RECENT IN JUDICIARY (MAY, 2020 AND NOVEMBER, 2020 EXAMINATIONS)

1. WHETHER NON-ISSUANCE OF NOTICE UNDER SECTION 143(2) IN ASSESSMENT PROCEEDINGS UNDER SECTION 143(3) OR 147 BY THE ASSESSING OFFICER A DEFECT NOT CURABLE UNDER SECTION 292BB INSPITE OF PARTICIPATION BY THE ASSESSEE IN ASSESSMENT PROCEEDINGS?

CIT V. LAXMAN DAS KHANDELWAL [2019] (SUPREME COURT)

Relevant provision of the Income-tax Act, 1961: Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3)/147. Section 292BB is a deeming provision that seeks to cure defects in any notice issued under any provision of the Income-tax Act, 1961, if the assessee has participated in the proceedings. Section 292BB provides that where the assessee has participated in the proceedings, **any notice which is required to be served upon him** shall be deemed to have been duly served and the assessee would be precluded from taking any objection that the notice was (a) not served upon him; or (b) not served upon him in time, or (c) served upon him in an improper manner.

Supreme Court's Decision: According to section 292BB, if the assessee had participated in the proceedings, by way of legal fiction, notice issued would be deemed to be valid even if there be infractions as detailed in the said section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee. **It is, however, to be noted that the section does not save complete absence of issue of notice**. For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself.

THE SUPREME COURT HELD THAT NON-ISSUANCE OF NOTICE UNDER SECTION 143(2) IS NOT A CURABLE DEFECT UNDER SECTION 292BB INSPITE OF PARTICIPATION BY THE ASSESSEE IN ASSESSMENT PROCEEDINGS.

2. WHETHER INITIATION OF ASSESSMENT BY ISSUE OF NOTICES UNDER SECTIONS 143(2) AND 142(1) IN THE NAME OF THE ERSTWHILE AMALGAMATING COMPANY, AFTER APPROVAL OF THE SCHEME OF AMALGAMATION BY THE HIGH COURT AND INTIMATION OF SUCH AMALGAMATION TO THE ASSESSING OFFICER, VOID AB INITIO?

PR. CIT V. MARUTI SUZUKI INDIA LTD. [2019] (SUPREME COURT)

Facts of the Case: The assessee-company, S, filed its return of income on November 28, 2019 (when no amalgamation has taken place). On January 29, 2020, the High Court approved the Scheme for Amalgamation of S (amalgamating company) with M (amalgamated company) w.e.f. April 1, 2019. On April 2, 2020, the amalgamated company, M, intimated the Assessing Officer of the amalgamation. Notice under section 143(2) was issued to S on September 26, 2020, followed by a notice under section 142(1). The amalgamated company, M, participated in the assessment proceedings. Assessment order was passed in the name of S.

Relevant provision of the Income-tax Act, 1961: Section 292B allows for curing of defects of a technical nature. The rationale behind this section is that the return of income, assessment, notice, summons or other proceedings should not be held to be invalid due to technical mistakes, which otherwise do not have much impact touching its legality, provided such return, assessment, notice, summons or other proceedings, etc., are otherwise in conformity with the purpose of the Income-tax Act, 1961.

Issue: Whether issue of notice by the Assessing Officer in the name of the amalgamating company (S, in this case), after such company has amalgamated with another company (M, in this case) and after he has been so informed of such amalgamation, is a defect curable under section 292B? Would participation of the amalgamated company, M, in the assessment proceedings operate as an estoppel against law?

Supreme Court's Observations: The consequence of approval of the scheme of amalgamation under section 394 of the Companies Act, 1956 is that the amalgamating company ceased to exist. It could not, thereafter, be regarded as a person under section 2(31) against which assessment proceedings could be initiated or an order of assessment could be made. Notice under section 143(2) was issued on September 26, 2020 to S, the amalgamating company. Prior to the date on which the jurisdictional notice under section 143(2) was issued, the scheme of amalgamation had been approved by the High Court under the Companies Act, 1956 and the same had also been informed to the Assessing Officer.

SUPREME COURT'S DECISION: IN THE PRESENT CASE, DESPITE THE FACT THAT THE ASSESSING OFFICER WAS INFORMED OF THE AMALGAMATING-COMPANY (S) HAVING CEASED TO EXIST AS A RESULT OF THE APPROVED SCHEME OF AMALGAMATION, THE JURISDICTIONAL NOTICE WAS ISSUED IN THE NAME OF S, THE AMALGAMATING COMPANY. THE BASIS ON WHICH JURISDICTION WAS INVOKED WAS FUNDAMENTALLY AT ODDS WITH THE LEGAL PRINCIPLE THAT THE AMALGAMATING ENTITY CEASES TO EXIST UPON THE APPROVED SCHEME OF AMALGAMATION. THE SUPREME COURT, ACCORDINGLY, HELD THAT THE INITIATION OF ASSESSMENT PROCEEDINGS ON A NON-EXISTENT ENTITY (S, IN THIS CASE) WAS VOID-AB-INITIO AND PARTICIPATION IN THE PROCEEDINGS BY THE APPELLANT-AMALGAMATED COMPANY (M, IN THIS CASE) IN THE CIRCUMSTANCES CANNOT OPERATE AS AN ESTOPPEL AGAINST LAW.

3. WHILE DECIDING AN APPEAL, IS IT MANDATORY FOR THE HIGH COURT TO FRAME A SUBSTANTIAL QUESTION OF LAW OR CAN IT DECIDE THE CASE ON THE BASIS OF THE QUESTION OF LAW URGED BY THE APPELLANT UNDER SECTION 260A(2)(c)?

CIT V. A. A. ESTATE PVT. LTD. [2019] (SUPREME COURT)

Facts of the Case: The High Court, without itself framing the substantial question of law at the time of admission of appeal, issued notices, heard both the parties and decided the appeal affirming the order of the Tribunal based on the questions raised by the appellant.

Relevant provision of the Income-tax Act, 1961: Section 260A provides that an appeal lies to the High Court from every order passed by the Tribunal, if the High Court is satisfied that the case involves a substantial question of law. If the High Court is satisfied that the case involves a substantial question of law, section 260A(3) requires the High Court to formulate such question.

Supreme Court's Observations: The Apex Court noted that there lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. Section 260A(4) provides that the appeal is to be heard on merits only on the questions formulated by the High Court under section 260A (3). In other words, the appeal is heard only on the questions formulated by the High Court and not on the questions proposed by the appellant.

