section 54G of the Income-tax Act, 1961, on the capital gains earned from the sale proceeds of its erstwhile industrial undertaking situated in Thane in view of the advances so

made, which was more than the capital gains earned by it. The Assessing Officer refused to grant exemption to the assessee under section 54G on the ground that the non-urban area had not been declared to be so by any general or special order of the Central Government and that giving advances did not amount to utilisation of capital gains for acquiring the assets.

Appellate Authorities' views: The CIT (Appeals) dismissed the case of the assessee while the Appellate Tribunal allowed the appeal by stating that even an agreement to purchase is good enough and that Explanation to section 54G is declaratory in nature and would be retrospectively applicable.

High Court's Decision: The High Court reversed the order of the Appellate Tribunal and denied the exemption on the reasoning that the notification declaring Thane to be an urban area stood repealed with the repeal of the section under which it was made. Further the expression "purchase" in the section 54G cannot be equated with the expression "towards purchase" and accordingly the advance for purchase of land, plant and machinery would not entitle the assessee to claim exemption under section 54G.

Supreme Court's Observations: The Apex Court observed that, on a conjoint reading of the Speech of the Finance Minister introducing the Finance Bill, 1987, and the Notes on Clauses and Memorandum explaining the provisions of the Finance Bill of 1987, it becomes clear that the idea of omitting section 280ZA of the Income-tax Act, 1961 and introducing section 54G on the same date was to do away with the tax credit certificates scheme together with the prior approval required by the Board and to substitute the repealed provision with the new scheme contained in section 54G. Once section 280ZA was omitted from the statute book, section 280Y(d) having no independent existence would for all practical purposes also cease to exist. Section 280Y(d) which was a definition section defining "urban area" for the purpose of section 280ZA alone was also omitted subsequently by the Finance Act, 1990. Apart from this, section 54G(1) by its *Explanation* introduces the very definition contained in section 280Y(d) in the same terms. It is obvious that both provisions are not expected to be applied simultaneously and it is clear that the *Explanation* to section 54G(1) repeals, by implication, section 280Y(d).

Unlike section 6 of the General Clauses Act, 1897 which saves certain rights, section 24 merely continues notifications, orders, schemes, rules, etc., that are made under a Central Act which is repealed and re-enacted with or without modification. The idea of section 24 of the 1897 Act is, as its marginal note shows, to continue uninterrupted subordinate legislation that may be made under a Central Act that is repealed and re-enacted with or without modification.

Section 54G gives a time limit of 3 years after the date of transfer of capital asset in the case of shifting of industrial undertaking from urban area to any area other than urban area. The expression used in section 54G(2) is that the amount "which is not utilized by him for all or any of the purposes aforesaid has to be deposited in the capital gain account scheme".

For the purpose of availing exemption, all that was required for the assessee is to "utilise" the amount of capital gain for purchase and acquisition of new machinery or plant and building or land. Since the entire amount of capital gain, in this case, was utilized by the assessee by way of advance for acquisition of land, building, plant and machinery, the assessee was entitled to avail exemption/deduction under section 54G.

Supreme Court's Decision: To avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and / or plant and machinery.

Note – *In this case, two issues have been touched upon, namely, whether notification of an area as an urban area under a repealed provision would hold good under the re-enacted provision and whether advance given for purchase of an eligible asset would tantamount to utilisation of capital gains for purchase of the said asset for availing exemption under section 54G. The former issue was decided taking support from section 24 of the General Clauses Act, 1897, which provides for uninterrupted subordinate legislation in case of repeal and re-enactment, with or without modification. The latter issue was also decided in favour of the assessee by holding that payment of advance for purchase of eligible asset would tantamount to utilisation of capital gains for purchase of the said asset.*

5e)

CIT v. Smt. A. Sivakami and Another (2010) 322 ITR 64 (Mad.)

Facts of the case: The assessee, running a proprietary concern, claimed depreciation on three buses, even though she was not the registered owner of the same. However, in order to establish that she was the beneficial owner, she furnished documents relating to loans obtained for the purchase of buses, repayment of such loans out of collections from the buses, road tax and insurance paid by her. She had also obtained an undertaking from the persons who hold the legal title to the vehicles as well as the permits, for plying buses in the name of her proprietary concern. Further, in the income and expenditure account of the proprietary concern, the entire collections and expenditure (by way of diesel, driver's salary, spares, R.T.O. tax etc.) from the buses was shown. The buses in dispute were also shown as assets in the balance sheet of the proprietary concern.

