

MOCK TEST PAPER – 2
FINAL COURSE: GROUP – II
PAPER – 7: DIRECT TAX LAWS
SUGGESTED ANSWERS / HINTS

1. (a) Computation of depreciation allowance under section 32 for the A.Y. 2016-17

Particulars	Normal Depreciation [u/s 32(1)(ii)]	Additional Depreciation [u/s 32(1)(iia)]
	(Rs. in crores)	
(A) Plant and Machinery (15% block) (Put to use for 180 days or more)		
- New machinery installed on 01.05.2015	84.00	84.00
Normal Depreciation@15% & additional depreciation @20%	12.60	16.80
(B) Plant and Machinery (15% block) (Put to use for less than 180 days – hence, depreciation is restricted to 7.5%, being 50% of 15%)		
- Lorries for transporting goods to depots	3.00	-
- Fork-lift trucks, used inside a factory	<u>4.00</u>	<u>4.00</u>
	<u>7.00</u>	<u>4.00</u>
Normal Depreciation @ 7.5% & additional depreciation @10%	0.53	0.40
(C) Plant and Machinery (60% block) (Put to use for less than 180 days, hence depreciation restricted to 30%, i.e., 50% of 60%)		
- Computers installed in office premises	1.00	-
- Computers installed in factory	<u>2.00</u>	<u>2.00</u>
	<u>3.00</u>	<u>2.00</u>
Normal depreciation @30% & additional depreciation@10%	0.90	0.20
(D) Plant and Machinery (80% block) (Put to use for 180 days or more) (See Note 1)		
- New windmill purchased and installed on	22.00	22.00

19.07.2015		
Normal Depreciation @ 80% & additional depreciation @20%	17.60	4.40
Total depreciation and additional depreciation		
- Plant and Machinery (15% block) (A +B)	13.13	17.20
- Plant and Machinery (60% block) (C)	0.90	0.20
- Plant and Machinery (80% block) (D)	17.60	4.40
Depreciation available under section 32 = Rs. 53.43 crores		

Computation of Written Down Value (WDV) as on 01.04.2016

Particulars	Plant & Machinery		
	15%	60%	80%
	(Rs. in crores)		
WDV as on 01.04.2015 (The company was started during the year only – as given in question)	Nil	Nil	
<i>Add:</i> Plant and Machinery acquired during the year			
- New Machinery installed on 01.05.2015 84.00			
- Lorries for transporting goods to sales depots 3.00			
- Fork-lift trucks, used inside factory 4.00			
- New imported machinery <u>12.00</u>	103.00	-	
- New Windmill purchased and installed on 19.7.2015	-	-	22.00
- Computers installed in office premises	-	1.00	-
- Computers installed in factory	-	<u>2.00</u>	-
	103.00	3.00	22.00
<i>Less:</i> Asset sold during the year	<u>Nil</u>	<u>Nil</u>	<u>Nil</u>
WDV as on 31.3.2016 (before charging depreciation)	103.00	3.00	22.00
<i>Less:</i> Depreciation for the P.Y.2015-16			
- Normal depreciation	13.13	0.90	17.60
- Additional depreciation	<u>17.20</u>	<u>0.20</u>	<u>4.40</u>
WDV as on 1.4.2016	<u>72.67</u>	<u>1.90</u>	<u>0.00</u>

Computation of deduction under section 32AC for the A.Y. 2016-17

(See Notes 2 to 6 below)

Particulars	(Rs. in crore)
Plant and Machinery acquired and installed during the previous year	
- New Machinery installed on 1.05.2015	84.00
- New Windmill purchased and installed on 19.07.2015	-
- Fork-lift trucks, used inside factory	4.00
- Computers installed in factory	<u>2.00</u>
	<u>90.00</u>
15% of Rs. 90 crore, being aggregate investment in new plant and machinery acquired and installed during the P.Y.2015-16	13.50

If the assessee is a partnership firm instead of a company

Yes, the answer would be different in respect of deduction under section 32AC, since this deduction is available only to an assessee, being a company engaged in the business of manufacture or production of any article or thing. Therefore, a partnership firm would not be eligible for deduction under section 32AC.