SUPREME COURT'S DECISION: THE SUPREME COURT HELD IT TO BE JUST AND PROPER TO REMAND THE CASE TO THE HIGH COURT FOR DECIDING THE APPEAL AFRESH, ON MERITS OF THE CASE IN ACCORDANCE WITH PROCEDURE PRESCRIBED IN SECTION 260A.

4. CAN AN ASSESSEE WHO HAS SET UP A NEW INDUSTRIAL UNDERTAKING AND AVAILED DEDUCTION @ 100% OF PROFITS UNDER SECTION 80-IC FOR THE FIRST 5 YEARS, BE ELIGIBLE TO CLAIM DEDUCTION @ 100% OF PROFITS ONCE AGAIN ON HAVING UNDERTAKEN "SUBSTANTIAL EXPANSION" THEREOF, FOR THE PERIOD REMAINING OUT OF 10 YEARS?

PR. CIT V. AARHAM SOFTRONICS [2019] (SUPREME COURT)

Facts of the Case: The assessee had started availing exemption under section 80-IC on setting up of new industrial unit in Himachal Pradesh. The assessee had availed deduction of 100% of profits for a period of 5 years. From sixth year, in normal course, deduction is admissible at 25% of the profits and gains, for next five years. However, the assessee, after the expiry of five years, carried out substantial expansion of its existing unit. This substantial expansion is in accordance with the provisions of section 80-IC and there is no dispute about the same. From the year of such substantial expansion, the assessee claimed deduction at 100% of profits, instead of 25% for the period remaining out of ten years.

Supreme Court's Observations: The benefit of section 80-IC is admissible not only when an undertaking sets up new unit and starts manufacturing or producing article or things. The advantage of this provision also accrues to existing units, if they carry out "substantial expansion" of their units by investing required capital, in the assessment year relevant to the previous year.

SUPREME COURT'S DECISION: THE APEX COURT HELD THAT AN UNDERTAKING WHICH HAD SET UP A NEW UNIT OF THE NATURE MENTIONED IN SECTION 80-IC, WOULD BE ENTITLED TO DEDUCTION AT THE RATE OF 100% OF THE PROFITS AND GAINS FOR FIVE ASSESSMENT YEARS COMMENCING WITH THE INITIAL ASSESSMENT YEAR". FOR THE NEXT FIVE YEARS, THE ADMISSIBLE DEDUCTION WOULD BE 25% OR 30%, AS THE CASE MAY BE, OF THE PROFITS AND GAINS. HOWEVER, IN CASE SUBSTANTIAL EXPANSION IS CARRIED OUT AS DEFINED IN SECTION 80-IC(8)(IX) BY SUCH AN UNDERTAKING, WITHIN THE AFORESAID PERIOD OF 10 YEARS, THE SAID PREVIOUS YEAR IN WHICH THE SUBSTANTIAL

EXPANSION IS UNDERTAKEN WOULD BECOME "INITIAL ASSESSMENT YEAR", AND FROM THAT ASSESSMENT YEAR THE ASSESSEE SHALL BE ENTITLED TO 100% DEDUCTIONS OF THE PROFITS AND GAINS. SUCH DEDUCTION, HOWEVER, WOULD BE FOR THE PERIOD REMAINING OUT OF 10 YEARS, AS PROVIDED IN SECTION 80-IC(6).

Notes: (1) The crux of the Supreme Court ruling is explained in the following example. If the substantial expansion is carried out immediately, on the completion of first 5 years, the assessee would be entitled to deduction @ 100% of profits and gains again for the next 5 years. On the other hand, if substantial expansion is undertaken, say, in the 8th year, deduction would be 100% for the first 5 years, deduction at 25% for the next 2 years and at 100% again from the 8th year as this year becomes "initial assessment year' once again. This 100% deduction would be for the remaining 3 years only, i.e., 8th, 9th and 10th assessment years.

(2) Consequent to the above Supreme Court judgement, students are advised to ignore case law [CIT v. Classic Binding Industries [2018] 407 ITR 429 (SC)).

5. CAN THE APPELLATE TRIBUNAL, WHILE HEARING AN APPEAL UNDER SECTION 254(1), IN A MATTER WHERE REGISTRATION UNDER SECTION 12AA HAS BEEN DENIED BY THE COMMISSIONER, ITSELF PASS AN ORDER DIRECTING THE COMMISSIONER TO GRANT REGISTRATION OR SHOULD APPELLATE TRIBUNAL REMAND THE CASE TO CIT FOR DECIDING AFRESH?

CIT (EXEMPTIONS) V. REHAM FOUNDATION [2019] (FB) (ALLAHABAD)

The High Court opined that the Tribunal can pass an order directing the CIT to grant registration, considering the specific facts of the case, where –

(i) the CIT has refused to accept the application for registration of trust after recording its finding, on the basis of the material on record before him, that the activities and object(s) of the trust are not genuine; and

(ii) the Appellate Tribunal, on the basis of the same material on record, comes to the conclusion that the order of the CIT is perverse since it has been passed ignoring, misconstruing or misinterpreting such evidence.

IN SUCH A CASE, THE APPELLATE TRIBUNAL CAN DIRECT REGISTRATION OF THE TRUST WITHOUT REMANDING THE MATTER TO THE CIT, SINCE SUCH REMAND WOULD BE AN EMPTY FORMALITY AS THE CIT CANNOT GO AGAINST THE CONCLUSION ARRIVED AT AND RECORDED BY THE APPELLATE TRIBUNAL.

6. CAN THE APPELLATE TRIBUNAL DISMISS AN APPEAL, WITHOUT DECIDING THE CASE ON ITS MERITS, SOLELY ON THE GROUND THAT THE ASSESSEE HAD NOT APPEARED ON THE APPOINTED DATE OF HEARING?

SMT. RITHA SABAPATHY V. DCIT [2019] (MAD)

Facts of the Case: The assessee filed an appeal under section 260A before the High Court against the order of the Appellate Tribunal dismissing the appeal due to non-appearance of the assessee on the appointed date of hearing.

High Court's Observations: The High Court noted the provisions of section 254, Rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963 and decisions of the Apex Court on the said issue. Accordingly, the High Court opined that even if the assessee could not appear, the Tribunal could have decided **the appeal only on merits, ex parte**, after hearing the Revenue's contentions. A legal and binding responsibility, therefore, lies upon the Tribunal to decide **the appeal on merits**, irrespective of the appearance or otherwise of the assessee or his counsel before it.

HIGH COURT'S DECISION: IN VIEW OF THE DECIDED CASE LAWS AND THE CLEAR PROVISIONS OF RULE 24, THE HIGH COURT SET ASIDE THE IMPUGNED ORDER OF THE TRIBUNAL DISMISSING THE ASSESSEE'S APPEAL DUE TO NON-APPEARANCE AND DIRECTED IT TO DECIDE THE APPEAL ON MERITS AFRESH IN ACCORDANCE WITH LAW.

