SUGGESTED SOLUTION

CA FINAL May 2017 EXAM

DIRECT TAX LAWS

Test Code - F N J 6 0 6 3

BRANCH - (MULTIPLE)

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Answer-1 (a) :

Tax consequences in the hands of the business trust and its unit holders

(1) **Rental income of Rs. 4 crore from directly owned real estate assets:** Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in the hands of the trust as per section 10(23FCA).

Where the income by way of rent is credited or paid to a business trust, being a REIT, in respect of any real estate asset held directly by such REIT, no tax is deductible at source under section 194-I.

The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed income of the unit holder as per section 115UA(3).

The rental component of income received from REIT in the hands of each unit holder would be determined in the proportion of 4/15.2, by virtue of section115UA(1).

The business trust has to deduct tax at source@10% under section 194LBA in case of distribution to a resident unit holder and at rates in force in case of distribution to a non-resident unit holder.

(1 Mark)

(2) **Short-term capital gains of Rs. 2 crore on sale of listed shares of Lambda Ltd.:** As per section 115UA(2), the business trust is liable to pay tax@15% under section111A in respect of short-term capital gains on sale of listed shares of Lambda Ltd., being a special purpose vehicle.

Any distributed income referred to in section 115UA, to the extent it does not comprise of interest referred to in section 10(23FC) and rental income referred to in section 10(23FCA) received by unit holders, is exempt in their hands under section10(23FD).

Therefore, by virtue of the exemption contained in section 10(23FD), there would be no tax liability on the capital gain component of income distributed to unit holders,

(1 Mark)

(3) **Dividend income of Rs. 3 crore from Lambda Ltd.:** There would be no tax liability in the hands of the business trust since dividend is subject to dividend distribution tax under section 115-O in the hands of Lambda Ltd; Hence, the dividend income is exempt under section 10(34) in the hands of the business trust.

Further, by virtue of section 10(23FD), there would be no tax liability on the dividend component of income distributed to unit holders in their hands.

(1 Mark)

(4) **Interest income of Rs. 5 crore from Lambda Ltd.:** There would be no tax liability in the hands of business trust due to pass-through status enjoyed by it under section10(23FC) in respect of interest income from Lambda Ltd., being the special purpose vehicle. Therefore, Lambda Ltd. is not required to deduct tax at source on interest payment to the business trust.

However, the business trust has to deduct tax at source under section 194LBA –

- @10%, on interest component of income distributed to resident unit holders; and
- @5%, on interest component of income distributed to non-corporate non resident unit Holders and foreign companies.

Interest component of income distributed to unit holders is taxable in the hands of the unit holders – @5%, in case of unit holders, being non-corporate non-residents or foreign companies; and at normal rates of tax, in case of resident unit holders.

The interest component of income received from the business trust in the hands of each unit-holder would be determined in the proportion of 5/15.2, by virtue of section 115UA(1).

(2 Marks)

(5) **Short-term capital gains of Rs. 1 crore on sale of developmental properties:** It is taxable at maximum marginal rate of 34.608% in the hands of the business trust as per section 115UA(2). There

would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them, by virtue of the exemption contained in section 10(23FD).

(1 Mark)

(6) Interest of Rs. 20 lakh received in respect of investment in unlisted debentures of real estate companies: Such interest is taxable@34.608%, being the maximum marginal rate, in the hands of the business trust, as per section 115UA(2). However, there would be no tax liability in the hands of the unit holders on the interest component of income distributed to them, by virtue of section 10(23FD).

(1 Mark)

Notes:

(1) New Chapter XII-FA, containing the special provisions relating to business trusts, has been inserted w.e.f. A.Y.2015-16. Section 115UA(1) provides that any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder, as it had been received by, or accrued to the business trust.

(2) Section 10(23FC) exempts any income of a business trust by way of interest received or receivable from a Special Purpose Vehicle (SPV). Section 10(23FCA) exempts any income of a business trust being a REIT, by way of renting any real estate asset directly owned by it. Thus, the business trust enjoys a pass-through status in respect of interest received or receivable from a SPV and rental income from real estate asset owned directly by it.

(3) SPV means any company or LLP in which the business trust holds controlling interest and any specified percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration [not less than 50% as per the current SEBI (Real Estate Investment Trusts) Regulations,2014]. Since Lambda Ltd. is an Indian company in which the business trust holds controlling interest and 60% of shareholding, it is a special purpose vehicle. It is presumed that Lambda Ltd. fulfills the other conditions specified in the regulations to qualify as an SPV.