However, depreciation and additional depreciation computed under section 32(1)(ii) and 32(1)(ia), respectively, and the written down of the block of assets would remain the same, even if the assessee is a firm.

Notes:

- (1) Windmills and any specially designed devices which run on windmills installed on or after 1.4.2014 would be eligible for depreciation@80%.
- (2) From the A.Y.2015-16, a company would be entitled for deduction under section 32AC if the investment in new plant and machinery acquired and installed during the previous year exceeds Rs.25 crores. The deduction under section 32AC would be in addition to the depreciation allowable under section 32 for that year. However, such deduction would not go to reduce the written down value of plant and machinery.
- (3) New imported machinery was not installed during the previous year 2015-16. Hence, it would not be eligible for deduction under section 32AC and additional depreciation for A.Y. 2016-17. It would also not be eligible for normal depreciation for A.Y. 2016-17, since it was not put to use in the P.Y. 2015-16, being the year of acquisition.

- (4) It may be noted that investment in the following plant and machinery would neither be eligible for deduction under section 32AC nor for additional depreciation under section 32(1)(ia):
- Lorries for transporting goods to sales depots, being vehicles/road transport vehicles; and
 - Computers installed in office premises.
- (5) As per section 2(28) of the Motor Vehicles Act, 1988, the definition of a "vehicle" excludes, *inter alia*, a vehicle of special type adapted for use only in a factory or in any enclosed premises. Therefore, fork-lift trucks used inside the factory would not fall within the definition of "vehicle". Hence, it is eligible for additional depreciation under section 32(1)(ia) and deduction under section 32AC.
- (6) The deduction under section 32AC would not be allowed in respect of the windmill since the whole of the actual cost of the windmill is allowed as deduction by way of depreciation @ 80% and additional depreciation @ 20% [Section 32AC(4)(v)].

(b) **Computation of total income of the trust for the A.Y. 2016-17**

Particulars	Rs.	Rs.
Income from properties held by trust	20,00,000	
Income from business incidental to the main objects of the trust	17,00,000	
Voluntary Contribution other than corpus donation (Note 1)	5,00,000	42,00,000
Less: 15% of income accumulated or set apart under section 11(1)(a)		6,45,000
		35,55,000
Less: Amount applied for charitable purposes		
Activities and programmes for the benefit of autistic persons	20,00,000	
Repayment of loan taken for construction of training centre (Note 2)	10,00,000	30,00,000
Taxable Income		5,55,000

Computation of tax liability of the trust for the A.Y. 2016-17

Particulars	Rs.	Rs.
Upto Rs. 2,50,000	Nil	
Rs. 2,50,000 – Rs. 5,00,000	25,000	

Rs. 5,00,000 – Rs. 5,55,000	11,000	36,000
Add: Education cess @ 2%		720
Add: Secondary and higher education cess @ 1%		360
Total tax liability		37,080

Notes:

- (1) Section 11(1)(d) excludes from the total income of the person, any income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.
- (2) In *CIT vs. Janmabhoomi Press Trust (2000) 242 ITR 703*, the Karnataka High Court held that where a debt is incurred for the purpose of the trust, the repayment of the debt would amount to an application of the income for the purpose of the trust. Therefore, repayment of loan taken for construction of training centre for disabled persons is to be considered as application for charitable purpose.