7. CAN THE ASSESSEE'S FAILURE TO PRODUCE COMMISSIONER'S ORDER OF APPROVAL DATING BACK TO THE YEAR 1976 FOR EMPLOYEES GRATUITY SCHEME, TANTAMOUNT TO NON-DISCLOSURE OF MATERIAL FACTS TO JUSTIFY RE-OPENING OF ASSESSMENT UNDER SECTION 148, WHERE HE HAS PRODUCED THE AGREEMENT BETWEEN LIC AND THE TRUSTEES OF THE GRATUITY SCHEME, ON THE BASIS OF WHICH CLAIM FOR DEDUCTION UNDER SECTION 36(1)(V) WAS BEING ALLOWED IN THE EARLIER YEARS?

VALSAD DISTRICT CENTRAL CO-OPERATIVE BANK LTD. V. ACIT [2019] (GUJ)

HIGH COURT'S DECISION: THE HIGH COURT, HELD THAT MERELY BECAUSE THE ASSESSEE IS UNABLE TO PRODUCE A COPY OF THE ORDER OF APPROVAL OF THE GRATUITY SCHEME BY THE COMMISSIONER AFTER LONG GAP OF TIME, IT CANNOT TANTAMOUNT TO FAILURE ON THE PART OF THE ASSESSEE TO DISCLOSE TRULY AND FULLY ALL MATERIAL FACTS, SINCE THE ASSESSEE HAD PRODUCED A COPY OF THE AGREEMENT WITH LIC AND THE TRUSTEES OF THE GRATUITY SCHEME IN THE COURSE OF ORIGINAL ASSESSMENT, IN LINE WITH THE DOCUMENTS PRODUCED IN THE COURSE OF ASSESSMENT IN THE EARLIER YEARS. THEREFORE, IN THE ABSENCE OF FAILURE ON THE PART OF THE ASSESSEE TO DISCLOSE TRULY AND FULLY ALL MATERIAL FACTS, REOPENING OF ASSESSMENT BY ISSUE OF NOTICE UNDER SECTION 148 IS NOT VALID, THOUGH, THERE MAY NOT BE A CHANGE OF OPINION ON THE PART OF THE ASSESSING OFFICER, AS HE MAY NOT HAVE POINTEDLY EXAMINED THIS ASPECT OF GRATUITY IN THE ORIGINAL ASSESSMENT.

8. CAN PENALTY UNDER SECTION 271C BE LEVIED FOR THE NON-REMITTANCE OF THE TAX DEDUCTED AT SOURCE UNDER CHAPTER XVII-B TO THE CREDIT OF THE CENTRAL GOVERNMENT?

CIT (TDS) V. EUROTECH MARITIME ACADEMY PVT. LTD. [2019) (KER)

Facts of the case: The assessee, a trust registered under section 12AA, ran an educational institution. It paid rent for the building occupied by it. The Assessing Officer found that the tax deducted at source by the assessee was deposited belatedly and imposed a penalty under section 271C equal to the amount of tax payable. The explanation offered by the assessee for the delay is that the clerk failed to discharge her duties properly. It was also noticed that the assessee had been making the payments piecemeal throughout the year and not deducting the tax on its payment in the respective months. The assessee contended that it is a trust registered under section 12AA, and therefore, not obliged to carry out an audit as provided under section 44AB. Only those persons covered under section 44AB would have to deduct tax at source under section 194-I.

Relevant provision of the Income-tax Act, 1961: Section 194-I requires any person, not being an individual or a Hindu undivided family, to deduct tax at source from any amount paid or credited as rent to a resident. The second proviso to 194- provides that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax thereunder. Section 271C imposes penalty where the assessee is liable to deduct tax at source and fails to do so.

High Court's Observations: The second proviso to section 194-I cannot be applicable to the assessee, because a trust cannot be included within the definition of "an individual or a Hindu undivided family" and therefore, the monetary limits specified in clause (a) or (b) of section 44AB is not relevant in this case. There is no exemption as such for other persons not covered under Section 44AB. Hence, the trust is liable to deduct tax at source, irrespective of whether or not it was covered under section 44AB.

Regarding the delay in deposit, the Court took note of the decision of the Kerala High Court in US Technologies International (P.) Ltd. v. CIT [2010] 195 Taxman 323 case, which held that penalty under section 271C would be attracted for failure to deduct or failure to remit recovered tax. Further, it also noted another decision of the same High Court in case of Classic Concepts Home India Pvt. Ltd. v. CIT [2016] 383 ITR 626 (Ker) which held that so far as failure on the part of the assessee to remit the tax recovered at source is concerned, there cannot be any justifying circumstance for delay in remittance because the assessee cannot divert tax recovered for the Government towards working capital or any other purpose. Thus, the defence available under section 273B does not cover failure in payment of recovered tax.

HIGH COURT'S DECISION: ACCORDINGLY, THE HIGH COURT HELD THAT, ASSESSEE IS LIABLE TO PAY PENALTY UNDER SECTION 271C FOR BOTH NON-DEDUCTION OF TAX AT SOURCE AND NON-REMITTANCE OF TAX DEDUCTED AT SOURCE.

CERTAIN CONCEPTS SO AS TO FALL IN LINE WITH ICAI VIEWS

CONCEPT I

SECTION 47

Certain Transactions Not Regarded as Transfer

The following transactions will not be regarded as transfers for the purposes of section 45 and therefore, no capital gains will arise:

any **transfer** of a capital asset under a **gift, will or an irrevocable trust.**

Provided that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued by the Central Government in this behalf;

Therefore, if an employee gifts ESOPs, then capital gains shall arise in hands of employee when he gifts the ESOPs. The FMV on the date of gift shall be the sales price.

CONCEPT II

EXEMPTION UNDER SECTION 10(23C)(iiiad) TO EDUCATIONAL INSTITUTIONS HAVING ANNUAL RECEIPTS UPTO ₹ 1 CRORE

Exemption is provided under section 10(23C)(iiiad) to

- **any university or**
- **other educational institution**
- **existing solely for educational purposes**
- **and not for the purposes of profit**
- **if the aggregate annual receipts of such university or educational institution**
- **do not exceed ₹ 1 crore**.

CONCEPT III

SECTION 115TD

Tax on Accreted Income

As per section 115TD, if a trust registered under section 12A does certain defaults, then the tax shall be levied on accreted income at Maximum Marginal Rate.