(4) The distributed income of the business trust, to the extent it comprises of interest referred to in section 10(23FC) and rental income referred to in section 10(23FCA),is deemed to be the income of the unit holder in the previous year of distribution and subject to tax in the hands of the unit holder in that year. Accordingly, the business trust is required to deduct tax at source on the interest component and rental component of income distributed to its unit holders.

(5) Any distributed income referred to in section 115UA, to the extent it does not comprise of interest referred to in section 10(23FC) and rental income referred to in section 10(23FCA), received by unit holders is exempt in their hands under section10(23FD).

(6) Section 115UA(2) provides that subject to the provisions of sections 111A and 112, the total income of a business trust shall be chargeable to tax at the maximum marginal rate.

(6 x 0.5 = 3 Marks)

Answer-1 (b) :

(a) Tax implications on sale of rural agricultural land and house property representing a capital asset in the hands of Mr. Harish, a salaried employee

(i) Tax implications in the hands of Mr. Harish, a salaried employee

Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. Harish. However, capital gains would arise on sale of house property, being a capital asset.

As per section 50C, the stamp duty value of house property (i.e., Rs. 85 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, Rs. 45 lakh (i.e., Rs. 85 lakh – Rs. 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2016-17.

It may be noted that under section 50C, there is no option to adopt the stamp duty value on the date of agreement, even if the date of agreement is different from the date of registration and part of the consideration was received on or before the date of agreement otherwise than by way of cash.

(2 Marks)

(ii) Tax implications in the hands of the buyer – Mr.Suresh, a retail trader

The house property purchased would be a capital asset in the hands of Mr. Suresh, who is a retail trader. The provisions of section 56(2)(vii) is attracted in the hands of Mr. Suresh who has acquired immovable property, being a capital asset, for inadequate consideration. For the purpose of section 56(2)(vii), Mr. Suresh can take the stamp duty value on the date of agreement instead of the date of registration since he has paid a part of the consideration by a mode other than cash on the date of agreement.

Therefore, Rs. 15 lakh, being the difference between the stamp duty value of the property on the date of agreement (i.e., Rs. 75 lakh) and the actual consideration (i.e., Rs. 60 lakh) would be taxable as per section 56(2)(vii) under the head "Income from other sources" in the hands of Mr. Suresh.

Since rural agricultural land is not a capital asset, the provisions of section 56(2)(vii) are not attracted in respect of acquisition of agricultural land for inadequate consideration, since the definition of "property" under section 56(2)(vii) includes only capital assets specified thereunder.

(3 Marks)

(iii) TDS implications in the hands of the buyer, Mr.Suresh

Since the sale consideration of house property exceeded Rs. 50 lakh, Mr. Suresh is required to deduct tax at source under section 194-IA. The tax deduction under section194-IA would be Rs. 60,000, being 1% of Rs. 60 lakh.

TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.

(1 Mark)

(b) Tax implications on sale of house property representing stock-in-trade in the hands of Mr. Harish, a property dealer

(i) Tax implications in the hands of Mr. Harish for A.Y.2016-17

If Mr. Harish is a property dealer who has sold the house property in the course of his business, the provisions of section 43CA would be attracted, since the house property represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value.

For the purpose of section 43CA, Mr. Harish can take the stamp duty value on the date of agreement instead of the date of registration, since he has received part of the sale consideration by a mode other than cash on the date of agreement. Therefore, Rs. 35 lakh, being the difference between the stamp duty value on the date of agreement (i.e., Rs. 75 lakh) and the purchase price (i.e., Rs. 40 lakh), would be chargeable as business income in the hands of Mr. Harish.

(3 Marks)

(ii) TDS implications and taxability in the hands of Mr. Suresh for A.Y.2016-17

There would be no difference in the TDS implications or taxability in the hands of Mr. Suresh, whether Mr. Harish is a property dealer or a salaried employee.

Therefore, the provisions of section 56(2)(vii) would be attracted in the hands of Mr. Suresh who has received house property, being a capital asset, for inadequate consideration. The TDS provisions under section 194-IA would also be attracted since the actual consideration for house property exceeds Rs. 50 lakh.