2. Computation of total income of M/s. Lotus for the A.Y. 2016-17

Particulars	Rs.	Rs.
Net profit as per profit & loss account		1,50,000
Add: Interest to partners on capital accounts for the period from 1.4.2015 to 30.9.2015 (Rs. 1,00,000 but deduction limited to 6 months only hence 50% thereof is deductible and the balance is added) [Note (i)]	50,000	
Interest to partners on current accounts from 1.4.2015 to 31.3.2016—not authorized by the deed, hence disallowed [Note (ii)].	50,000	
100% of Rs. 25,000 paid towards purchase of refrigerator otherwise than by way of account payee cheque (being stock in trade, hence disallowed) [Note (iv)].	25,000	
Difference on account of valuation of closing stock-in-trade at market value (Rs. 65,000 less Rs. 60,000) [Note (ix)]	5,000	
Salary paid to working partners considered separately.	2,50,000	3,80,000
		5,30,000
Less: Additional depreciation on new machinery (Rs. 5,00,000 x 20%) = Rs. 1,00,000. Only 50% is allowable as deduction. [Note (vii)]		50,000
		4,80,000
Less: Interest received from bank on fixed deposits		

considered separately		25,000
		4,55,000
Less: Salary to working partners -		
(i) As per limit in section 40(b)		
On first Rs. 3,00,000 @ 90%	2,70,000	
On the balance of Rs. 1,55,000 @ 60%	93,000	
	3,63,000	
(ii) Salary actually paid	2,50,000	
Deduction allowed being (i) or (ii) whichever is less		2,50,000
		2,05,000
Less: Business loss relating to assessment year 2015-16 set off		50,000
Income from business		1,55,000
Income from other sources		
Interest received from bank on fixed deposits		25,000
Gross Total Income		1,80,000

Explanation for the treatment of various items

- (i) Interest to partners authorised by the partnership deed will be allowed as deduction only for the period beginning with the date of the partnership deed and not for any earlier period as per section 40(b)(iv). Therefore, interest paid to the partners on the balances standing to the credit of their capital accounts from 1.10.2015 alone is eligible for deduction, since the partnership deed was executed only on 1.10.2015. Interest for the period prior to 1.10.2015 is not allowed.
- (ii) The partnership deed of 1.10.2015 provides for payment of interest on balances in capital accounts of partners only. As such, the interest paid on the balances standing to the credit of the current accounts of partners is not allowable under section 40(b). The Kerala High Court has, in *Novel Distributing Enterprises v. DCIT (2001) 251 ITR 704 (Ker)*, on identical facts, held that interest paid to the partners on their current account balances is not allowable.
- (iii) Since Mr. Lalit is a partner in his individual capacity, interest paid to the Hindu Undivided Family of partner Mr. Lalit does not attract disallowance under section 40(b)(iv).
- (iv) Section 40A(3) provides for disallowances @ 100% of the expenditure incurred otherwise than by an account payee cheque/account payee bank draft. Since the firm has made payment of Rs. 25,000 towards purchase of refrigerators by a

crossed cheque and not by an account payee cheque, 100% of such expenditure would be disallowed.

- (v) Gold jewellery valued at Rs. 30,000 received as gift from a manufacturer for achieving sales target is taxable under section 28(iv), being a benefit arising from business.
 - (vi) Depreciation on motor car bought and used exclusively for the purposes of business is allowable though not registered in the name of the firm in view of the ratio of the decision of the Supreme Court in *Mysore Minerals Ltd. v. CIT (1999) 239 ITR 775*.
 - (vii) The firm is entitled to additional depreciation @ 20% under section 32(1)(ia) in respect of the new machinery installed for manufacture of pencils. Since the new machinery is put to use for less than 180 days during the relevant previous year, the additional depreciation is restricted to 50% of the prescribed rate of 20% i.e. it is restricted to 10%. The balance additional depreciation can be claimed in the immediately succeeding financial year.
 - (viii) Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Hence, it is not taken into account for the purpose of computing book-profit.
 - (ix) As per para 24 of ICDS II : Valuation of Inventories, closing stock has to be valued at net realizable value in the case of a dissolved firm. As such, the closing stock-in-trade of the firm has to be valued at the net realizable value.
 - (x) Net profit shown in the profit and loss account computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners constitutes book profit as per *Explanation 3* to section 40(b). Carry forward and set off of business loss is covered under Chapter VI. Hence, brought forward business loss relating to the assessment year 2015-16 is not considered for calculation of book-profit.
 - (xi) Section 45(4) is not applicable to the firm for the assessment year 2016-17, though the dissolution of the firm took place on 31.3.2016, as there was no transfer by way of distribution of capital assets during the relevant previous year. The distribution of the capital assets took place on 20.4.2016. The capital gains will, therefore, be assessable in the assessment year 2017-18.
3. (a) Stalwart Ltd., the foreign company and IND Ltd., the Indian company are associated enterprises since Stalwart Ltd. is the holding company of IND Ltd. Stalwart Ltd. sells computer monitors to IND Ltd. for resale in India. Stalwart Ltd. also sells identical computer monitors to FMP Ltd., which is not an associated enterprise. The price charged by Stalwart Ltd. for a similar product transferred in comparable uncontrolled transaction is, therefore, identifiable. Therefore, Comparable Uncontrolled Price (CUP) method for determining arm's length price can be applied.