Maximum Marginal Rate means the highest tax applicable to an individual increased by surcharge and cess. MMR is therefore
30% + 37% + 4% = 42.744%

In case of section 115TD, the Finance Act, 2019 provides that the tax rate referred to in section 115TD shall be increased by surcharge of 12%. Therefore the MMR for purpose of section 115TD shall be
30% + 12% + 4% = 34.944%

THEREFORE, FOR SECTION 115TD, THE MMR IS 34.944%
FOR ALL OTHER SECTIONS, THE MMR IS 42.744%

CONCEPT IV

As per section 115BBC, the anonymous donations received by the trust reduced by higher of the following shall be taxable @ 30%.
(i) ₹1,00,000
(ii) 5% of total donations

Therefore if anonymous donations are ₹10,00,000 and total donations are ₹40,00,000 then ₹10,00,000 reduced by higher of the following shall be taxable @ 30%.
(i) ₹1,00,000
(ii) ₹2,00,000

Therefore ₹8,00,000 anonymous donations are taxable @ 30% and ₹2,00,000 anonymous donations will be treated as normal donations to be taxed at normal rates.

Now ICAI takes the view, that 15% adhoc deduction is available on this normal donations. We accept this view of ICAI.

Question 21:
Asha Memorial Trust running hospitals is registered under Section 12A. Following particulars relevant for the previous year ended 31st March, 2020 are furnished to enable you to compute tax liability of the trust:

(i) Income from running of hospitals ₹ 14.25 lacs.

(ii) Donation received (including anonymous donation ₹ 3lacs) ₹ 5.75 lacs.

(iii) Amount applied for the purposes of hospital ₹18 lacs. Out of ₹ 18 lakhs, ₹ 5 lakhs was paid to contractor in cash for providing cleaning and sanitation facilities.

(iv) The trust had accumulated ₹ 15 lacs under Section 11(2) in the financial year 2013-14 for a period of five years for extension of one of its hospitals. The trust has spent ₹ 13.50 lacs for the said purpose till 31st March, 2020.

Compute the taxable income of the trust and tax payable by Asha Memorial Trust for the assessment year 2020-21.

[May 2010]

Answer:

Asha Memorial Trust
Assessment Year 2020-21

Particulars	Amount (₹)
Receipts from running Hospital	14,25,000
Donations excluding anonymous donations	2,75,000
Anonymous donations taxable at normal rates (See Note 2)	**1,00,000**
Total Receipts	**18,00,000**

Less:	15% of **18,00,000** under section 11(1)	**2,70,000**
Less:	Applied for charitable purpose under section 11 (1) [**See Note 1**]	13,00,000
		2,30,000
Add:	Amount not spent under section 11(2) taxable under section 11(3) since it is not spent upto 31.3.2020	1,50,000
	Income taxable at Normal Tax Rate	**3,80,000**
	Anonymous donations taxable under section 115BBC (₹ 3 lakh minus ₹1 lakh)	**2,00,000**
	Tax on ₹ 3,80,000 at normal rates	**6,500**
	Tax on ₹ 2,00,000 @ 30% under section 115BBC	**60,000**
		66,500
Add:	**Health & Education Cess @ 4%**	**2,660**
	Total Tax	**69,160**

Note 1: As per Finance Act, 2018, section 40A(3) shall apply to the trust while computing application of income under section 11(1)(a). ₹ 5,00,000 is disallowed under section 40A(3) and shall not be regarded as application of income. Needless to mention that contractor shall pay penalty of ₹5,00,000 as per section 269ST read with section 271DA.

Note 2: Out of Anonymous donations, 5% of total donations or ₹ 1,00,000, whichever is higher, shall be taxable at normal rates and shall, be regarded as normal donations.

Question 23:

Jyoti Education Centre, a charitable institution registered under section 12AA of the Income-tax Act runs schools for primary and secondary education. The following particulars pertaining to the previous year 2019-20 are furnished to you by the institution:

		₹ (in lakhs)
(i)	*Gross Receipts from students towards admission fees, tuition fees, development fees, laboratory fees, etc.*	*152.75*
(ii)	*Dividend received on units of mutual funds specified in section 10(23D)*	*16.00*
(iii)	*Donations received (including anonymous donation ₹ 2.50 lakh)*	*10.50*
(iv)	*Grant from State Government*	*7.25*
(v)	*Amount applied for the purposes of schools. This includes ₹12,00,000 paid to resident teachers and contractors on which TDS is required to be deducted under section 192 and 194C and TDS has not been deducted.*	*95.50*
(vi)	*Purchase of computers and laboratory equipment*	*20.10*
(vii)	*Included in (v) above, a sum of ₹ 3.50 lakh, being the amount applied for the benefit of the founder of the institution*	
(viii)	*The institution had accumulated ₹ 20 lakh under section 11(2) in the previous year 2016-17 for a period of two years for acquiring and development a plot of land for construction of a new school. Land was purchased for ₹ 15 lakh and development was made at a cost of ₹ 2 lakh in the previous year 2019-20*	
(ix)	*Excess of expenditure over income in the previous year 2018-19*	*35.00*

Compute total income of the institution and tax payable by it for the Assessment Year 2020-21.

[November 2011]

Answer:

Computation of Total Income of Jyoti Education Centre for the Assessment Year 2020-21

Particulars	₹	₹
Gross receipts from students towards admission fees, tuition fees, development fees, lab fees etc.	1,52,75,000	
Add: Dividend on Units	16,00,000	
Add: Grant from State Government is a Donation	7,25,000	
Add: Donations (other than anonymous donations)	8,00,000	
Add: **Anonymous donations taxable at normal rates**	**1,00,000**	
	1,85,00,000	
Less: 15% eligible for exemption	**27,75,000**	
	1,57,25,000	
Less: Amount applied for purposes of schools (See Note 6)	88,40,000	
Less: Application for the purposes of purchase of computer and lab equipment	20,10,000	
Less: Excess of expenditure over income in the P.Y. 2018-19	**35,00,000**	**13,75,000**
Add: Application for the benefit of founder chargeable under section 12(2)		**3,50,000**
Amount accumulated for construction of a school but not spent deemed to be income under section 11(3) (₹20 lakh – ₹ 15 lakh – ₹ 2 lakh)		**3,00,000**
Anonymous donations taxable @ 30% under section 115BBC		**1,50,000**
Total Income		**21,75,000**

Computation of tax liability for Assessment Year 2020-21

Particulars	₹
Tax on anonymous donations of ₹ 1,50,000 @ 30%	45,000
Tax on other income of **₹20,25,000** at normal rates	**4,20,000**
	4,65,000
Add: Health & Education cess @ 4%	**18,600**
Total tax Liability	**4,83,600**

Notes:

(1) For dividend received on units of mutual funds specified in section 10(23D) exemption under section 10(35) is not available.

