

MOCK TEST PAPER 1
FINAL COURSE: GROUP – II
PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION
SOLUTIONS

Division A – Multiple Choice Questions

MCQ No.	Most Appropriate Answer	MCQ No.	Most Appropriate Answer
1.	(d)	9.	(a)
2.	(d)	10.	(d)
3.	(c)	11.	(d)
4.	(c)	12.	(a)
5.	(c)	13.	(c)
6.	(a)	14.	(b)
7.	(a)	15.	(c)
8.	(d)		

Division B – Descriptive Questions

1. (a) **Computation of Total Income of Parik Hospitality Ltd. for the A.Y.2023-24**

Particulars	Amount (₹)	
Profit as per Statement of profit and loss		1,52,00,000
Add: Items debited but to be considered separately or to be disallowed		
(a) Payment to middleman for purchase of raw corn etc. in cash for an amount exceeding ₹10,000 [Under section 40A(3), disallowance is attracted in respect of expenditure for which cash payment exceeding ₹ 10,000 is made on a day to a person. Payment of ₹ 25,000 to farmer for purchase of corn is covered by exception under Rule 6DD. However, payment of ₹ 30,000 to spice trader is not covered under the exception - <i>CBDT Circular 27/2017 dated 3/11/2017</i>].	30,000	
(b) Contribution towards employees' pension scheme in excess of 10% of salary disallowed under section 40A(9) [Contribution to the extent of 10% of salary (basic salary + dearness allowance, if it forms part of pay for retirement benefits) is allowable as deduction under section 36(1)(iva). In this case, 2% is in excess of 10% i.e., Rs.3,00,000 x 2/12, would be disallowed]	50,000	

(c) Payment to transport contractor without deduction of tax at source [Since the contractor opts for presumptive taxation under section 44AE and furnished a declaration to this effect, tax is not required to be deducted at source under section 194C in respect of payment to transport contractor].	-	
(e) Contribution to IIT for scientific research [Contribution to IIT for scientific research programme approved by the prescribed authority qualifies for deduction @100% under section 35(2AA). Since the amount of contribution has already been debited to the statement of profit and loss, there is no further adjustment required].	-	
(f) Expenses on foreign travel of two directors for a collaboration agreement which failed to materialize [Where expenditure is incurred for a project not related to the existing business and the project was abandoned without creating a new asset, the expenses are capital in nature as per <i>Mc Gaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 210 ITR 1002 (Guj.)</i> . Brewery project is not related to the existing business of running three - star hotels]	10,00,000	
(g) Fees paid to directors without deducting tax at source [30% of ₹1 lakh] [Disallowance @ 30% would be attracted under section 40(a)(ia) for non-deduction of tax at source from director's remuneration on which tax is deductible under section 194J]	30,000	11,10,000
Less: Items credited but to be considered separately/ Expenditure to be allowed		1,63,10,000
(d) Profit on sale of plot of land to 100% subsidiary [Short-term capital gains arise on sale of plot of land held for less than 24 months. However, in this case, since the transfer is to a 100% subsidiary company and the subsidiary company is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv). Since this amount has been credited to the statement of profit and loss, the same has to be deducted for computing business income].	12,00,000	
(h) Depreciation [Depreciation allowable under the Income-tax Act, 1961 is ₹ 15 lakhs whereas the depreciation as per books of account debited to the statement of profit and loss is ₹ 10 lakhs. Hence, the additional amount of ₹ 5 lakhs has to be deducted while computing business income]	5,00,000	
(i) Additional compensation received from State Government [Since the additional compensation has been received pursuant to an interim order of the Court, the same would be deemed as income chargeable to tax under the head "Capital	10,00,000	