While applying CUP method, the price in comparable uncontrolled transaction needs to be adjusted to account for difference, if any, between the international transaction (i.e. transaction between Stalwart Ltd. and IND Ltd.) and uncontrolled transaction (i.e. transaction between Stalwart Ltd. and FMP Ltd.) and the price so adjusted shall be the arm's length price for the international transaction.

For sale of monitors by FMP Ltd., Stalwart Ltd. is responsible for warranty for 3 months. The price charged by Stalwart Ltd. to FMP Ltd. includes the charge for warranty for 3 months. Hence arm's length price for computer monitors being sold by Stalwart Ltd. to IND Ltd. would be:

Particulars	No. of units	Rs.
Sale price charged by Stalwart Ltd. to FMP Ltd.		10,000
Less: Cost of warranty included in the price charged to FMP Ltd. (Rs.1,000 x 3 /12)		250
Arm's length price		9,750
Actual price paid by IND Ltd. to Stalwart Ltd.		11,000
Difference per unit		1,250
No. of units supplied by Stalwart Ltd. to IND Ltd.	50,000	
Addition required to be made in the computation of total income of IND Ltd. (1,250 × 50,000)		6,25,00,000

No deduction under chapter VI-A would be allowable in respect of the enhanced income of Rs.6.25 crores.

Note: It is assumed that IND Ltd. has not entered into an advance pricing agreement or opted to be subject to Safe Harbour Rules.

- (b) Under section 2(22)(e), any payment by a closely-held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits.

Therefore, in order to attract the deeming provisions under section 2(22)(e), the recipient of loan should be a registered shareholder as well as the beneficial owner of shares.

Accordingly, in this case, Rs.50,000 (i.e., loan to the extent of accumulated profits of Aqua Ltd.) would be deemed as dividend in the hands of Mrs. Malik, who holds 17% equity shares in Aqua Ltd., under section 2(22)(e).

Thereafter, the clubbing provisions under section 64(1)(iv) would be attracted, as per which, income as arises, directly or indirectly, from asset transferred to spouse,

otherwise than for adequate consideration, would be included in the hands of the transferor.

If the assets so transferred are shares in a company, the loan taken from the company is deemed as dividend income of the shareholder under section 2(22)(e) to the extent to which the company possesses accumulated profits. Thus, on account of this deeming provision, such loan is treated as income arising from the shares. It was so held by the Madras High Court in *CIT v. Vimalan (A.) (1975) 98 ITR 529*.

Accordingly, as per section 64(1)(iv), such income arising in the hands of the shareholder, Mrs. Malik, by virtue of section 2(22)(e) (i.e., deemed dividend of Rs. 50,000) would be included in the total income of Mr. Malik, who had transferred the said shares to Mrs. Malik without consideration.