(2) Grant from State Government is a donation.

(3) Only the anonymous donations in excess of the exemption limit specified below would be subject to tax @ 30% under section 115BBC.

The exemption limit is the higher of the following –

(a) 5% of the total donations received by the assessee [i.e., ₹ 88,750 (5% x 17,75,000)]; or

(b) ₹ 1 lakh.

Therefore, in this case, **anonymous donation of ₹ 1 lakh is not taxable @ 30%. ₹ 1 lakh shall be treated as normal donations to be taxed normally**.

(4) ₹ 35 Lakhs, being excess of expenditure over income in the P.Y. 2018-19 can be treated as application of income of the current year as per *Matriseva Trust (Madras High Court).*

(5) ₹ 3,50,000 applied for the benefit to the founder of the institution is taxable under section 12(2) read with section 13(6). This amount is taxable at the normal rates.

(6) **As per Finance Act, 2018, provisions of section 40(a)(ia) shall apply while computing application of income under section 11(1)(a) ₹ 12,00,000 has been paid to resident teachers and contractors on which TDS was required to be deducted and has not been deducted. As per section 40(a)(ia), 30% of ₹ 12,00,000 is disallowed i.e., ₹ 3,60,000. As per Finance Act, 2018, ₹ 3,60,000 shall not be treated as application of income under section 11(1)(a). Therefore, application of income is ₹95.50 lakhs – ₹3.60 lakhs = ₹91.90 Lakhs.**

As per ICAI, the amount applied for the benefit of the founder of the institution shall not be treated as application of income. Therefore ₹ 3.50,000 shall not be treated as application of income. Hence application of income is ₹ 91.90 – ₹ 3.50 = ₹ 88.40 lakhs

(7) Section 11(3) provides that if the income accumulated for certain purpose is not utilized for the said purpose within the period (not exceeding 5 years) for which it was accumulated, or in the year immediately following the expiry thereof, then the unutilized amount is deemed to be the income of the charitable institution for the previous year immediately following the expiry of the period of accumulation. In the instant case, the institution accumulated ₹ 20,00,000 in the previous year 2016-17 for acquiring and developing a land of construction of a new school for a period of 2 years. The assessee was required to utilise this amount by 31.3.2020. The assessee has spent ₹17,00,000 [out of accumulated sum 20,00,000] in the P.Y. 2019-20. Therefore, the unutilized amount of ₹ 3,00,000 is deemed to be income of the previous year 2019-20.

Question 26:

A public charitable trust registered under section 12AA runs a hospital and also a medical college. It furnishes you the following information for the year ended 31st March, 2020:

(i) Gross receipt from Hospital ₹ 425 lakhs
(ii) Income from business - incidental to main objects ₹2 lakhs,
(iii) Voluntary contributions received from public ₹32 lakhs. It includes corpus donation of ₹ 3 lakhs and anonymous donation of ₹5 lakhs.
***Note:** Voluntary contributions are included in Gross receipt given in (i) above*
(iv) Hospital operational expenses incurred ₹105 lakhs. (This does not include capital expenditures and depreciation)
(v) Income from Medical College (solely for education purpose) ₹ 10 lakhs. Gross receipts of college for the year ₹ 90 lakhs.
(vi) Gross receipt given in (i) above includes a sum of ₹ 55 lakhs which has accrued but not received. However, a sum of ₹ 18 lakhs was received only on 31st day of March, 2020.
(vii) The trust set apart ₹ 80 lakhs for acquiring a building to expand its hospital. But the amount was paid in May 2020 when sale deed was registered in its name.
(viii) In June, 2019, the trust purchased and installed new computer software for ₹28 lakhs. The rate of depreciation is 40% as per Income-tax Act, 1961.

(ix) The trust incurred ₹ 35 lakhs towards purchase of laptops, computers and printers for the hospital. The payment for the same has been made in cash exceeding ₹ 10,000 in a day.

(x) It repaid loan of ₹ 15 lakhs taken earlier for construction of hospital building.

Compute the total income of the trust for the assessment year 2020-21 in order to avail maximum benefits within the four corners of law.

[May 2015]

Answer:

Computation of Total Income of the Trust for the Assessment Year 2020-21

	Particulars	**(₹ in Lakhs)**	**(₹ in Lakhs)**
	Gross receipts from Hospital		425.00
	Gross receipts from Medical College		90.00
	Income from business - incidental to main object (It is assumed that separate books of account are maintained for such business)		2.00
			517.00
Less:	Corpus donations totally exempt		3.00
Less:	Anonymous donation taxable @ 30% under section 115BBC **[See Note-1]**		**3.40**
			510.60
Less:	15% of income eligible for accumulation or being set apart without any condition under section 11(1)(a)		**76.59**
			434.01
Less:	Applied for operational expenses (80 + 105)		185.00
Less:	Deemed application as per Explanation 2 to section 11(1)(a) **[See Note-4]**		**249.01**
	(i) Amount accrued but not received during the previous year	55.00	
	(ii) Income received on 31st March 2020 which will be spent in Previous Year 31.3.2021	18.00	
Less:	**Amount applied for the purposes of hospital [See Note-2]**		
	Cost of new computer software [Assuming that the same was purchased for the purposes of the hospital]	28.00	
	Cost of laptops, computers and printers purchased for the hospital [Capital expenditure can be claimed as application of income] [See Note 5]	35.00	
	Repayment of loan taken earlier for construction of hospital building - repayment of a debt incurred for the purpose of trust is application of income	15.00	
Less:	Amount set apart for acquisition of a building to expand its hospital [See Note 3] [The amount spent in May 2020 in the immediately following year can be treated as application in the Previous Year 2019-20, provided a notice in writing is given to the Assessing Officer as required under section 11(2)] **[See Note-3]**	80.00	231.00

	Total income [other than anonymous donation taxable under section 115BBC]		**18.01**
Add:	Anonymous donation taxable @ 30%		**3.40**
	Total income of the trust (including anonymous donation taxable @ 30%)		**21.41**

In order to minimize and /or reduce the tax liability, the trustees may give notice in writing to Assessing Officer in the prescribed manner about their intention to accumulate minimum of ₹ **15.51 lakhs** [₹ **18.01 Lakhs** minus ₹2.50 Lakhs (basic exemption limit) specifying the period and purpose for which the accumulation is proposed to be made and invest such sum in the modes specified under section 11(5). This accumulation would be in compliance with section 11(2) and such a case no tax will be payable on the total income (other than anonymous donation taxable @ 30% under section 115BBC) of **₹ 18.01 Lakhs**.