(1 Marks)

Answer-2 (a) :

As per section 115-O, dividend distribution tax at the rate of 17.304% (i.e., 15% plus surcharge @12%, education cess@2% and secondary and higher education cess@1%)is leviable on dividend declared, distributed or paid by a domestic company. As per section 115-O(1A), a holding company receiving dividend from its domestic subsidiary company can reduce the same from dividend declared, distributed or paid by it. The dividend from its domestic subsidiary company should be received in the same financial year in which the holding company declares, distributes or pays the dividend. Further, the dividend shall not be considered for reduction more than once.

The conditions to be fulfilled for this purpose are as follows:

(1) The domestic subsidiary company should have paid the dividend distribution tax which is payable on such dividend;

(2) The recipient holding company should be a domestic company;

(2 Marks)

For this purpose, a holding company is a company which holds more than 50% of the nominal value of equity shares of another company.

Section 115-O(1B) provides that for the purposes of determining the tax on distributed profits payable in accordance with section 115-O, any amount by way of dividends referred to in section 115-O(1), as reduced by the amount referred to in section 115O(1A)[referred to as net distributed profits],shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in section 115O(1),be equal to the net distributed profits.

(1 Mark)

On the basis of the aforesaid provisions, dividend distribution tax payable by Zeta Limited shall be computed as follows:

Particulars	**Rs. in lakh**
Dividend distributed by Zeta Ltd.	50.00
Less: Dividend received from subsidiary Rho Ltd. (55% of Rs. 42 lacs)	23.10
Net distributed profits	**26.90**
Add: Increase for the purpose of grossing up of dividend 26.90 × 15/85	4.75
Gross dividend	**31.65**
Additional income-tax payable by Zeta Ltd. u/s 115-O [15% of Rs. 31.65 lakh]	4.75
Add: Surcharge@12%	0.57
	5.32
Add: Education cess@2% and SHEC@1%	0.16
	5.48

In case any domestic company (Zeta Ltd., in this case) receives any dividend during the year from any subsidiary company (Rho Ltd., in this case) and such subsidiary company(Rho Ltd.) has paid the DDT as payable on such dividend, then, dividend distributed by the holding company (Zeta Ltd.) in the same year to the extent of dividend received from the subsidiary (Rho Ltd.), shall not be subject to DDT under section 115-O.

Therefore, Zeta Ltd. can reduce the amount of dividend received from Rho Ltd. For computation of dividend distribution tax. Therefore, dividend distribution tax payable by Zeta Ltd. shall be 17.304% of Rs. 31.65 lakhs (grossed up amount) i.e. Rs. 5.48 lakhs.

(5 Marks)

Answer-2 (b) :

(i) Computation of income of the firm chargeable under the head "Profits and Gains of business or profession"

Particulars	Rs.
Presumptive income under section 44AD (8% of Rs. 82 lakh) **[See Note 1]**	6,56,000
Less: Interest @ 12% to Rahul (12% of Rs. 7 lakh) **[See Note 3]**	84,000
	5,72,000
Less: Brought forward business loss under section 72 **[See Note 4]**	90,000
Income of the firm chargeable under the head **"Profits and Gains of business or profession"**	**4,82,000**

(4 Marks)

Notes:-

(1) A partnership firm falls within the definition of "eligible assessee" under section 44AD. The threshold limit of turnover for applicability of presumptive taxation scheme under section 44AD is Rs. 100 lakh (i.e., the turnover should not exceed Rs. 100 lakh). In this case, since the turnover of the business of the firm is Rs. 82lakh, it falls within the definition of "eligible business" and therefore, the firm is eligible to opt for presumptive taxation under section 44AD. 8% of the total turnover would be deemed to be the business income of the firm.

(2) As per section 44AD(2), all deductions allowable under sections 30 to 38 shall be deemed to have been allowed in full and no further deduction shall be allowed. Accordingly, no deduction shall be

allowed for bad debts since the same is deductible under section 36(1)(vii); Similarly, no deduction shall be allowed for unabsorbed depreciation since the same is deductible under section 32(2).

(3) However, where the "eligible assessee" is a firm, salary and interest would be allowed as deduction subject to the conditions and limits prescribed under section 40(b). Therefore, interest@12% to partner Rahul, which is authorized by the partnership deed, is allowable as deduction.