(c) **Computation of gross total income of Mr. Anshul for the A.Y.2016-17**

Particulars		Rs.
Income from Other Sources		
(i)	Receipt of immovable property for inadequate consideration attracts the provisions of section 56(2)(vii). The difference between the stamp duty value (Rs. 18 lakhs) and the actual consideration (Rs. 10 lakhs) would be taxable.	8,00,000
(ii)	Interest on enhanced compensation amounting to Rs. 1,70,000 would be taxable under section 56(2)(viii) in the year of receipt. Deduction@50% is allowable under section 57(iv). Hence, the taxable interest is Rs. 85,000 (i.e., Rs. 1,70,000 – Rs. 85,000)	85,000
(iii)	Interest of Rs. 90,000 received on fixed deposit is income of Mr. Anshul. The interest of Rs. 50,000 on loan taken by Mr. Anshul from the same bank on security of the fixed deposit will not go to reduce the income by way of interest on fixed deposit [<i>CIT v. D. V. Gopinathan (2001) 248 ITR 449</i>].	90,000
Gross Total Income		9,75,000

4. (a) **Computation of Capital Gains of Ravi for the A.Y.2016-17**

Particulars		Rs.
Sale of house on 28.2.2016		
	Sale consideration received	13,00,000
	Less: Indexed cost of acquisition Rs. 4,50,000 x 1081/406	<u>11,98,153</u>
	Long term capital gain	1,01,847
	Less: Exemption under section 54 (lower of capital gains or	<u>1,01,847</u>

amount invested)	
Taxable capital gain	<u>Nil</u>
Sale of house plot on 4.3.2016	
Sale consideration received	10,00,000
Less: Indexed cost of acquisition Rs. 3,00,000 x 1081/389	<u>8,33,676</u>
Long term capital gain	1,66,324
Less: Exemption under section 54F	
Investment for the purpose of section 54F is Rs. 5,98,153 (i.e. Rs. 7,00,000 – Rs. 1,01,847), which is less than the net consideration on sale of plot. Therefore, only proportionate capital gain would be exempt under section 54F.	
[Capital gain × Amount invested / Net sale consideration] i.e., [Rs. 1,66,324 × Rs. 5,98,153 / Rs. 10,00,000]	<u>99,487</u>
Taxable capital gain	<u>66,837</u>

- (b) (i) For claiming deduction of any expense enumerated under section 43B, the requirement is, the actual payment and not deemed payment. Furnishing of bank guarantee cannot be equated with actual payment. Actual payment requires that money must flow from the assessee to the public exchequer as specified in section 43B. Therefore, deduction of an expense covered under section 43B cannot be claimed by merely furnishing a bank guarantee [CIT v. McDowell & Co Ltd (2009) 314 ITR 167 (SC)]

- (ii) Interest payable to Sales tax department is part of sales tax.

Therefore, interest payable to sales tax department, which is not paid before the "due date" of filing of return of income, would attract disallowance under section 43B [Mewar Motors v. CIT (2003) 260 ITR 218 (Raj)]

- (c) (i) **Interest on term loan for purchase of machinery:** As per section 36(1)(iii), interest paid in respect of capital borrowed for acquisition of an asset for a period beginning from the date of borrowal of loan for acquiring the asset till the date on which such asset is first put to use is not allowable as deduction but has to be capitalised by adding the same to the cost of the asset. Therefore, interest@12% p.a. for a period of 10 months from 1st April, 2015 to 31st January, 2016 on Rs. 7 crores, being the amount of loan, is to be capitalized.