Notes:

(1) As per section 115BBC(1), the anonymous donation in excess of the higher of the following would be subject to tax @ 30%

- ₹ 1.60 Lakhs being 5% of the total donations received i.e., 5% of ₹ 32 Lakhs; or
- ₹ 1 Lakhs

Therefore, anonymous donation of ₹ 3.4 Lakhs (₹ 5 Lakhs -1.60 Lakhs) would be subject to tax @ 30% under section 115BBC.

As per section 13(7), such anonymous donation are not eligible for the benefits of exclusion for total income under section 11 and 12. **However the donation of ₹ 1,60,000 shall be taxable normally and shall be entitled to adhoc exemption of 15%,**

(2) As per section 11(6), where the cost of assets is claimed as application, no deduction for depreciation on such assets would be allowed in determination income for purpose of application. Therefore, since cost of new computer software, laptop computers and printers purchased for hospital has been claimed as application of income, no depreciation would be allowed on these assets while determining income for the purpose of application.

(3) The word "applied" used in section 11 does necessary imply spent. Even if a certain amount is irretrievably earmarked and allocated for charitable purpose, the said amount can be deemed to have been applied for charitable purpose.

(4) It is assumed that the trust has exercised an option in writing before the expiry of time allowed under section 139(1) to treat ₹ 55.00 lakhs as application of income in the Previous Year in which it is received and in the next succeeding Previous Year and to treat ₹ 18.00 lakh as application in Previous Year 31.3.2021.

(5) As per Finance Act, 2018, provisions of section 40(a)(i), 40A(3), 40A(3A) shall apply to trust to determine application of income. However, section 40A(3) is applicable to revenue expenditure. Section 43(1) provides that if an asset is purchased and payment exceeding ₹ 10,000 is made in cash in a day, then such part of a cost which has been paid in cash shall not form part of actual cost. Therefore, section 40A(3) shall not apply to purchase of capital assets. Therefore, entire ₹ 35,00,000 has been treated as application of income.

However, alternate view is possible that section 40A(3) shall apply to entire application of income. If this alternate view is taken then ₹ 35 lakhs shall

not be treated as application of income and total income of trust shall be ₹56.65 lakhs.

Question 31:

Mathi Charitable Trust registered under section 12AA, following cash system of accounting, furnishes you the following information:

(i) Gross receipts from hospital by name "Full Cure" ₹400 lakhs.

(ii) Gross receipts from college by name "India Arts College" ₹180 lakhs (offering recognized degree courses).

(iii) Corpus donations by way of cheque ₹30 lakhs and by way of cash ₹5 lakhs.

(iv) Anonymous donations by cash ₹10 lakhs.

(v) Administrative expenses for hospital ₹220 lakhs and for college ₹100 lakhs.

(vi) Fees not realized from patients ₹20,60,000 and from students of the college ₹6,50,000 as on 31st March, 2020.

(vii) Depreciation on assets of the trust ₹18,00,000. The entire cost of assets ₹300 lakhs claimed as application in the earlier years.

(viii) Acquired a building for ₹120 lakhs on 01.06.2019 for expansion of hospital (cost of land included therein ₹100 lakhs). Stamp duty value of the land and building on the date of registration of sale deed ₹140 lakhs.

(ix) The trust gave donation of ₹25 lakhs to Gandhiji Free Trust having objects of charitable nature registered under section 12AA but not similar to the objects of the donor trust.

You are required to compute the total income of the trust and its income-tax liability in such a manner that it can avail the optimal benefit within the four corners of the Income-Tax Act, 1961.

***Note:** The trust does not want to seek accumulation of income by virtue of section 11(2) of the Act.*

[May 2018 (Old Syllabus)]

Answer:

Computation of total income of Mathi Charitable Trust for the A.Y.2020-21

Particulars	**₹**	**₹**
Gross receipts from Full Cure Hospital		4,00,00,000
Gross receipts from India Arts College		1,80,00,000
Anonymous donations taxable at normal rates (See Note 1)		**2,25,000**
		5,82,25,000
Less: 15% of income eligible for being set apart without any condition. [As per the Supreme Court ruling in CIT v. Programme for Community Organisation (2001), 15% of gross receipts would be eligible for accumulation under section 11(1)(a).]		**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]		**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 Assessment Year 2020-21

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: Health & Education cess @ 4%		**37,695**
Total tax liability		**9,80,070**

Notes:

(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

₹ 2,25,000 shall be taxable at normal rates and shall be entitled to adhoc deduction of 15%.

(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 under section 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) 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.

Question 33:

Mani foundations, a charitable trust registered under section 12AA of the Income tax Act run schools for primary and secondary education. The following particulars pertaining to the previous year 2019-20 are furnished to you by the trust:

S. No.	***Particulars***	***₹ (in lakhs)***
(i)	*Gross receipts from students towards tuition fees, development fees, laboratory fees, etc.*	*200*
(ii)	*Voluntary contributions received from public (including anonymous donation ₹ 5 lakhs)*	*25*
(iii)	*Government grants*	*8*
(iv)	*Donation given towards corpus to a trust registered u/s 10(23C)*	*2*
(v)	*Amount applied for the purpose of schools*	***105***
(vi)	*Included in (v) above, a sum of ₹ 5 lakhs, being the amount applied for the benefit of the founder of the trust.*	
(vii)	*The trust set apart ₹55 lakhs for acquiring a building to expand its schools. But the amount was paid in December 2020 when the sale deed was registered in its name.*	*25*
(viii)	*Excess of expenditure over income in the Previous Year 2018-19*	*25*

Compute the total income of the trust for the assessment year 2020-21 in order to avail maximum benefits within the four corners of law.

[Nov 2018 (New Syllabus)]

Answer:

Mani Foundations

Computation of Total Income for Assessment Year 2020-21

Particulars		**₹ in Lakhs**
Gross Receipt		
(i)	From students towards tuition fees etc.	200
(ii)	Voluntary contributions from public (excluding anonymous donations)	20
(iii)	Government Grants	8
(iv)	**Anonymous donations taxable at normal rates (See Note)**	**1.65**
Total Receipts		**229.65**
Less: 15% set apart or accumulated as per section 11(1)		**34.4475**
Balance Income		**195.2025**
Less: Application of income as per section 11(1)		
(a)	Donations towards corpus of trust not treated as application of income	Nil
(b)	Applied for purpose of schools (see note)	100
(c)	Assuming that agreement to purchase the building was entered into in previous year 31.3.2020, ₹ 55 lakhs shall be treated as application of income. It is immaterial that sale deed was registered in next previous year and payment was made in next previous year	55
(d)	Excess of expenditure over income of previous year 2018-19 treated as application of income as per judgement of **Matriseva Trust**	25
Income of the trust		**15.2025**
Add: Anonymous donation taxable as per section 115BBC		**3.35**

Add: Amount applied for founder of trust deemed on income as per section 12	5
Total Income	**23.5525**

Note: For the purpose of section 115BBC,
(i) 5% of total donations of ₹ 33 Lakh, i.e. ₹1,65,000; or
(ii) ₹1,00,000
whichever is higher, is not treated as anonymous donation.