Gains" in the year of final order as per section 45(5). Since the compensation has been credited to the statement of profit and loss, the same has to be deducted while computing business income]		
(j) Dividend received from foreign company [Dividend received from foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	5,00,000	
AI (i) Interest paid during the year [Conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose section 43B. The amount of unpaid interest converted into a new loan will be allowable as deduction only in the year in which such converted loan is actually paid. Since ₹ 2 lakhs has been paid in the P.Y.2022-23, the same is allowable as deduction]	2,00,000	
AI (iii) Purchases omitted to be recorded in the books [Since the purchase is made in March, 2023 (i.e., P.Y.2022-23), in respect of which bill of ₹ 2 lakhs received on 31.3.2023 has been omitted to be recorded in the books in that year, it has to be deducted to compute the business income <i>[Kedarnath Jute Manufacturing Company Ltd. v. CIT (1971) 82 ITR 363 (SC)]</i> . It is logical to assume that the company is following mercantile system of accounting].	2,00,000	36,00,000
Income under the head "Profits and Gains of Business or Profession"		1,27,10,000
Capital Gains		
Profit on sale of plot of land to 100% subsidiary [Since the transfer is to a 100% subsidiary company and the subsidiary company is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv). Consequently, profit arise on sale of plot of land would not be taxable in the hands of Parik Hospitality Ltd.].	-	
Additional compensation received from State Government [Since the additional compensation has been received pursuant to an interim order of the Court, the same would be deemed as income chargeable to tax under the head "Capital Gains" in the year of final order as per section 45(5). Consequently, such compensation would not be taxable during the P.Y. 2022-23].	-	
Income from Other Sources		
Dividend received from foreign company [Dividend received from a foreign company is chargeable to tax under the head "Income from other sources".]		5,00,000

Gross Total Income		1,32,10,000
<i>Less: Deduction under Chapter VI-A</i>		
Deduction u/s 80M in respect of inter-corporate dividends [to the extent of dividend distributed by it on or before the due date specified u/s 139(1) of filing return of income]		5,00,000
Total Income		1,27,10,000

2. (a) **Computation of total income and tax liability of PQR LLP for A.Y.2023-24 (under the regular provisions of the Income-tax Act, 1961)**

Particulars	₹	₹
Profits and gains of business or profession		
Unit in SEZ		40,00,000
Profit from operation of warehousing facility	1,05,00,000	
<i>Less: Deduction under section 35AD [See Note (2) below]</i>	65,00,000	
Business income of warehousing facility chargeable to tax		40,00,000
Gross Total Income		80,00,000
<i>Less: Deduction under section 10AA [See Note (1) below]</i>		32,00,000
Total Income		48,00,000
Computation of tax liability (under the normal/regular provisions)		
Tax @ 30% on ₹ 48,00,000		14,40,000
<i>Add: Health and Education cess @ 4%</i>		57,600
Total tax liability		14,97,600

Computation of adjusted total income of PQR LLP for levy of Alternate Minimum Tax

Particulars	₹	₹
Total Income (as computed above)		48,00,000
<i>Add: Deduction under section 10AA</i>		32,00,000
		80,00,000
<i>Add: Deduction under section 35AD</i>	65,00,000	
<i>Less: Depreciation under section 32</i>		
On building @10% of ₹ 65 lakhs ¹	6,50,000	58,50,000
Adjusted Total Income		1,38,50,000
Alternate Minimum Tax @18.5%		25,62,250
<i>Add: Surcharge@12% (since adjusted total income > ₹ 1 crore)</i>		3,07,470
		28,69,720
<i>Add: Health and Education cess@4%</i>		1,14,789
		29,84,509
Tax liability under section 115JC (rounded off)		29,84,510

¹Assuming the capital expenditure of ₹ 65 lakhs is incurred entirely on buildings

Since the regular income-tax payable is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income and tax is leviable @18.5% thereof *plus* surcharge @ 12% and cess @4%. Therefore, the tax liability is ₹ 29,84,510.

AMT Credit to be carried forward under section 115JD

	₹
Tax liability under section 115JC	29,84,510
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	14,97,600
	14,86,910

Notes:

(1) Deduction under section 10AA in respect of Unit in SEZ =

$$\text{Profit of the Unit in SEZ} \times \frac{\text{Export turnover of the Unit in SEZ}}{\text{Total turnover of the Unit in SEZ}} \times 100\%$$

$$₹ 40,00,000 \times \frac{₹ 80,00,000}{₹ 1,00,00,000} \times 100\% = ₹ 32,00,000$$

- (2) Deduction @ 100% of the capital expenditure is available under section 35AD for A.Y.2023-24 in respect of specified business of setting up and operating a warehousing facility for storage of agricultural produce which commences operation on or after 01.04.2009.