Cost of machinery	10,00,00,000
Add: Interest [12% × 10/12 × Rs.7,00,00,000]	<u>70,00,000</u>
Actual Cost of machinery	<u>10,70,00,000</u>

Interest @12% for two months (February, 2016 & March, 2016) after the asset is put to use is allowable as deduction under section 36(1)(iii) $[12\% \times 2/12 \times \text{Rs.}7,00,00,000]$ 14,00,000

(ii) Depreciation

	Rs.
Since the machinery is put to use for less than 180 days in the previous year 2015-16, the depreciation would be restricted to 50% of the amount calculated at the prescribed percentage of 15%. Therefore, depreciation = $50\% \times [15\% \times \text{Rs.}10,70,00,000]$	80,25,000
Likewise, the additional depreciation would also be restricted to 50% of the amount calculated at the prescribed percentage of 20%, assuming that Saraf Ltd. is engaged in the manufacture or production of any article or thing and that the machinery acquired is a new machinery. Therefore, additional depreciation = $50\% \times [20\% \times \text{Rs.}10,70,00,000]$	<u>1,07,00,000</u>
	<u>1,87,25,000</u>

Note: The company shall not be entitled for investment allowance under section 32AC since the investment in plant and machinery does not exceed Rs.25 crores.

ICDS IX relating to borrowing costs in respect of assets also mandates capitalization from the date of borrowing and upto the date such asset is first put to use.

(d) Computation of total income of the investment fund for A.Y.2016-17

Particulars	Rs.		
	Cell	Chip	Cubical
Business Income	Nil	2,00,000	Nil
Total Income	Nil	2,00,000	Nil

Computation of total income of a unit holder of the following investment funds for A.Y.2016-17

Particulars	Rs.		
	Cell	Chip	Cubical
Capital Gains	80,000	70,000	-
Income from other sources	20,000	20,000	30,000
Total Income	1,00,000	90,000	30,000

Notes:

- (i) The total income of Investment Fund Chip would be chargeable to tax@30% if the fund is a company or firm and at the maximum marginal rate, in any other case.
- (ii) In case of Investment Fund Cubical, the business loss of Rs. 2 lakh is set-off against income from other sources of Rs. 8 lakh. Loss of Rs. 6 lakh under the head capital gains cannot be set-off. The same has to be carried forward by the Investment Fund for set-off in the subsequent years.
- (iii) For A.Y.2017-18, the brought forward capital loss of Rs. 6 lakh can be set-off against capital gains of Rs. 9 lakh. Business income of Rs. 2 lakh would be taxable in the hands of the Investment Fund.

Capital gains of Rs. 3 lakh (Rs. 9 lakh – Rs.6 lakh) and Income from other sources of Rs. 8 lakh would be taxable in the hands of the unit-holders. The total income of each unit holder for A.Y.2017-18 would be Rs. 55,000, comprising of –

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

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

5. (a) The income received by Mr. Mandeep from a filmmaker for allowing them to shoot a film in the agricultural land owned by him is not in the nature of agricultural income because it was neither received by him against the sale of agricultural produce obtained nor for carrying out the normal agricultural operations on the land. The amount paid was only for the purpose of shooting of a film on such land.

To claim exemption for agricultural income under section 10(1), the conditions contained in section 2(1A) (a) to (c) have to be first complied with/fulfilled by the assessee. The Madras High Court in the case of *B. Nagi Reddi v. CIT (2002) 258 ITR 719*, following the judgment of Apex Court in the case of *CIT v Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466*, has held, on identical facts, that the income derived for allowing a shooting of film in the agricultural land cannot be treated as agricultural income, as it has no nexus with the land, except that it was carried out on agricultural land.

- (b) Double Taxation Avoidance Agreements (DTAAs) generally contain an Article providing that business income is taxable in the country of residence, unless the enterprise has a permanent establishment in the country of source, and such income can be attributed to the permanent establishment.

As per section 92F(iia), the term "Permanent Establishment" includes a fixed place of business through which the business of an enterprise is wholly or partly carried on.

As per this definition, to constitute a permanent establishment, there must be a place of business which is fixed and the business of the enterprise must be carried out wholly or partly through this place.

Section 9(1)(i) requires existence of business connection for deeming business income to accrue or arise in India. DTAA's however provide that business income is taxable only if there is a permanent establishment in India.