In the present case, ₹1,65,000 shall not be treated as anonymous donation **and shall be entitled to adhoc deduction of 15% and shall be taxed normally.**

Computation of Tax Liability

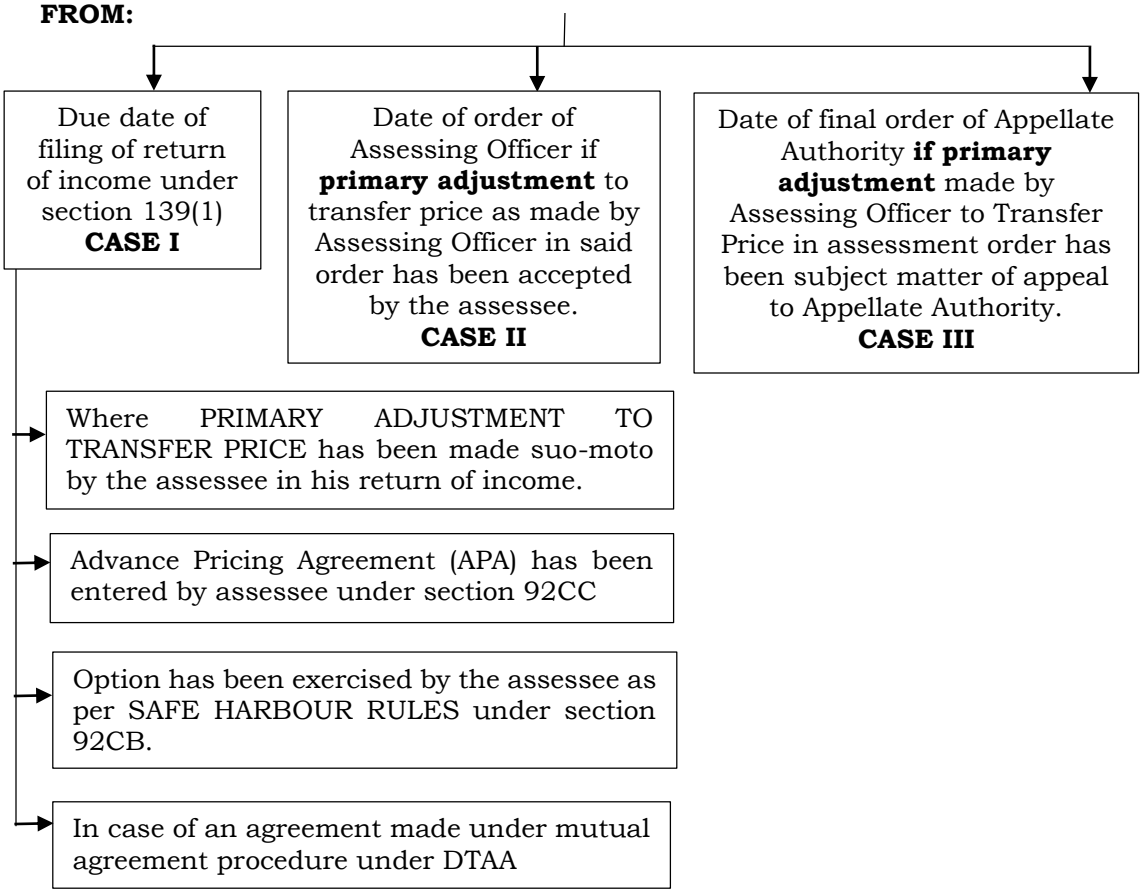
Tax on **₹ 20,20,250** at normal rates	**₹ 4,18,575**
Tax on ₹ 3.35 Lakh @ 30% as per section 115BBC	₹ 1,00,500
Total Tax	₹ **5,19,075**
Add: 4% Health & Education Cess	**₹ 20,763**
Total Tax Liability	₹ **5,39,838**

Note: As per ICAI, the amount applied for the benefit of founder of the trust shall not be treated as application of income.

CONCEPT V

PRIMARY AND SECONDARY ADJUSTMENTS IN CASE OF TRANSFER PRICING

EXCESS MONEY SHALL BE REPATRIATED TO INDIA ON OR BEFORE 90 DAYS FROM:



Note 1: Where Advance Pricing Agreement (APA) is entered into after the date of filing of return, then excess money has to be repatriated into India within 90 days from the end of the month in which APA is entered into **(Case IV)**.

Note 2: In the classes, we have done that interest shall be computed for the period after the expiry of 90 days. However, as per new Income Tax Rules, the interest shall also be levied for 90 days. Therefore, if excess money is not repatriated within 90 days, then interest shall be chargeable from:

In Case I : From due date of filing of return u/s 139(1)
In Case II : From the date of order of Assessing Officer
In Case III : From the date of final order of Appellate Authority
In Case IV : From the end of the month in which APA is entered into

Computation of Interest where excess money is not repatriated to India within 90 days:

	Case	Rate
(i)	**Where the international transaction is denominated in Indian rupee**	At the one-year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year + 3.25%
(ii)	**Where the international transaction is denominated in foreign currency**	At six-month London Inter-Bank Offered Rate (LIBOR) as on 30th September of the relevant previous year + 3.00%

Illustration:
ABC Ltd. is having an associated enterprise in UK, namely, JCB Plc. During the financial year 2019-20, ABC Ltd. exported goods at a price of ₹ 100 crores to JCB Plc. The Arm's length price of the transaction is ₹ 110 crores. Transaction was designated in Indian Rupees.