(4) Further, business loss of previous year 2014-15 can be set-off against current year business income as per section 72.(ii) As per section 44AD(4), the provisions of Chapter XVII-C would not apply to an eligible assessee in so far as they relate to the eligible business. Therefore, an assessee opting for presumptive taxation scheme under section 44AD is relieved from the requirement of advance tax payments. It would be a sufficient compliance if self assessment tax is paid while filing its return of income on or before the 'due date'.

Therefore, in this case, the firm is not required to make advance tax payments. Accordingly, there would be no liability for interest under sections 234B and 234C.

(4 x 1 = 4 Marks)

Answer-3 (a) :

(a) Computation of total income of Shri Ramamurthy Public Charitable Trust for A.Y. 2016-17

	Particulars	**Rs.(in Lacs)**
(i)	Income from Engineering College – exempt under section 10(23C) (iiiad) as gross receipts do not exceed Rs. 1 crore.	Nil
(ii)	Income from properties held under trust	26.00
(iii)	Income from business undertaking held under trust (assumed that the business is incidental to the attainment of objectives of the trust and separate books are maintained satisfying section 11(4A))	2.00
		28.00
	85% of the income required to be spent (85% of Rs. 28 Lacs)	23.80
	Less: Option exercised under Explanation 2 to section 11(1)	
	(i) Amount not received during the previous year	2.00
	(ii) Income received on the last day to be spent in the next year	2.00
		19.80
	Less: Amount spent on free scholarship, free meals and free medical centre	9.00
	Repayment of loans for construction of health centre (this is utilized for the fulfillment of the objects of the trust) (See CIT v.Janmbhoomi Press Trust (2000) 242 ITR 703)	3.00
	Income of the trust liable to tax	**7.80**

(6 Marks)

(b) In order to minimize and / or reduce the tax liability, the trustees may give a notice in writing to the Assessing Officer in the prescribed manner about their intention to accumulate minimum of Rs. 5.30 lacs [Rs. 7.80 lacs minus Rs. 2.50 lacs (basic exemption limit)] specifying the period and the purpose for which the accumulation is proposed to be made and invest such sum in specified assets as per section 11(5). This accumulation would be in compliance with section 11(2) and in such case, no tax will be payable on the whole sum of Rs. 7.80 lacs.

(2 Marks)

Answer-3 (b) :

As per section 44AD, in the case of an eligible assessee being an individual, HUF or a partnership firm other than limited liability partnership, carrying on any business except the business of plying, hiring or leasing goods carriages referred under section 44AE, whose total turnover or gross receipts from such business does not exceed Rs. 1 crore, a sum equal to 8% of total turnover or gross receipts of the assessee in the previous year on account of such business or such higher sum as claimed by the assessee, shall be deemed to be profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Further, any deduction allowable under sections 30 to 38 shall be deemed to have been given full effect to and no further deduction under those sections shall be allowed. However, where the eligible assessee is a

firm, the salary and interest paid to its partners shall be deducted from such deemed profits and gains from eligible business.

For the purpose of section 44AD, "Gross receipts" will not include the value of materials supplied by Government. Therefore, in this case, the gross receipts would be only Rs. 35,00,000.

(3 Marks)

Computation of total income of partnership firm for the A.Y.2016-17

Particulars	**Profits equal to 8% of Gross receipts (Rs.)**	**Profits as per books of account (Rs.)**
Profit before interest and salary	2,80,000	3,00,000
Less: Interest paid to partner "R"@12% of Rs. 6,00,000, assuming that such payment is authorized by the partnership deed	72,000	72,000
Book Profits	**2,08,000**	**2,28,000**
Less: Salary (See Note below)	1,08,000	1,08,000
	1,00,000	1,20,000
Note: Applying the provisions of 40(b), allowable salary would be lower of -		
(i) Actual salary	1,08,000	1,08,000
(ii) On the first Rs.3,00,000 of the book profits: 90% of book profit or Rs.1,50,000, whichever is higher	1,87,200 (Rs.2,08,000×90%)	2,05,200 (Rs.2,28,000×90%)

As per the provisions of section 44AD, 8% of gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the firm shall be deemed to be the profits and gains of business chargeable under the head "Profits and gains of business or profession". In this case, the presumptive income computed@8% is Rs. 1,00,000. However, the firm can claim to have earned a sum higher than the said sum. In this case, if the firm claims to have earned Rs. 1,20,000 (being profits computed as per books of account) from such business, then, such sum would be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(5 Marks)