Therefore, in cases covered by DTAA's, where there is no permanent establishment in India, business income cannot be brought to tax due to existence of business connection as per section 9(1)(i).

However, in cases not covered by DTAA's, business income attributable to business connection is taxable.

- (c) The Supreme Court, in the case of *Union of India v. Dharmendra Textile Processors (2007) 295 ITR 244*, observed that the object behind the enactment of section 271(1)(c) read with the *Explanations* is to provide a remedy for loss of revenue. The penalty under that provision is a civil liability. The Supreme Court held that in cases related to imposition of penalty under section 271(1)(c), wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C.

Therefore, while considering an appeal against an order made under section 271(1)(c), what is required to be examined is the record which the officer imposing penalty had before him and if that record can sustain the finding that there has been concealment, that would be sufficient to sustain the penalty. Hence, there is no need for the revenue to prove that concealment was done by the assessee 'willfully' in order to impose penalty under section 271(1)(c).

Hence, it will not help the assessee to raise defence on the lines that there was no *mens rea*.

However, every addition to the income returned does not warrant levy of concealment penalty under section 271(1)(c). The addition should be consequent to an act of concealment or withholding a fact or furnishing of inaccurate particulars of income. Where the assessee has furnished all particulars and has claimed an exemption on an honest belief that he is entitled to the same, merely because the exemption is not allowable does not warrant levy of penalty under section 271(1)(c). This has been held so, in a number of decisions. In *CIT v. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC)*, it was held that merely making an incorrect claim which is not sustainable in law, by itself, cannot tantamount to furnishing inaccurate particulars regarding the income of the assessee.

The reply should be prepared on the above lines.

- (d) Under section 132(1), the income-tax authorities listed therein are empowered to authorise other income-tax authorities to conduct search and seizure operations. The authorities empowered to issue authorization include such Additional Director, Additional Commissioner, Joint Director and Joint Commissioner as are empowered by the CBDT to do so.

However, a Joint Commissioner can issue warrant of authorization only if he has been specifically empowered to do so by the CBDT. Therefore, if the Joint Commissioner has not been specifically empowered by the CBDT to do so, the contention of the assessee would hold good.

6. (a) The income derived from leased assets shall be chargeable to tax as 'Income from other sources' under section 56(2)(iii) but the computation thereof shall be made after allowing deductions specified under sections 30, 31 and 32 subject to section 38. This is as per the provisions of section 57(ii) and 57(iii).

Computation of income under the head "Income from other sources"

Particulars	Rs.	Rs.
(A) Lease Rent for 12 months @ Rs. 50,000 p.m.		6,00,000
Less: Expenses and deductions allowable under section 57(ii) & 57(iii):		
Repairs	15,000	
Fire Insurance Premium	12,000	
Legal expenses for drafting of lease agreement	1,500	
Factory Licence fee	1,000	
Depreciation for the year	1,47,500	
Unabsorbed depreciation of earlier assessment years – eligible for deduction (Note 1)	<u>2,75,000</u>	<u>4,52,000</u>
		1,48,000
(B) Interest on Deposits	1,00,000	
Less: Expenses allowable under section 57(i)		
Brokerage Rs. 2,000		
Interest on hundi loans (Note 2) Rs. <u>50,000</u>	<u>52,000</u>	<u>48,000</u>
Total Income		<u>1,96,000</u>

Note:

1. Unabsorbed depreciation of Rs. 2,75,000 pertains to earlier assessment years. The unabsorbed depreciation shall form part of the current year depreciation and can be set off against any other head of income. Accordingly, the amount of Rs. 2,75,000 is adjustable / allowed to be set off against 'Income from other sources'.

2. Since deposits are made by investing amount received on hundi and other loans, the interest on hundi and other loans would be eligible for deduction from the income arising on such deposits.
3. Interest paid to non-resident is not eligible for deduction as the tax has not been deducted at source.