Previous Year 31.03.2020

Actual Export Price to Associated Enterprise ₹100 crores

Arm's Length Price of Exports determined ₹110 crores

(i) By assessee himself and adjustment to Transfer Price Made by assessee suo-moto in return

OR

(ii) Under Advance pricing Agreement

OR

(iii) As per Safe Harbour Rules

OR

(iv) Under agreement made under mutual agreement procedure under DTAA

OR

(v) By assessment order by Assessing Officer and accepted by assessee (order of Assessing Officer dated 31.03.2021)

OR

By assessment order by Assessing officer to be ₹115 crores and on appeal to CIT(Appeals)/ITAT reduced to ₹110 crore (order of CIT(Appeals)/ITAT dated 30.06.2021)

PRIMARY ADJUSTMENT = ₹110 crores

EXCESS MONEY = ₹110 crores - ₹100 crores
= ₹10 crores

SECONDARY ADJUSTMENT:
Assessee should pass following according entry in the books of account:

Foreign Associated Enterprise	Dr.	₹10 crores	
To Profit & Loss Account			₹10 crores

REPATRIATION TO INDIA WITHIN 90 DAY: BY JCB Plc U.K. OR ANY NON-RESIDENT ASSOCIATED ENTERPRISE OF ASSESSEE WHO IS A NON-RESIDENT

If any non-resident associated enterprises of the assessee repatriates ₹10 crores to India:

- **In (i)/(ii)/(iii)/(iv) above** → on or before 90 days from the due date of filing of ROI i.e. 30.11.2020 i.e. by 28.02.2021, then no further adjustments are required.

- **In (v)** → on or before 90 days from the date of assessment order i.e. 31.03.2021 i.e. by 29th June. 2021, then no further adjustments are required.

- **In (vi)** → on or before 90 days from the date of Appellate order i.e. 30.06.2021 i.e. by 28.09.2021, then no further adjustment.

IF MONEY IS NOT REPATRIATED WITHIN 90 DAYS:

Suppose, in above cases (i)/(ii)/(iii)/(iv) money is not repatriated to India by non-resident associated enterprises by 28.02.2021, then in previous year 31.03.2021, assessee shall compute interest.

For example, one-year marginal cost of fund lending rate of SBI on 01.04.2020 is 8%. Then, interest shall be computed @ 11.25% since international transaction was designated in Indian Rupees. In cases (i), (ii), (iii) and (iv) the following entry shall be passed by assessee.

Foreign Associated Enterprise	Dr.	**₹37,60,274**	
To Interest Income			**₹37,60,274**

[Being interest @ 11.25% on ₹10 crores from **30.11.2020** to 31.03.2021]
₹10 crores × 11.25% × **122/365** = **₹ 37,60,274**

NO SECONDARY ADJUSTMENT IF ASSESSEE DECIDES TO PAY ADDITIONAL TAX

As per amendment by Finance Act, 2019, no secondary adjustment is required to be made in books of account of the assessee, if he pays from his own pocket additional income tax by 28.02.2021 as under:

Additional tax @ 18% on ₹ 10 crores	₹ 1,80,00,000
Add: 12% surcharge thereon	₹ 21,60,000
	₹ 2,01,60,000
Add: 4% cess	₹ 8,06,400
	₹ 2,09,66,400

The above tax cannot be
(i) claimed as expenditure
(ii) claimed as credit by assessee or anyone else.

If assessee pays the additional tax on 15.03.2021, then

Excess amount	₹ 10,00,00,000
Add: Interest from **30.11.2020** to 14.03.2021 (**105 days)**	**₹ 32,36,301**
	₹ 10,32,36,301
Additional Tax thereon @ 20.9664	**₹ 2,16,44,935**

CONCEPT VI

ADVANCE RULLING

Advance Ruling means determination by the AAR, whether an arrangement, which is proposed to be undertaken by a resident or a non-resident, is an Impermissible Avoidance Arrangement as per GAAR.

CONCEPT VII

If a Forward Exchange Rate Contract is taken for payment of foreign currency loan taken for acquiring an asset from outside India and the said contract is cancelled, then the profit/loss arising on cancellation of contract, shall be business income/business loss. The same shall not be deducted/added to the WDV of Block of assets.

CONCEPT VIII

SECTION 139(1C) OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - EXEMPTION TO SPECIFIED CLASS OF PERSONS FROM REQUIREMENT OF FURNISHING A RETURN OF INCOME UNDER SECTION 139(1) FOR ASSESSMENT YEAR 2019-20

In exercise of the powers conferred by sub-section (1C) of section 139 of the Income-tax Act, 1961 (43 of 1961), the Central Government, hereby exempts the following class of persons, subject to the conditions specified hereinafter, from the requirement of furnishing a return of income under subsection (1) of section 139 of the said Act from Assessment Year 2019-20 onwards, namely:

1. **Class of persons. –**

   (i) a non-resident, not being a company; or

   (ii) a foreign company,

   who have any income chargeable under the said Act during a previous-year from any investment in an investment fund set up in an International Financial Services Centre (IFSC) located in India.

   Explanation: – For the purposes of this paragraph.

   (a) "**investment fund**" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992):

   (b) "**International Financial Services Centre**" shall have the same meaning as assigned to it in clause (9) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

2. **Conditions –**

In case of class of persons referred to in para 1, –

(i) any income-tax due on income of the said class of persons has been deducted at source and remitted to the Central Government by the investment fund at the tax-rate in force as per provisions of section 194LBB of the said Act, and

(ii) there is no other income during the previous year for which the said class of persons, is otherwise liable to file the tax-return.

3. The exemption from the requirement of furnishing a return of income shall not be available to the said class of persons where a notice under sub-section (1) of section 142 or section 148 or section 153A or section 153C of the said Act has been issued for filing a return of income for the assessment year specified therein.

4. This notification shall come into force from the date of its publication in the Official Gazette.

CONCEPT IX

SECTION 115BAA

1. Tax Rate 22%

2. Always to be increased by surcharge of 10% irrespective of amount of total income plus 4% cess

3. STCG referred in section 111A to be taxed @ 15% (plus 10% surcharge) plus 4% cess

4. LTCG referred in section 112/112A to be taxed @ 10%/20% (plus 10% surcharge) plus 4% cess

CONCEPT X

SECTION 115BAB

1. Tax Rate 15%

2. Always to be increased by surcharge of 10% irrespective of amount of total income plus 4% cess

3. STCG referred in section 111A to be taxed @ 15% (plus 10% surcharge) plus 4% cess

4. LTCG referred in section 112/112A to be taxed @ 10%/20% (plus 10% surcharge) plus 4% cess

5. **Income other than from manufacturing** for example Income from House Property, Income from other sources:

To be taxed at 22% + 10% surcharge + 4% cess

6. **If assessee shows higher profits than ordinary profits**

If normal manufacturing profits are 100 lakhs but assessee shows profits of ₹ 160 lakhs then

₹ 100 lakhs to be taxed at 15% + 10% + 4%

₹ 60 lakhs to be taxed at 30% + 10% + 4%