Further, the expenditure incurred, wholly and exclusively, for the purposes of such specified business, shall be allowed as deduction during the previous year in which it commences operations of specified business if the expenditure is incurred prior to the commencement of its operations and the amount is capitalized in the books of account of the assessee on the date of commencement of its operations.

Deduction under section 35AD would, however, not be available on expenditure incurred on acquisition of land.

In this case, since the capital expenditure of ₹ 65 lakhs (i.e., ₹ 75 lakhs – ₹ 10 lakhs, being expenditure on acquisition of land) has been incurred in the F.Y. 2021-22 and capitalized in the books of account on 1.4.2022, being the date when the warehouse became operational, ₹ 65,00,000, being 100% of ₹ 65 lakhs would qualify for deduction under section 35AD in F.Y. 2022-23.

(b) Computation of total income of Mr. Ravi for A.Y.2023-24

Particulars	₹	₹
Income from House Property [House situated in Country T]		
Gross Annual Value ²	3,30,000	
Less: Municipal taxes paid in Country T	<u>10,000</u>	
Net Annual Value	3,20,000	
Less: Deduction under section 24 – 30% of NAV	<u>96,000</u>	
		2,24,000
Profits and Gains of Business or Profession		
Income from business carried on in India	4,40,000	

²Rental income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

Royalty income from a book of art in Country S (after deducting expenses of ₹ 50,000)	7,30,000	11,70,000
Income from Other Sources		
Interest on savings bank with ICICI Bank	42,000	
Agricultural income in Country S [Not exempt]	94,000	
Dividend from a company in Country T	<u>2,65,000</u>	<u>4,01,000</u>
Gross Total Income		17,95,000
Less: Deduction under Chapter VIA		
Under section 80QCB – Royalty income of a resident from a work of art ³		3,00,000
Under section 80TTA – Interest on savings bank account, subject to a maximum of ₹ 10,000.		<u>10,000</u>
Total Income		14,85,000

Note – Since adjusted total income (i.e., ₹ 17,85,000) does not exceed ₹ 20 lakhs, AMT would not be attracted in this case.

Computation of tax payable by Mr. Ravi for A.Y.2023-24

Particulars		₹
Tax on total income [30% of ₹ 4,85,000 + ₹ 1,12,500]		2,58,000
Add: Health and education cess @4%		<u>10,320</u>
		2,68,320
Less: Rebate under section 91 (See Working Note below)		<u>1,72,197</u>
Tax Payable		<u>96,123</u>
Tax payable (rounded off)		96,120
Calculation of Rebate under section 91:		
Average rate of tax in India [i.e., ₹ 2,68,320 / ₹ 14,85,000 x 100]	18.069%	
Average rate of tax in Country S	16%	
Doubly taxed income pertaining to Country S⁴	₹	
Agricultural Income	94,000	
Royalty Income [₹ 7,80,000 – ₹ 50,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QCB)]	4,30,000	
	5,24,000	
Rebate under section 91 on ₹ 5,24,000 @16% [being the lower of average Indian tax rate (18.069%) and Country S tax rate (16%)]		83,840

³ It is assumed that the royalty earned outside India has been brought into India in convertible foreign exchange within a period of six months from the end of the previous year.

⁴Doubly taxed income includes only that part of income which is included in the assessee's total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount – CIT v. Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.).