(b) (i) Deduction available to Mr. Himanshu under Chapter VI-A for A.Y.2016-17

Section	Particulars	Rs.	Rs.
80C	Deposit in public provident fund	1,20,000	
	Life insurance premium paid Rs.15,000 (deduction restricted to Rs.12,000, being 10% of Rs.1,20,000, being sum assured, since the policy was taken after 31.3.2012)	12,000	
	Five year term deposit with bank	30,000	
		1,62,000	
80CCD(1)	Restricted to Contribution to NPS of the Central Government, Rs.1,30,000 [Rs.1,80,000 – Rs.50,000, being deduction under section 80CCD(1B)], restricted to 10% of salary [Rs.1,80,000 x 10/15] [See Note 1]		1,50,000
			1,20,000
			2,70,000
80CCE	Aggregate deduction under section 80C and 80CCD(1), Rs.2,70,000, but restricted to		1,50,000
80CCD(1B)	Rs.50,000 would be eligible for deduction in respect of contribution to NPS of the Central Government		50,000
80CCD(2)	Employer contribution to NPS, restricted to 10% of salary [See Note 2]		1,20,000
Deduction under Chapter VI-A			3,20,000

Notes:

- (1) The deduction under section 80CCD(1B) would not be subject to overall limit of Rs.1.50 lakh under section 80CCE. Therefore, it is more beneficial for Mr. A to claim deduction under section 80CCD(1B) first in respect of contribution to NPS. Thereafter, the remaining amount of

Rs.1,30,000 can be claimed as deduction under section 80CCD(1), subject to a maximum of 10% of salary.

(2) The entire employer's contribution to notified pension scheme has to be first included under the head "Salaries" while computing gross total income and thereafter, deduction under section 80CCD(2) would be allowed, subject to a maximum of 10% of salary.

(c) *Explanation 3* to section 147 permits the Assessing Officer to assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under section 147, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

Therefore, in the instant case, the Assessing Officer has the power to disallow expenses under section 14A in addition to disallowing excess depreciation for which notice under section 148 was issued even though the reason for issue relating to disallowance under section 14A was not recorded under section 148(2).

Hence, there is no deficiency in the order passed by the Assessing Officer.

7. (a) (i) The proposition is **correct** in law. The Supreme Court has, in *CIT vs. MFMPian & 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 reliefs.

The Allahabad High Court has, in *CIT v. Kashi Nath Chandiwala (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** in law. The Supreme Court, in *CIT v. Meghalaya*

Steels Ltd. (2015) 377 ITR 112, observed that the power of review would inhere on High Courts, being courts of record under article 215 of the Constitution of India. There is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Supreme Court further observed that section 260A(7) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. The Supreme Court opined that this does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

- (b) 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.

In this case, no application had been filed or contention urged by the applicant foreign company, namely Butter Cocoa Co., before any income-tax authority/Appellate Tribunal/court, raising the question raised in the application filed with AAR. However, one of the Indian companies, namely, Bakers Ltd., had raised the question before the Assessing Officer, not on the applicant's 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 to the 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 applicant's case.

Therefore, as held in *Ericsson Telephone Corporation India AB v. CIT (1997) 224 ITR 203 (AAR)*, the application filed by the Indian company, Bakers Ltd., before the Assessing Officer cannot be treated to have been filed by the foreign company, Butter Cocoa Co.

Hence, the rejection of the application of Butter Cocoa 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.

- (c) The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and take-off facilities and parking facility for the aircraft are for the "use of the land" by the airline company came up before the Supreme Court in *Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372*.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from the reality.

The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land *per se* and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in *Singapore Airlines* case and overruled the view taken by the Delhi High Court in *United Airlines/Japan Airlines* case.

Applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Assessing Officer that landing and parking charges are levied for use of the land of airport and hence, the charges are in the nature of rent to attract the provisions of tax deduction at source under section 194-I is **not** correct.