Answer-4 (a) :

Computation of income from salaries of Mr. Babu for A.Y.2016-17

Particulars	**Rs.**
Basic pay (Rs. 25,000 x 10)	2,50,000
Dearness Allowance (Rs. 10,000 x 10)	1,00,000
Bonus	50,000
	4,00,000
Perquisites-	
Rent free accommodation (assumed that D.A is not included for superannuation benefits) – 15% of (Rs. 2,50,000 + Rs. 50,000)	45,000
Value of furniture - 10% of Rs. 3,00,000 for 10 months	25,000
Motor car - Rs. 2700 x 10 (As per perquisite rules)	27,000
Sweeper (Actual cost to company) – Rs. 1500 x 10	15,000
Watchman (Actual cost to company) – Rs. 1500 x 10	15,000
Educational facility for 2 children (assumed that the cost of education per child does not exceed Rs. 1,000 p.m.)	NIL
Interest free loan for purchase of house - 10% p.a. on Rs. 5 Lacs for 6 months	25,000
Interest free loan for purchase of computer - 16.50% p.a. of Rs. 50,000 for 3 months	2,063
Income from salary	**5,54,063**

(4 Marks)

Note: Motor car owned by employer used partly for official purpose and partly for personal purpose by the employee is taxable as perquisite. The cubic capacity of the engine is less than 1.6 litres. The perquisite value including driver salary is Rs. 1800 + Rs. 900 per month. The perquisite value is therefore Rs. 27,000 (Rs. 2,700 x 10).

Answer-4 (b) :

Computation of capital gain on slump sale of Unit Omega under section 50B

Particulars	**Rs. (in lakhs)**
Sale consideration for the slump sale of Unit Omega	440
Less: Net worth of Unit Omega (Refer Note 1 below)	385
Long term capital gain arising on slump sale	**55**

(1 Mark)

Computation of tax liability of Beta Ltd. on slump sale of Unit Omega

Particulars	**Rs. (in lakhs)**
Tax on capital gains@20%	11.00
Add: Education cess@2% and Secondary and higher education cess@1%	0.33
Total tax liability on capital gain arising on slump sale of Unit Omega	**11.33**

(1 Mark)

Notes:

(1) The net worth of an undertaking transferred by way of slump sale shall be deemed to be the cost of acquisition and cost of improvement for the purposes of section 48and 49 [Section 50B(2)].

Computation of net worth of Unit Omega

Particulars		**Rs. (in lakhs)**
(A)	Book value of non-depreciable assets:	
	(i) Land (Revaluation is to be ignored for computing net worth)	30
	(ii) Other assets	195
(B)	Written down value of depreciable assets under section 43(6)	205
	Aggregate value of total assets	430
	Less: Value of liabilities of Unit Omega	45
	Net worth of Unit Omega	**385**

(2) Since Unit Omega is held for more than 36 months, the capital gains of Rs. 55 lacs arising on transfer of such unit would be a long term capital gain taxable under section 112.However, indexation benefit is not available in the case of a slump sale.

(2 Marks)

Answer-4 (c) :

The interest income from deposit in the bank is assessable under the head "Income from Other Sources". The deduction admissible against this income is any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income. However, the interest paid on the borrowing of Rs. 5 Lacs does not fall in this category. This has been held by the Supreme Court in CIT v. Dr. V.Gopinathan (2001) 248 ITR 449. In that case, the Supreme Court observed that the interest

received by the assessee from the bank on a fixed deposit is income in his hands and there could be no deduction there from unless there is a law permitting such deduction. The interest on a loan taken by the assessee on the security of the fixed deposit would not go to reduce the income by way of interest on the fixed deposit as there is no provision for deduction of such interest on the loan.

Therefore, in this case, the full sum of Rs. 80,000 will be liable to tax under the head "Income from Other Sources".

Note: In case the assessee had deposited business funds and availed loan against such deposit for business use of such loan, the interest on loan against deposit is eligible for deduction.