Average rate of tax in Country T	20%	
Doubly taxed income pertaining to Country T		
Income from house property	2,24,000	
Dividend	<u>2,65,000</u>	
	<u>4,89,000</u>	
Rebate under section 91 on ₹ 4,89,000 @18.069% (being the lower of average Indian tax rate (18.069%) and Country T tax rate (20%))		<u>88,357</u>
Total rebate under section 91 (Country S + Country T)		<u>1,72,197</u>

Note: Mr. Ravi shall be allowed deduction under section 91, since the following conditions are fulfilled:-

- (a) He is a resident in India during the relevant previous year i.e., P.Y.2022-23.
 - (b) The income in question accrues or arises to him outside India in foreign countries S & T 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 countries "S" and "T" in his hands and it is presumed that he has paid tax on such income in those countries.
 - (d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries S and T where the income has accrued or arisen.
3. (a) As per section 115TD, the accreted income of "Serving the poor", a charitable trust, registered under section 12AB which merged with an entity not entitled for registration under section 12AB or approval under section 10(23C), would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @12% plus cess@4%].

Computation of accreted income and tax liability in the hands of the trust arising as a result of merger with the "not eligible" entity for A.Y. 2023-24

Particulars	Amount (₹)
Aggregate FMV of total assets as on 1.4.2022, being the specified date (date of merger) [See Working Note 1]	1,21,00,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	96,00,000
Accreted Income	25,00,000
Tax Liability @ 34.944% of ₹ 25,00,000	8,73,600
Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
- Land, being an immovable property [The fair market value of land would be higher of ₹ 17 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and ₹ 15 lakhs, being stamp duty value as on the specified date]	17,00,000
- Quoted equity shares in Ink Ltd. [75,000 x ₹ 80 per share] [₹ 80 per share, being the average of the lowest (₹ 75) and highest price (₹ 85) of such shares on the date of merger]	60,00,000

- 55,000 preference shares of N Ltd. [The fair market value which it would fetch if sold in the open market on the date of merger i.e., FMV on 1.4.2022]	44,00,000
	1,21,00,000
(2) Total liability	
- Outside liabilities	90,00,000
- Corpus Fund of ₹ 15 lakhs [not includible]	-
- Provision for taxation ₹ 5 lakhs [not includible]	-
- Liabilities in respect of payment of various utility bills [since this liability is an ascertained liability]	6,00,000
	96,00,000

- (b) (i) An applicant who is aggrieved by any ruling pronounced by the Board for Advance Rulings may appeal to the High Court against such ruling or order of the Board of Advance Rulings. He has to do so within sixty days from the date of the communication of that ruling, in the prescribed form and manner.

However, where the High Court is satisfied, on an application made by the appellant in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the 60 day period as specified above, it may grant further period of 30 days for filing such appeal.

- (ii) Section 165A in the Finance Act, 2016 provides for equalisation levy@2% on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it, *inter alia*, to a person resident in India and a person who buys such goods or services or both using internet protocol address located in India.

In the present case, XYZ & Co. is an e-commerce operator since it is a non-resident owning and operating an electronic facility for online sale of goods and provision of services. If XYZ & Co. has no permanent establishment in India, the gross receipts of the e-commerce operator from the e-commerce supply and services facilitated is ₹ 2.15 crore.

	Particulars	Amount in ₹
(a)	Receipts from sale of goods to persons resident in India	158 lakhs
(b)	Receipts from sale of goods to persons not resident in India (using internet protocol address located in India)	57 lakhs
Total receipts		215 lakhs

Since total receipts which are chargeable to equalisation levy exceed ₹ 2 crore, equalisation levy@2% is attracted on the above sum of ₹ 215 lakhs, which would amount to ₹ 4.30 lakhs.

4. (a)

		Amount of TDS (₹)
(i)	Since the consideration and stamp duty value for transfer of house property at Mumbai both are not less than ₹ 50 lakhs, Mr. X, being the transferee, is required to deduct tax @1% under section 194-IA on ₹ 95 lakhs, being higher of stamp duty value and the amount of consideration for transfer of property, at the time of credit to the	95,000