The assessee claimed depreciation on these buses. The Assessing Officer rejected the claim of the assessee on the ground that the assessee was not the owner of the three buses and the basic condition under section 32(1) to claim depreciation is that the assessee should be the owner of the asset. The Assessing Officer was of the view that mere admission of the income cannot *per se* permit the assessee to claim depreciation.

High Court's Observations: The High Court observed that in the context of the Income-tax Act, 1961, having regard to the ground realities and further having regard to the object of the Act i.e., to tax the income, the owner is a person who is entitled to receive income from the property in his own right. The Supreme Court, in *CIT v. Podar Cement P Ltd. (1997) 226 ITR 625*, observed that the owner need not necessarily be the lawful owner entitled to pass on the title of the property to another.

High Court's Decision: Since, in this case, the assessee has made available all the documents relating to the business and also established before the authorities that she is the beneficial owner, the High Court held that she was entitled to claim depreciation even though she was not the legal owner of the buses.

6)

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

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

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

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

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

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

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

(iii) Equalisation levy of 6% is attracted in respect of the amount of consideration exceeding Rs. 1 lakh for, *inter alia*, online advertisement, received or receivable by a non-resident not having

permanent establishment in India, from, *inter alia*, a resident in India who carries on business or profession.

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

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

(iv) The statement is not correct.

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

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

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

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

7a)

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

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

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

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

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

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

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

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

7b)

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

7c)

Computation of total income of Mysore Co-operative Society for A.Y.2018-19

	Particulars	₹	₹
I	**Income from house property**		75,000
II	**Profits and Gains of Business or Profession**		
	From processing with the aid of power	40,000	
	From collective disposal of labour	20,000	
	From other business	72,000	
			1,32,000
III	**Income from Other Sources**		
	Interest received from another co-operative society	12,000	
	Dividend received from another co-operative society	15,000	
			27,000
Gross Total Income			**2,34,000**
***Less:* Deduction under section 80P**			
	Interest and dividend from another co-operative society [₹ 12,000 + ₹ 15,000] - fully deductible under section 80P(2)(d)	27,000	
	Income from collective disposal of labour – fully deductible under section 80P(2)(a)(vi), assuming that the stipulated conditions are fulfilled.	20,000	
	Income from other business ₹ 72,000, deduction restricted to ₹ 50,000 under section 80P(2)(c)(ii)	50,000	
			97,000
Total Income			**1,37,000**

Note: *Since the gross total income exceeds ₹ 20,000, in case of a co-operative society engaged in manufacturing operations with the aid of power, income from house property is not eligible for deduction under section 80P(2)(f)*

7d)

The issues under consideration are:

(1) whether a firm can be a partner of another firm;

(2) whether the CIT (Appeals) has the power to change the status of assessee.

These issues came up before the Madras High Court in *Mega Trends Inc. v. CIT (2016) 388 ITR 16*. The Court observed that since a partnership firm is a relationship between persons who have agreed to share the profits of the business carried on by all or any of them acting for all, and the term "persons" can connote only natural persons. Since some of the partners are other firms, the assessment cannot be carried out as a firm, as per the Supreme Court's ruling in *Dhulichand Laxminarayan v. CIT (1956) 29 ITR 535*.

The contention of the Commissioner (Appeals) that a firm cannot be a partner of another firm is, therefore, correct.

In *Mega Trends Inc's* case, the Madras High Court further observed that, under section 251(1), the powers of the first appellate authority are co-terminous with those of the Assessing Officer and the appellate authority can do what the Assessing Officer ought to have done and also direct him to do what he had failed to do. If the Assessing Officer had erred in concluding the status of the assessee as a firm, it could not be said that the Commissioner (Appeals) had no jurisdiction to go into the issue. The appeal was in continuation of the original proceedings and unless fetters were placed upon the powers of the appellate authority by express words, the appellate authority could exercise all the powers of the original authority.

The High Court thus, held that the power to change the status of the assessee is available to the assessing authority and when it is not used by him, the appellate authority is empowered to use such power and change the status. The Court relied on a full bench decision of the Madras High Court in *State of Tamil Nadu v. Arulmurugan and Co. reported in [1982] 51 STC 381* to come to such conclusion.

Accordingly, applying the rationale of the Madras High Court ruling to the case on hand, the CIT (Appeals) has the power to change the status of the assessee.