(4 Marks)

Answer-4 (d) :

The accumulated business loss and unabsorbed depreciation of the demerged company shall be carried forward and set off by the resulting company under section 72A(4) in the following manner:

(i) Where such loss or unabsorbed depreciation is not directly relatable to the undertaking transferred to the resulting company, such loss shall be apportioned between the demerged company and the resulting company in the same proportion in which assets of the undertaking have been retained by the demerged company and transferred to the resulting company and shall be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be. In this case, therefore, 30% of Rs. 130 lacs and Rs. 250 lacs, shall be allowed to be carried forward and set off by the resulting company and the balance by the demerged company.

(2 Marks)

(ii) Where such loss or unabsorbed depreciation is directly relatable to the undertaking transferred to the resulting company, the entire loss or unabsorbed depreciation shall be allowed to be carried forward and set off in the hands of the resulting company. Accordingly, in such a case, the entire amount of Rs. 130 lacs and Rs. 250 lacs shall be allowed to be set off in the hands of the resulting company.

(2 Marks)

Answer-5 (a) :

An assessee may, at any stage of a case relating to him, make an application in the prescribed form and manner to the Settlement Commission under section 245C.

"Case" means any proceeding for assessment which may be pending before an Assessing Officer on the date on which such application is made.

A proceeding for assessment or reassessment or recomputation under section 147 is deemed to have commenced from the date of issue of notice under section 148. Where a notice under section 148 is issued for any assessment year, a proceeding under section 147 shall be deemed to have commenced on the date of issue of such notice and the assessee can approach the Settlement Commission for other assessment years as well, even if notice under section 148 for such other assessment years have not been issued but could have been issued on that date. However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142.

In the case on hand, Upsilon Ltd. has received a notice under section 148 for the A.Y.2013-14 and also anticipates similar notices for the assessment years 2011-12 and2012-13 for which return of income has been furnished.

Moreover, since after examination of the books of account, a large amount of concealed income is also noticed, it is presumed that the second condition that the additional amount of income-tax payable on the income disclosed in the application should exceed Rs. 10 lakhs would also be satisfied.

Based on these facts, assuming that the necessary conditions are fulfilled, Upsilon Ltd. may approach the Settlement Commission to have his case settled and apply for grant of immunity from penalty and prosecution.

(4 Marks)

Answer-5 (b) :

Computation of total income and tax liability of Miss Vivitha for the A.Y. 2016-17

Particulars	**Rs.**

Indian Income [Income from playing snooker tournaments in India]			19,20,000
Foreign Income [Income from playing snooker matches in country L]			12,00,000
Gross Total Income			**31,20,000**
Less:	Deduction under Chapter VIA	**Rs.**	
	Deduction under section 80C		
	Life insurance premium of Rs. 1,10,000 paid during the previous year deduction, is within the overall limit of 1.5 lakh. Hence, fully allowable as deduction	1,10,000	
	Deduction under section 80D		
	Medical insurance premium of Rs. 32,000 paid for her father aged 62 years. Since her father is a senior citizen, the deduction is allowable to a maximum of Rs. 30,000 (assuming that her father is also a resident in India). Further, deduction is allowable where payment is made by any mode other than cash. Here payment is made by credit card hence, eligible for deduction.	30,000	1,40,000
	Total Income		**29,80,000**
Tax on Total Income			
Income-tax		7,19,000	
Add : Education cess @ 2%		14,380	
Add: Secondary and higher education cess @ 1%		7,190	7,40,570
Average rate of tax in India (i.e. Rs. 7,40,570/Rs. 29,80,000 × 100)		24.8513%	
Average rate of tax in foreign country (i.e. Rs. 1,80,000/Rs. 12,00,000 ×100)		15.00%	
Rebate under section 91 on Rs. 12 lakh @ 15% (lower of average Indian-tax rate or average foreign tax rate)			1,80,000
Tax payable in India (Rs. 7,40,570 – Rs. 1,80,000)			**5,60,570**

Note : Miss Vivitha shall be allowed deduction under section 91, since the following conditions are fulfilled:-

(a) She is a resident in India during the relevant previous year.

(b) The income accrues or arises to her outside India during that previous year and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign country L in her hands and she has paid tax on such income in the foreign country L.

(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and country L where the income has accrued or arisen.

(12 Marks)

Answer-6 (a) :

The matter relates to the admission or rejection of the application filed before the Authority for Advance Rulings on the ground specified in clause (i) of the first proviso to section 245R(2) .The said clause provides that the Authority shall not allow the application where the question raised in the application is already pending before any income-tax authority or Appellate Tribunal or any court.