	transferor account or payment, whichever is earlier. Mr. X is not required to deduct tax as source under section 194-IA from the consideration of ₹ 49,50,000 paid to Mr. C for transfer of urban plot, since the consideration and stamp duty value, both are less than ₹ 50 lakhs. Mr. X is also not required to deduct tax at source under section 194-IA for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction under section 194-IA. Note - Section 194-IA requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 1% of higher of consideration and stamp duty value, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such consideration to the resident transferor, whichever is earlier. However, no tax is required to be deducted where the consideration for transfer of an immovable property and stamp duty value of such property, both are less than ₹ 50 lakhs.	Nil						
(ii)	Section 194H requires deduction of tax at source @5% from commission and brokerage payments to a resident. However, no tax is to be deducted at source where the amount of such payment does not exceed ₹ 15,000. In the given case, 'ABC Packaging Ltd.', the consignee, has not remitted the commission of ₹ 50,000 to the consignor 'XYZ Developers' while remitting the sales consideration. Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission [CBDT Circular No.619 dated 4/12/1991]. Therefore, XYZ Developers has to deduct tax at source on ₹ 50,000 at the rate of 5%.	2,500						
(iii)	Section 192 provides that tax is required to be deducted on the payment made as salaries. Tax is to be deducted on the estimated income at the average of income tax computed on the basis of the rates in force for the financial year in which payment is made. The employee may declare details of his other incomes (including loss under the head "Income from house property" but not any other loss) to his employer. In this case, since Mr. Raj has notified his employer AB Ltd. of loss from self-occupied house property, the employer has to take the same into consideration for deduction of tax at source. Therefore, AB Ltd. is required to deduct tax at source on the salary of ₹ 55,000 per month paid to Mr. Raj, in the following manner: <table><tr><td>Income under the head salaries (₹ 55,000 x 12)</td><td>6,60,000</td></tr><tr><td>Less: Standard deduction under section 16(ia)</td><td><u>50,000</u></td></tr><tr><td></td><td>6,10,000</td></tr></table>	Income under the head salaries (₹ 55,000 x 12)	6,60,000	Less: Standard deduction under section 16(ia)	<u>50,000</u>		6,10,000	
Income under the head salaries (₹ 55,000 x 12)	6,60,000							
Less: Standard deduction under section 16(ia)	<u>50,000</u>							
	6,10,000							

	Income under the head "house property"	<u>(80,000)</u>	
	Gross total income	5,30,000	
	Less: Deduction under Chapter VI-A	<u>Nil</u>	
	Total Income	<u>5,30,000</u>	
	Tax on ₹ 5,30,000	18,500	
	Add: Health and Education cess@4%	<u>740</u>	
	Tax to be deducted at source	<u>19,240</u>	19,240
(iv)	Where the payer is an individual or HUF whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 1 crore during the financial year immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source. Since the turnover from business of Mr. Anand was ₹ 202 lakhs for the F.Y. 2021-22, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2022-23. Accordingly, Mr. Anand is liable to deduct tax at source under section 194-I on the rental payments made. Section 194-I provides that rent includes any payment, by whatever name called, for the use of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of ₹ 15,000 p.m., service charge of ₹ 6,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. Since the aggregate rental payments of ₹ 2,52,000 to Mr. R during the financial year 2022-23 exceeds ₹ 2,40,000, Mr. Anand is liable to deduct tax at source @10% under section 194-I from rent paid to Mr. R.		
			25,200

(b) **Computation of total income of STYLE Inc., a notified FII, for A.Y.2023-24**

Particulars	₹	₹
Interest on Rupee Denominated Bonds	8,50,000	
Dividend income	6,20,000	
Interest on securities [No deduction is allowable in respect of expenses incurred in respect thereof]	<u>17,32,000</u>	32,02,000
Long-term capital gains on sale of bonds of J Ltd.		
Sale consideration	47,00,000	
Less: Cost of acquisition	<u>32,00,000</u>	15,00,000
[Benefit of indexation is not allowable]		
Short-term capital gains on sale of STT paid equity shares of E Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	<u>7,80,000</u>	4,60,000
Short-term capital gains on sale on unlisted equity shares of M Ltd.		
Sale consideration	8,40,000	
Less: Cost of acquisition	<u>3,72,000</u>	4,68,000
Total Income		56,30,000

Computation of tax liability of STYLE Inc. for A.Y.2023-24

Particulars	₹
Tax@5% on interest of ₹ 8,50,000 received from an Indian company on investment in rupee denominated bonds = 5% x ₹ 8,50,000	42,500
Tax@20% on interest on securities and dividend = 20% x ₹ 23,52,000	4,70,400
Tax@10% on long-term capital gains on sale of bonds of J Ltd. = 10% x ₹ 15,00,000	1,50,000
Tax @ 15% on short-term capital gains on sale of listed equity shares of E Ltd., in respect of which STT has been paid = 15% of ₹ 4,60,000	69,000
Tax @ 30% on short-term capital gains on sale of unlisted equity shares of M Ltd. = 30% of ₹ 4,68,000	<u>1,40,400</u>
	8,72,300
Add: HEC@4%	<u>34,892</u>
Tax liability	<u>9,07,192</u>
Tax liability (rounded off)	<u>9,07,190</u>

5. (a) The clarification regarding filing of return of income by the coffee growers being individuals covered by Rule 7B of the Income-tax Rules, 1962 is given in *Circular No.10/2006 dated 16.10.2006*. According to the Circular, an individual deriving income from growing, curing, roasting and grounding of coffee with or without mixing chicory, would not be required to file the return of income if the aggregate of 40% of his or her income from growing, curing, roasting and grounding of coffee with or without mixing chicory and income from all other sources liable to tax in accordance with the provisions of this Act, is equal to or less than the basic exemption limit prescribed in the First Schedule of the Finance Act of the relevant year.

In this case, Smt. Kanti has income of ₹ 6,00,000 from this business, which was her only source of income for P.Y. 2022-23. Her total income would be 40% of such income i.e., ₹ 2,40,000, which is less than the basic exemption limit of ₹ 2,50,000 in respect of an individual assessee. Therefore, Smt. Kanti is not required to file a return of income for the A.Y. 2023-24 as per the provisions of section 139(1).

If Smt. Kanti had travelled to USA during the P.Y. 2022-23 and incurred ₹ 2.20 lakhs on such travel, she would be required to mandatorily file a return of income for A.Y. 2023-24 on or before the due date u/s 139(1), even though her total income does not exceed the basic exemption limit.

- (b) (i) The proposition is correct in law. The Supreme Court has, in *CIT vs. McMillan & Co. (1958) 33 ITR 182* and *CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225*, held that in disposing of an appeal before him, the appellate authority can travel over a whole range of the assessment order. The scope of his powers is co-terminus with that of the Assessing Officer. He can do what the Assessing Officer can do and can also direct him to do, what he has failed to do. He can assess income from sources which have been considered by the Assessing Officer but not brought to tax. He can consider every aspect of the assessment order and give appropriate relief.

The Allahabad High Court has, in *CIT v. Kashi Nath Chandiwalla (2006) 280 ITR 318*, held that the appellate authority is empowered to consider and decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding the fact that such matter was not raised before him by the assessee. The Commissioner (Appeals) is

entitled to direct additions in respect of items of income not considered by the Assessing Officer.

Further, the Apex Court has, in the case of *Jute Corporation of India Ltd. vs. CIT* (1991) 187 ITR 688, held that the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter.

Thus, the powers of the Commissioner of Income-tax (Appeals) in enhancing the assessment are very wide and plenary.

- (ii) The proposition is not correct as per law. This is because section 254(2) specifically empowers the Appellate Tribunal to amend any order passed by it, either *suo-moto* or on an application made by the assessee or Assessing Officer, with a view to rectify any mistake apparent from record, at any time within 6 months from the end of the month of the order sought to be amended.

The powers of the Tribunal under section 254(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the record. The mistake has to be such that for which no elaborate reasons or inquiry is necessary. Accordingly, the re-appreciation of evidence placed before the Tribunal during the course of the appeal hearing is not permitted. It cannot re-adjudicate the issue afresh under the garb of rectification [*CIT vs. Vardhman Spinning* (1997) 226 ITR 296 (P & H), *CIT v. Ballabh Prasad Agarwalla* (1998) 233 ITR 354 (Cal.) & *Niranjan & Co. Ltd. v. ITAT* (1980) 122 ITR 519 (Cal.)]