(1 Mark)

In this case, no application had been filed or contention urged by the applicant foreign company, namely Macline Cola Co., before any income-tax authority/Appellate Tribunal/court, raising the question raised in the application filed wit h AAR. However, one of the Indian companies, namely, Coca Cola Ltd., had raised the question before the Assessing Officer, not on the applicants behalf or with a view to benefit the applicant, but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made tot he foreign company. Although the question raised pertains to one of the payments made or to be made to the non-resident applicant, it was not one pending determination before any income-tax authority in the applicants case.

(2 Marks)

Therefore, as held in Ericsson Telephone Corporation India AB v. CIT (1997) 224 ITR 203 (AAR),the application filed by the Indian company, Coca Cola Ltd., before the Assessing Officer cannot be treated to have been filed by the foreign company, Macline Cola Co. Hence, the rejection of the application of Macline

Cola Co. by the AAR on the ground that the question raised in the application is already pending before an income-tax authority is not justified.

(1 Mark)

Answer-6 (b) :

The issue as to whether a rectification order can be passed by the Income-tax Appellate Tribunal under section 254 beyond four years from the date of its order sought to be rectified has been addressed in Sree Ayyanar Spinning and Weaving Mills Ltd. v. CIT (2008) 301 ITR434 (SC). Section 254(2), dealing with the power of the Appellate Tribunal to pass an order of rectification of mistakes, is in two parts. The first part refers to the suo motu exercise of the power of rectification by the Appellate Tribunal, whereas the second part refers to rectification on an application filed by the assessee or Assessing Officer bringing any mistake apparent from the record to the attention of the Appellate Tribunal.

(2 Marks)

If Income-tax Appellate Tribunal, suo moto, makes the rectification of its order, then the order has to be passed within 4 years from the date of order to be revised. Where the application for rectification is made within four years from the date of the order by the Assessing Officer or the assessee, the Appellate Tribunal is bound to decide the application on merits and not on the ground of limitation i.e. order can be passed after expiry of 4 years from date of order sought to be revised. However, the application for rectification cannot be filed belatedly after 4years [Ajith Kumar Pitaliya vs ITO (2008) 167 Taxmann 24 (M.P.)]

(2 Marks)

Answer-6 (c) :

(a) The action of the Commissioner in issuing the second notice is not justified. The term "record" has been defined in clause (b) of Explanation to section 263(1). According to this definition "record" shall include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner. In other words, the information, material, report etc. which were not in existence at the time the assessment was made and came into existence afterwards can be taken into consideration by the Commissioner for the purpose of invoking his jurisdiction under section 263(1). However, at the same time, in view of the express provisions contained in clause (b) of the Explanation to section 263(1), such information, material, report etc. can be relied upon by the Commissioner only if the same forms part of record when the action under section 263 is taken by the Commissioner, Issuance of a notice under section 263 succeeds the examination of record by Commissioner. In the present case, the Commissioner initially issued a notice under section 263, after the examination of the record available before him. The subsequent second notice was on the basis of material collected under section 133A, which was totally unrelated and irrelevant to the issues sought to be revised in the first notice. Accordingly, the material on the basis of which the second notice was issued could not be said to be "record" available at the time of examination as emphasised in Explanation(b) to section 263(1).

(4 Marks)

(b) As per Rule 46A(1) of the Income-tax Rules 1962, an appellant shall be entitled to produce before the Commissioner (Appeals), evidence, either oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, only in the following circumstances-

- (a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or
- (c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or
- (d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(4 Marks)

Answer-6 (d) :

The powers under section 131(1A) deal with power of discovery and production of evidence. They do not confer the power of seizure of cash or any asset. The Director General, for the purposes of making an enquiry or investigation relating to any income concealed or likely to be concealed by any person or class of persons within his jurisdiction, shall be competent to exercise powers conferred under section 131(1), which confine to discovery and inspection, enforcing attendance, compelling the production of books of account

and other documents and issuing commissions. Thus, the power of seizure o f unaccounted cash is not one of the powers conferred on the Director General under section 131(1A).