- (c) Article 31 of Vienna Convention of Law of Treaties contains the General Rule of Interpretation. It lays down that following general rule of interpretation:

- A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms thereof in the context and in the light of its object and purpose.
- The context for the purpose of interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexure
 - (a) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
 - (b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related thereto.
- The following shall be taken into account, together with the context in that:
 - (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) Any relevant rules of international law applicable to relation between the parties.

A special meaning shall be given to a term if it is established that the parties so intended.

6. (a) Section 292B provides that no return of income, assessment, notice or summons furnished or made or issued or taken in pursuance of any of the provisions of the Income-tax Act, 1961 shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment or notice etc., if such return of income, assessment, notice, summons etc. is in substance and effect in conformity with or according to the intent and purpose of the Act.

Therefore, a clerical mistake cannot invalidate an otherwise valid assessment. Thus, the typographical error in the assessment order as to assessment year and previous year does not make the same invalid unless established otherwise. Accordingly, the action of the CIT(Appeals) in not accepting the claim of the assessee is valid.

(b)

	Answer	Reason
(i)	Tax management	Maintaining register of payments subject to TDS helps in complying with the obligations under the Income-tax Act, 1961.
(ii)	Tax management	Obtaining declaration from lenders/depositors in Form No. 15G/15H by a partnership firm and forwarding the same to Income-tax authorities is in the nature of compliance of statutory obligation under the Income-tax Act, 1961.
(iii)	Tax evasion	An air conditioner fitted at the residence of a director as per the terms of his appointment would be a furniture qualifying for depreciation @10%, whereas an air conditioner fitted in a factory would be a plant qualifying for a higher depreciation @15%. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduces profit and consequent tax liability. Treatment of air-conditioner fitted at the residence of a director as a plant fitted at the factory would tantamount to furnishing of false particulars with an attempt to evade tax.
(iv)	Tax evasion	Issuance of a credit note for ₹ 80,000 by RR Ltd. as brokerage payable to Mr. Ramana, the son of the Managing Director, to increase his total income from ₹ 4.2 lakh to ₹ 5.00 lakh and to correspondingly reduce the company's total income is a method of reducing the tax liability of the company by recording a fictitious transaction. The company is liable to tax at a flat rate of 30%/25%/22%, as the case may be, whereas Mr. Ramana would not be liable to pay any tax, since his total income does not exceed ₹ 5,00,000, consequent to which he would be eligible for tax rebate of ₹ 12,500 under section 87A. Reducing tax liability by recording a fictitious transaction would tantamount to tax evasion.
(v)	Tax planning	Making a tax saver deposit of ₹ 1,00,000 in a nationalized bank for claiming deduction under section 80C by an individual is a permitted tax planning measure under the provisions of income-tax law.

(c) XE Ltd, the Indian company and Zilla Inc., the US company are deemed to be associated enterprises as per section 92A(2)(a), since Zilla Inc. holds shares carrying not less than 26% of the voting power in XE Ltd.

As per *Explanation* to section 92B, the transactions entered into between these two companies for sale of product, lending or guarantee and provision of services relating to market research are included within the meaning of "international transaction".

Accordingly, transfer pricing provisions would be attracted and the income arising from such international transactions have to be computed having regard to the arm's length price. In this case, from the information given, the arm's length price has to be determined taking the comparable uncontrolled price method to be the most appropriate method.

Particulars		₹ in lakhs
Amount by which total income of XE Ltd. is enhanced on account of adjustment in the value of international transactions:		
(i)	Difference in price of T-Shirt @ \$ 1 each for 1,00,000 pieces sold to Zilla Inc. (\$ 1 x 1,00,000 x ₹ 64)	64.00
(ii)	Difference for excess payment of guarantee fee to Zilla Inc. for loan borrowed from foreign lender (\$ 3,000 x ₹ 64)	1.92
(iii)	Difference for excess payment for services to Zilla Inc. (\$ 5,000 x ₹ 64)	3.20
		69.12
XE Ltd. cannot claim deduction under section 10AA in respect of ₹ 69.12 lakhs, being the amount of income by which the total income is enhanced by virtue of the first proviso to section 92C(4)		