(2 Marks)

However, under section 132(1), the Director General has the power to authorize any Additional Director or Additional Commissioner or Joint Director or Join t Commissioner etc. to seize money found as a result of search [Clause (iii) of section 132(1)], if he has reason to believe that any person is in possession of any money which represents wholly or partly income which has not been disclosed [Clause (c) of section 132(1)]. Therefore, the proper course open to the Director General is to exercise his power under section 132(1) and authorize the Officers concerned to enter the premises where the cash is kept by Mr.Mogambo and seize such unaccounted cash.

(2 Marks)

Answer-7 (a) :

Discuss whether transfer pricing provisions under the Income-tax Act, 1961 are attracted in respect of the following cases -

(i) XY Ltd., an Indian company, has two units, X & Y. Unit X, which commenced business two years back, is engaged in the development of a highway project, for which purpose an agreement has been entered into with the Central Government. Unit Y is carrying on the business of trading in steel. Unit Y transfers steel of the value of Rs. 80 lakhs to Unit X for Rs. 68 lakhs.

(ii) Transfer of industrial design by X Ltd., an Indian company, to Y Inc., a US company, which guarantees 20% of the borrowings of X Ltd.

(iii) Marketing management services provided by LMN Inc., a French company to MNO Ltd., an Indian company. LMN Inc. is a "specified foreign company" as defined in section 115BBD, in relation to MNO Ltd.

(iv) Ms. Poorna, a resident Indian, is a director of ABC Ltd, an Indian company. ABC Ltd. pays salary of Rs. 22 lakhs per annum to Manasi, who is Ms. Poorna's daughter.

(v) Purchase of equipment by A Ltd., an Indian company, from B Inc., a Japanese company. A Ltd. is the subsidiary of B Inc. to in section 40A(2)(b) i.e., relative (i.e., daughter) of Ms. Poorna, who is a director of ABC Ltd. However, such a transaction would be treated as a "specified domestic transaction" to attract transfer pricing provisions only if the aggregate of such transactions as specified in section 92BA during the year by ABC Ltd. exceeds a sum of Rs. 20 crore.

(vi) Purchase of tangible property falls within the scope of "international transaction". Tangible property includes equipment. B Inc. and A Ltd. are deemed to be associated enterprises under section 92A(2), since B Inc., being a holding company of A Ltd., fulfils the condition of holding shares carrying not less than 26% of the voting power in A Ltd. Therefore, purchase of equipment by A Ltd., an Indian company, from B Inc., a Japanese company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

(6 x 1 = 6 Marks)

Answer-7 (b) :

(i) A registered trade union is having income from property, which is exempt under section 10(24). Section 139(4C) mandates filing of return only when the total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of section 10. Even without giving effect to section 10(24), the total income is below basic exemption limit and therefore, there is no mandatory requirement to file the return of income.

(2 Marks)

(ii) The quantum of exemption under section 10(23C)(via) is not given in the question. If the total income of the public trust hospital, without giving effect to the exemption under section 10(23C)(via), is less than the basic exemption limit of Rs. 2,50,000, the trust need not file its return of income. However, if the total income without giving effect to the exemption under section 10(23C)(via) exceeds Rs. 2,50,000, the trust has to file its return of income by 30th September, 2016.

(2 Marks)

Answer-7 (c) :

(i) The Assessing Officer, under section 133A, is empowered to conduct a survey on the business premises of an assessee within his jurisdiction only during the hours at which such place is open for the conduct of business. In the present case, the assessee was engaged in money lending business from his residence which shall be construed as business premises and therefore, the action of the

Assessing Officer to conduct survey on residential premises on Thursday, being a working day, at 4.30 p.m., which falls within the working hours, is correct.

(2 Marks)

(ii) The assessment under section 143(3) was completed for the assessment year 2009-10and the notice under section 148 was issued on 11.03.2016. The validity of the notice is discussed hereunder. An assessment completed under section 143(3) can be reopened under section 148(where the income escaping assessment is more than Rs. 1 lac) within a period of 6 years from the end of the assessment year in which the income was first assessable. The income of Rs. 1,32,500 which escaped assessment could be subjected to reassessment within a period of 6 years from the end of the assessment year to which it relates. The time limit of 6 years from the end of the relevant assessment year would expire o n31.03.2016. Since the notice was served on 11.03.2016, it is valid in law. After serving notice under section 148, the time limit for completion of assessment would be 1 year from the end of the financial year in which the notice was served. Therefore, the time limit for completion of assessment, in this case, would be upto 31.3.2017.

(4 Marks)